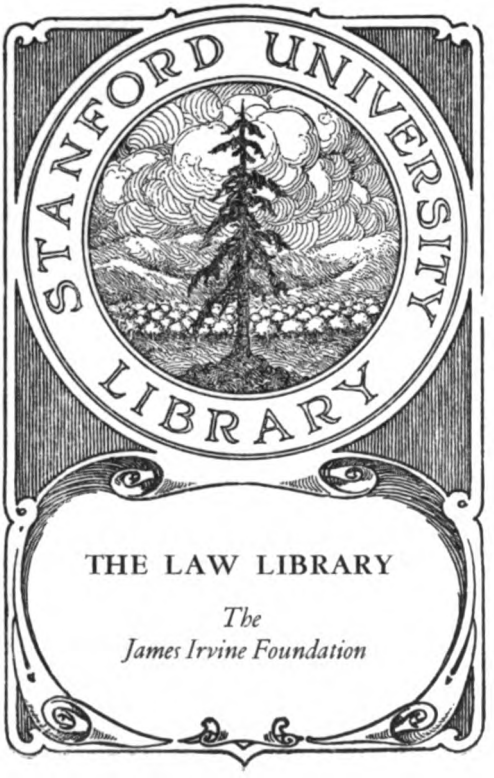

LIVES

OF

EMINENT SERJEANTS-AT-LAW

OF THE

ENGLISH BAR.

BY

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IN TWO VOLUMES.

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LIVES OF EMINENT SERJEANTS.

THE DARNALS.

WHETHER Darnal, Darnel, or Darnell, or even Darnall, according to various readings, these lawyers were of high promise. The elder was spoken of in 1700, amongst other gossip, by Luttrell, as the new Baron of the Exchequer, and actually, though incorrectly, named by him as such.[1]

A classical pun is extant upon the name. Kett, or Horse Kett, as he was called at Oxford, from the resemblance which his head bore to that animal, was a master of the schools at Oxford, and with him was Mr. Darnell. The following line was immediately applied to these gentlemen:—

"Infelix *Lolium*, et steriles dominantur avenæ."

"Oats and Darnel choke the rising corn."[2]

Or rather, according to Covington, *nascuntur*. "Nas-

[1] "Diary," vol. iv. pp. 652, 653. Sir Salathiel Lovel, Recorder of London, got the vacant place.

[2] Dryden's "Pastorals," vol. v. p. 56.—"Virg. Eclog.," v. 37.

cuntur," he observes, is found in all the MSS." And he distinguishes the word "*dominantur*" in the "Georgics," where exactly the same passage appears, by referring the last to "weeds growing *amongst* the corn," whereas, here the "weeds are growing *instead* of barley."[1] So in Job: cockle or darnel instead of barley.

[1] "Virg. Bucol. Eclog.," v. 37; Covington's "Georgics," i. 154. And oats unblest, and darnel domineers.—Dryden's "Georgics," vol. i. p. 229. So again, "Ovid's "Fast.," vol. i. p. 691. "Et careant loliis, oculos vitantibus agri. Nec sterilis culto surgat avena solo." Lolium: Tares-Avena: Wild oats.

SIR JOHN DARNAL, Senior.

Serjeant-at-Law, 1692—King's Serjeant, 1698.

The Darnal family were harnessed to the law.

Thomas Darnell, Clerk of the Pipe, temp. Hen. VII., was buried in the Mercers' Chapel, London, in 1515, 7 Hen. VIII.

John Darnell, Clerk of the Pipe, was a Baron of the Exchequer, temp. Edw. VI. He died in 1549.

John Darnell, of Hertingfordbury, was of the Middle Temple.

Henry Darnell, of Bird's Place, Essenden, Herts., was of Gray's Inn.[1]

"Centum patrimonia," according to Juvenal, "causidicorum."

But these are not all.

John Darnall was a son of Ralph Darnall, of Essenden and Loughton's Hope, near Pembridge, Herefordshire.[2] Little, however, is known of his early life.

In 1680 Mr. Darnal became engaged in the trials for high treason during the tyranny of Oates and Dangerfield. He was assigned as counsel for Lord

MS.

[2] "Notes and Queries," 4. vol. ii. p. 42.

Castlemaine, with Jones and Saunders; but they do not appear to have taken an active part for the defence. The prisoner, however, was acquitted.[1]

Nearly at the same time he was called upon to defend Mr. Giles for an attempt to murder Edward Arnold, Esq. The trial took place before the famous Jeffreys, then Recorder. At this time the offence was only a misdemeanor, and counsel were, therefore, able to address the jury. An alibi was set up, and several witnesses appeared in support of it; but the jury soon returned a verdict of guilty, upon which the sentence was, that the defendant should be three times pilloried, and fined £500, and, "as a terror to all such villains," should procure sureties for good behaviour *during life*.[2]

The celebrated case of Dammaree and Purchuse is familiar to all who have read the "State Trials." Upon that occasion Mr. Whitaker and Mr. Darnal defended them; but the latter must not be confounded with the elder Sir John, who, had he been engaged upon that occasion, would have taken precedence of Whitaker.[3]

[1] "State Trials," vol. vii. pp. 1084, 1112.

[2] "State Trials," vol. vii. pp. 1129, 1144, 1159. He appeared for the Crown, however, in several well-known and important cases. Against Fuller for several scandalous libels, p. 1702; "State Trials," vol. xiv. p. 517; Haagen Swendsen for the abduction of Mrs. Rawlins, *Id.* p. 561; Tutchin for libel, *Id.* p. 1100; Denew and others for conspiracy and assault, *Id.* p. 903; Arnold for shooting at Lord Onslow, vol. xvi. p. 750; Major Oneby for murder, vol. xvii. p. 38. In all these cases there were verdicts of "guilty."

[3] "State Trials," vol. xv. pp. 521, 587, 627, 665. This Darnal or Darnell was made a Serjeant in 1 Geo. I., 1714, whereas Sir John had the coif conferred on him in 1692.

On the 27th of April, 1692, Mr. Darnal was called to the degree of the coif.[1] In 1698, about January, he was made a King's Serjeant.[2] In June of the next year he was knighted by King William at Kensington,[3] and in the same month he appeared as counsel for the Crown, to argue with Serjeant Wright the case of Knight and Burton for the false endorsement of Exchequer Bills.[4] And he was again counsel against Mr. Duncombe for a similar offence, but the defendant was acquitted.[5]

In 1696 he defended Peter Cook for high treason, and, with Sir Bartholomew Shower, made a stout opposition to the prosecution, both as to law and fact, and although he was not fortunate enough to succeed, his client was pardoned on condition of transportation.[6] It is much to the credit of Sir John that all those implicated in the conspiracy, who had been tried before Mr. Cook, were executed. His legal reasonings and powerful advocacy must have had weight with the Court, and, subsequently, arrested the execution.

Sir John died in December, 1706,[7] at his house in Essex.[8] He was buried on Friday, the 20th, in St.

[1] Wynne, p. 90.
[2] "The Law Reports of Lord Raymond," vol. i. p. 414.—Wynne, p. 91.
[3] Luttrell's "Diary," vol. iv. p. 523.
[4] *Id.* p. 526.
[5] "State Trials," vol. xiii. p. 1061.
[6] "State Trials," vol. xiii. pp. 311, 398.
[7] Luttrell's "Diary," vol. vi. p. 137. [8] MS.

Clement Danes' Church, in the chancel vault.[1] According to Luttrell, he had been dangerously ill in 1701.[2]

In right of his wife (with whose name we are not acquainted), he impaled a boar passant.[3]

The character of Vagellius, in Garth's "Dispensary," has been attributed to him, but it rather belongs to Sir Bartholomew Shower. Vagellius was a Roman lawyer of Mutina, a city of the Lombards, now Modena. He seems to have been a reckless declaimer, by no means baffled by a cause at once bad, and even perilous. Garth thus celebrates the lawyer:—

"Since of each enterprise th' event 's unknown,
We 'll quit the sword, and hearken to the gown;
Nigh lives Vagellius, one reputed long,[4]
For strength of lungs, and pliancy of tongue;
For fees to any form he moulds a case,
The worst has merits, and the best has flaw.
Five guineas make a criminal to-day,
And ten to-morrow wipe the stain away;
To law then, friends, for 'tis by fate decreed,
Vagellius and our money shall succeed."[5]

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[1] MS. Mr. Bridger, who refers to the English Post, Monday, December 23, 1706.

[2] Luttrell, vol. v. p. 116.

[3] MS.

[4] Sir B. Shower. Bell's "Poets."

[5] "The Dispensary," canto iv. p. 156. But the "Complete Key," notes Darnal as the Vagellius.

THOMAS CARTHEW.

Serjeant-at-Law, 1700.

[The Author is indebted to Mr. Carthew, of Milfield, East Dereham, Suffolk, for many interesting particulars concerning his eminent great grandfather.]

CARTHEW, in Cornish, Cardu, or Carthu, has given a name to three places in Cornwall; Carthew in Madron, in St. Issey, and St. Austell.[1] It signifies rock black.[2]

Thomas Carthew was born at Cannalidgy, the family seat, in the parish of St. Issey, Cornwall, on the 4th of April, 1657. He was the eldest son of Thomas Carthew, of that place. "Cannall Lidgye," says Mr. Hals,[3] "was the voke lands of a considerable manor, now in several persons' hands; much of those lands being in possession of Boscawen, as I take it; the high rents are in Hart. "As part of the same, is the possession and birth-place of my very kind friend and neighbour, Thomas Carthew, Esq., barrister-at-law, who, by his indefatigable study and labour, first in the inferior practice of the law, under Mr. Tregena, without being a perfect Latin grammarian, always using

[1] Burke's "Landed Gentry," 1858, p. 182.
[2] Gilbert's "Parochial History of Cornwall," vol. ii. p. 255. [3] *Id.*

the English words for matters or things in his declarations, where he understood not the Latin."[1]

On the 23rd of November, 1698, he was admitted of the Inner Temple.[2]

He arrived, however, at an eminence which, but for his early decease, would have secured for him a seat on the Judicial Bench. Carthew became a student at the Middle Temple on the 21st of May, 1683 : and on the 14th of June, 1686, he was called to the Bar[3] by a mandamus from the Lord Keeper North.[4]

On the 7th of November, 1700, he was made a Serjeant-at-Law,[5] and during his brief enjoyment of the practice he derived through this creation, "he grew into such great fame and reputation," says Mr. Hals,[6] "that he is likely to make a considerable addition of riches to his paternal estate."

But he died in London in July, 1704,[7] in the lifetime of his father, at the early age of forty-seven, and was buried in the Temple Church.[8]

He married Mary, one of the two daughters and coheiresses of John Colly, of Banham, Norfolk, by whom he left two sons, Thomas and John, both of whom were at the Bar. The other daughter married Edward North, of Benacre, Suffolk, a relation of the Lord

[1] Gilbert's "Parochial History of Cornwall," vol. ii. p. 255 (Sic.)
[2] MS. [3] Gilbert, vol. ii. p. 255. [4] MS.
[5] Wynne, p. 92.
[6] In Gilbert's "Parochial Registry," vol. ii. p. 255.
[7] See Luttrell's "Diary, vol. v. p. 442. [8] MS.

Keeper.[1] The widow died June 15, 1726. Thomas inherited the estates at Benacre and Woolbridge, in Suffolk, from his maternal uncle, Edward North. Thomas was born June 30, 1687, and died March 20, 1742, after disposing of the Cornish property. Of John we have no particulars.

The arms of the Serjeant were: Argent, a chevron azure, between three ducks, proper;[2] or, more properly, or a chevron sable, between two awks, proper. Crest, an awk ducally gorged, proper.[3]

The lands of Canaligye were "long since the writing hereof" all sold by Mr. Carthew's son and heir to two of the brothers of Trebilliocks.[4]

In the Church of St. Issey, called in some ancient writing Eglos Crocle and Nansant, there are monuments to Mr. Thomas Carthew, and to some of the Vicars.[5]

There is a portrait of this Serjeant at Woolbridge Abbey, Suffolk.[6]

In common with other considerable lawyers of those days, Serjeant Carthew collected a number of law cases decided in his time. But it was not allowable to publish them without first obtaining an "Imprimatur." Thus: "We being well satisfied of the learning and

[1] MS. Hals, in Gilbert's "Cornwall," vol. ii. p. 255. See Burke's "Commoners," vol. ii. p. 215. It is said, however, that he was twice married, and that Thomas, at least, was the son of the first wife. MS. "His father, Baker, of Nantyglos by Fowey—his grandfather Lawry."

[2] Gilbert, vol. ii. p. 255.

[3] MS. Auk.

[4] Gilbert, as above.

[5] *Id.* p. 256.

[6] MS.

judgment of the Author, do approve of the printing and publishing the Reports of Thomas Carthew, late Serjeant-at-Law." This was the licence given to his eldest son, Thomas Carthew, a barrister-at-law, of Benacre Hall and Woolbridge Abbey. It was signed by all the twelve Judges. It seems that the Serjeant began his labours in this respect when he was nearly thirty, and he continued them almost until his decease. His heir (whom we have just mentioned) dedicated the volume to Peter, Lord King, Lord Chancellor, the ancestor of the Earls of Lovelace.

He vouches for the authenticity of the Reports, adding, that it was not his intention to have made them public, but for the importunity of "Persons of judgment." And he remarks, that his father was well known to the Chancellor.[1]

This book of Law Reports has been well spoken of by Lord Kenyon. "Carthew, who in general was a good Reporter."[2] And Lord Chief Justice Willes took occasion to say, that Carthew was "in general a very good and a very faithful Reporter." (The Judge was criticising one of his Reports.)[3] But, on the contrary, during the trial of the Bishop of London against Fytche in the House of Lords, Lord Thurlow observed,

[1] See the book which was printed in the Savoy in 1741. The cases were from 3 Jac. I.—12 William III., published first in folio, 1728; secondly, with some marginal references added, 1741.—Bridgman's "Leg. Bibl." p. 52.

[2] "Term Reports, in the King's Bench," London, 1817, vol. ii. p. 776.

[3] L. C. J. Willes, MSS. edited by Durnford, and called, "Reports of Adjudged Cases," &c.—"Reports, by Willes," p. 182.

that Carthew and Comberbach were equally bad authority.[1] However, with regard to this hostile opinion of Lord Thurlow, there is a curious tradition in the Carthew family, that the Serjeant's grandson headed an adverse party against the Chancellor at school upon one occasion (for they were school-fellows), and that Thurlow was a great bully, and remembered the circumstance afterwards with an ungenerous feeling.[2]

[1] Bridgman's "Leg. Bibl." tit. "Carthew," citing Brown's "Chancery Cases," p. 52.
[2] MS.

CHARLES BONYTHON, OR BONITHON.

Serjeant-at-Law, 1692.

We must diversify our biography with a tragic history. Painful as is the narrative, it may, if carefully considered, be for our instruction. The examination of hereditary insanity, forms, of course, no part of this undertaking; but it is matter for deep thought, that, when father and son fall successively by their own hand, the remaining portions of the family are often of sound judgment, and prosperous in their undertakings.

Charles Bonython was of Gray's Inn, and was made a Serjeant in 1692.[1]

"Charles Bonython, of Bonython, in this parish,[2] was a Serjeant-at-law, and Steward of Westminster, which city he also represented in Parliament. 'Mr. Bonithon succeeds Sir Francis Withens in his place of Steward to the Courts at Westminster, in the gift of the Dean and Chapter.'[3] He married Mary, the daughter of —— Livesay, Esq., of Livesay, in Lincolnshire. His father, John Bonython, married Ann, a daughter

[1] Wynne, p. 90.
[2] Cury, or Curye, Cornwall.
[3] Luttrell's "Diary," vol. i. p. 255.

of Hugh Trevanion, of Trelegon, Esq. His grandfather, Thomas Bonython, married Frances, the daughter of Sir John Parker, of London.

"From this place, also, were descended the Bonythons of Carclew, in Milor.

"This Charles Bonython, however, in a fit of madness shot himself in his own house, in London, leaving two sons, Richard and John; and a daughter, married to Thomas Pearse, of Helatin. Richard Bonython, the eldest son, a very ingenious gentleman, was called to the Bar; but, being tainted likewise with his father's distemper, first sold portions of his estate in parcels, and at last this barton, which had been so long in his family, to Humphry Carpenter, jun.; and then, to complete the tragedy, for he was never easy in his mind after this sale, first of all he set fire to his chambers in Lincoln's Inn, burnt all his papers, bonds, &c., and then stabbed himself with his sword, but not effectually; but he then threw himself out of the window, and died on the spot.

"John Bonython, the second son, was bred in King's College, Cambridge, and is now an eminent physician in Bristol.

"Roskymer Bonython, of this place, was Sheriff of Cornwall in the 17th of James the First, A. D. 1619.[1]"

Bonython appears to be derived from the well-known word for an house, and possibly ethon; furze.

[1] Tonkin, in Gilbert's "Parochial History of Cornwall," vol. i. p. 302.

JOHN HOOKE.

Serjeant-at-Law, 1703.

[For this memoir, the Author is indebted to Mr. Noel H. Robinson, of Great Queen Street, Westminster, one of his descendants.]

THE father of the Roman historian seems entitled to notice, and not the less when we find that he attained the rank of a Welsh Judge, and the dignity of the coif.

John Hooke was Irish. He was born in 1655, at Drogheda, the eldest son of John Hooke, of that town. He was educated at a school in Kilkenny. On the 28th of June, 1672, he was entered at Trinity College, Dublin, as a pensioner, being then seventeen. His tutor was Richard Acton, of Drogheda. After remaining at College about a year and a half, he was admitted, on the 3rd of February, 1674, a student of Gray's Inn, and on the 8th of February, 1681, he was called to the Bar.[1] On the 30th of November, 1700, he was made a Serjeant.[2] . . . . .

In 1703 we find him a Welsh Judge, Chief Justice of Carnarvon, Merioneth, and Anglesea. He was, certainly, a Judge in 1706; and there is no reason for

[1] MS. [2] Wynne, p. 98.

supposing that he did not die in office.[1] He signed his name in his will, "Serjeant-at-Law," but that affords no reason why he should have resigned; for it does not follow that he would have added his judicial title. . . . . .

The only anecdote which has been communicated to the author respecting this Serjeant, relates to a case in which he was engaged with a barrister named Crook. They were successful, and got their verdict. Upon this, the fortunate litigant observed, that he had gained his cause by "Hook and by Crook."[2]

His wife's name was Elizabeth. They had several children. The eldest was Nathaniel, the historian, who was admitted a student of Lincoln's Inn in 1702.[3]

Serjeant Hooke died in 1712, at the age of fifty-seven, leaving a will, which was proved by his widow. This last testament manifests great affection for his wife and children. Indeed, he seems to have died poor, if not in debt, for he says: "He that multiplied the widow's *oyl*, will, I hope, enable my executrix to do justice to my creditors, of whom she herself is a principal one." The will was signed on the 22nd of March, 1710. An earnest expression of religious feeling prevails throughout it. . . . . .

[1] MS. "Law Reports of Lord Raymond," vol. ii.

[2] MS. This is a better play upon the words than the saying about ship-money. They could not get it by Hook nor by *Croke*, Sir George Croke being against it. The meaning of the proverb is:—If you could not manage with the crook, you would bend it into a hook. If you could not then succeed, you neither do it by *hook* nor by *crook*.

[3] MS.

In one part, he speaks of his "zeal for true and pure Christianity and Moderation." And the family must originally have been Protestants, for Alderman Hooke, of the Dublin Corporation, the Serjeant's grandfather, renewed a grant of lands from Charles the Second in 1666, under the Act of Settlement, consisting of 658 acres in the County of Westmeath. And the Alderman was educated at Trinity College, Dublin, where he subsequently sent his two sons, John and Nathaniel.

It seems, therefore, that Nathaniel, the historian, departed from the religion of his ancestors. For he is represented as being "a strict Roman Catholic." It is even asserted by some of his biographers, that he attempted to convert his friend and patron, the Duchess of Marlborough, on her death-bed, and that when Pope was dying, Mr. Hooke brought a Roman Catholic Priest to him. This last statement is very credible, for he enjoyed the friendship of the poet.[1]

He is said to have lost his fortune in the South Sea scheme. He died in 1764.[2]

The death of Serjeant Hooke's widow is thus recorded :—"Mrs. Elizabeth Hooke, relict of Serjeant Hooke, the Welsh Judge, died on the 26th of January, 1736. She was the daughter of the famous Major-General Lambert.[3]

[1] MS. [2] "Penny Cyclopædia," vol. xii. (Hooke.)
[3] "Gentleman's Magazine," for 1736.

SIR HENRY CHAUNCEY, KNT.

Serjeant-at-Law, 1688.

WE now present to the reader the celebrated historian of Hertfordshire and eminent lawyer, Sir Henry Chauncey. However amusing and instructive it may be to follow the career of a forensic advocate, it is a relief from a sameness, which is apt to weary, to be able to record his fame in another branch of learning.

Henry Chauncey, Serjeant-at-Law, and author of "The Historical Antiquities of Hertfordshire," was born in 1632. He was of a very ancient family, which came into England with the Conqueror in 1066, according to Stow and Hollingshed, and soon became the possessors of manors and lands in that realm. Fuller says, that the name of Chauncey was on the roll of Battel Abbey.[1] His grandfather Henry, of Yardley Bury, died on the 18th of April, 1631, in his fifty-eighth year. His father, also of Yardley Bury, died May 1, 1681, aged eighty. He was not Sir Henry, as he is represented in Granger.[2]

[1] "Church History," vol. i. p. 410.
[2] "Biog. Dict.," by Noble, vol. i. p. 266.

Fuller says that Henry Chauncey, Esq., of Yardlebury, was a direct descendant from John Chauncey, who died in 1479.

The education of the future historian began at Bishops Stortford School, under Mr. Leigh. From thence he went to the Middle Temple, and was called in 1656.[1]

In 1647 he was entered at Caius.[2] From thence he went to the Middle Temple, and was called to the Bar in 1656.[3]

In 1661 he is said to have been made a Justice of Peace for his County,[4] but, as he was then only twenty-nine, and his father sixty, it would have seemed probable that the owner of Yardley Bury would have been placed in the Commission after the Restoration. But we must accept his own relation. "In 1661 this Henry was constituted a Justice of Peace for this County." It must be remembered that he was nearly thirty years of age.

The prejudice of ancient Judges against wizards, witches, and sorcery, led them into grave mistakes. They looked upon acts which, at the most were petty misdemeanours, as traps to catch a small livelihood, as deeds of devilry. Although we must allow, on the other hand, that sometimes malice was combined with

[1] Chauncey's "Hist. of Herts," p. 55, where an account of the family will be found.

[2] Chauncey, as above, p. 59; "Biog. Brit." (Kippis) vol. iii. p. 482.—"Worthies of Northamptonshire," by Nichols, vol. ii. p. 185.

[3] Chauncey, and "Biog. Brit." as above.

[4] *Id.* p. 59; "Biog. Brit." vol. iii. p. 482.—Rose's "Biog. Dict." vol. vi. (Chauncey).

witchcraft, and that mischiefs were occasionally perpetrated which our law now treats as serious felonies.

Sir Henry (and this was not very long before his death,) could not withstand the general hatred against the tribe.[1] Clutterbuck writes: "In this village, Walkern, lived Jane Wenham, a poor woman, who was accused of having in several instances practised sorcery and witchcraft upon the body of Ann Thorn, upon the oaths of several respectable inhabitants of this neighbourhood, before Sir Henry Chauncey, of Yardley Bury, and by him committed to Hertford Gaol. She was afterwards tried at the Assizes, on the 4th of March, 1711—12, before Mr. Justice Powell; and, being found guilty of the charges brought against her, received sentence of death. The Judge, however, made a favourable representation of her case to the Queen, who was graciously pleased to grant her a pardon." She was afterwards supported upon charity. "She died on the 11th of June, 1730, and was decently buried in the church-yard of Hertingfordbury on the Sunday following, when her funeral sermon was preached by the Rev. William Squire, then Curate, to a numerous congregation assembled upon the occasion."[2]

In 1675 Mr. Chauncey was made a Bencher of his Inn, and, in 1681, was elected their Reader, and, in 1685, Treasurer.[3]

[1] No doubt he was compelled to commit.
[2] Clutterbuck's "Herts," vol. ii. p. 461, note.
[3] Chauncey, p. 59.

When Charles the Second granted, in 1680, that Hertford should be a free borough of itself,[1] Sir Henry Chauncey was made the first Recorder, and received the honour of knighthood on the 14th of June, 1681.[2] Previously he had been Steward of the Borough Court, and was the last who held that office (1675), the Charter being subsequently so much enlarged.[3]

On the 11th of June, 1688, he was created a Serjeant-at-Law, and was made a Judge in the same year for Glamorgan, Brecknock, and Radnor.[4] He had eight for his brethren upon this new occasion. All met at Lincoln's Inn, *counted there*, and walked in their party-coloured robes to Westminster, to the bar of the Common Pleas, where they counted again. After which there was a grand feast at Lincoln's Inn to the Chancellor, Judges, Serjeants, and others. The rings were "Rex Princeps, et Christiana Libertas."[5]

After a long, useful, and well appreciated life, Sir Henry Chauncey died on the 21st of May, 1719,[6] in his 88th year. He was buried at his place, Yardley Bury, in the church there, near Stevenage, with the remains of his last wife (for he survived three wives), "whose virtues were as great as his literary fame and

[1] Chauncey, pp. 59, 254.
[2] *Id.* p. 256.
[3] Clutterbuck's "Herts," vol. ii. p. 146.
[4] Chauncey, p. 59; Noble's "Granger," vol. i. p. 266; Clutterbuck's "Herts," vol. iii. p. 603. Wynne, who more than once apologises for errors, seems to have omitted this eminent Serjeant.
[5] Luttrell's "Diary," vol. i. p. 446.
[6] Not 1700.—Noble's "Granger," vol. i. p. 267.

integrity."[1] The first of his wives, whom he married in 1657,[2] was Jane, the youngest daughter of Francis Folyer, of Brent Pelham, Esq. By her he had three sons and four daughters. She died on the last day of the year 1672.[3] He then married Elizabeth, the daughter and co-heir of George Wood, of Risby, Suffolk, and relict of John Gouldsmith, of Stredset, Norfolk.[4] She died, leaving no issue, on the 4th of August, 1677, in London, of the spotted fever, and was buried at Stredset.[5] His third wife was Elizabeth, daughter of Nathaniel Thurstone, of Hoxny, Suffolk, by whom he had one son and one daughter.[6]

One of his sisters married William Hurst, of Haveril, Essex, who afterwards inherited the estate of Benington, Herts through his wife, and who was also the possessor of the remaining moiety, after other estates had ceased, of Baldock.[7]

Sir Henry's daughter, Mary, the widow of Humphry Forester (who was heir-apparent of Sir Humphry Forester, of Addermaston, Berks, Bart.),[8] married John Throckmorton, Esq., owner of the manor of Chisfield, in the hundred of Broadwater, Herts, of the family of Throckmorton, Warwickshire. She was born in 1672, and died in 1702, leaving seven chil-

[1] Noble, vol. i. p. 267.
[2] Chauncey, p. 59.
[3] See his "Herts," pp. 59, 142.
[4] Chauncey, p. 59.
[5] *Ibid.*
[6] *Ibid.*—Clutterbuck's "Herts," vol. iii. p. 603.
[7] Clutterbuck, vol. ii. pp. 269, 402.
[8] Chauncey, p. 59.

dren by Mr. Throckmorton. She was buried at Chisfield.[1]

Charles Chauncey, the Serjeant's great uncle, was a man of note in his days. He was born in 1592, and, in 1654, accepted the office of Principal of Harvard College, Cambridge. He died in 1672.[2]

The portrait of Sir Henry appears as a frontispiece to his history. The countenance is very striking. Benevolence, intelligence, accompanied by determination of character, beam in it. We would almost liken it to Sir Roger de Coverley. It seems the picture of an upright magistrate, an able lawyer, a benign friend, a religious man.

Sir Henry Chauncey's chief work was his "Historical Antiquities of Hertfordshire." This is a book whose pretensions are fully equalled by its execution; but although, to some extent, a topographical, it is not a "*history*" of that splendidly beautiful county. The physical geography, which gives so great a charm to it, and a graphic account of the villas and mansions, which show themselves in all directions, will neither be found there nor in Clutterbuck. Although the latter is certainly more communicative in this respect than the Serjeant.

These are no demerits, for a work devoted to the

[1] Chauncey, p. 59.

[2] "Biog. Br." (Kippis), vol. iii. p. 482, where a very curious account of him, and his recantation, as Vicar of Ware, "for opposing the setting of a rail about the Communion Table," will be found.

description of the beauties of that county would be entirely distinct. The Serjeant's "Historical Antiquities" soon gained notice, and it has maintained its high reputation to this day. It would appear that the number of copies of the first edition were not sufficient to satisfy the demand.[1] There is a paper in the "Gentleman's Magazine"[2] concerning the "Causes of the Rarity of Books," and, amongst others, Chauncey comes in for a share of notice.

The writer attributes the scarceness of this book "to the smallness of the number printed, or, as it is called, of the impression, to the limited demand, or the policy or timidity of the publisher."[3]

Another probable cause is insinuated by Granger. "Many gentlemen sedulously kept back their title-deeds and evidences from a mere jealous fear." Had the writer stopped here, it had been well; but he adds, "unworthy of persons of a liberal education."[4]

No shrewd attorney will advise a client to disclose the title to his estates without the most absolute assurance of safety, and no wise client will surrender his deeds for inspection unless under legal assent. Still there might, in those days, have been trifling objections, which, in these, would have been easily sur-

[1] In 1700.—See Gough's "Topography," vol. i. p. 419.

[2] Vol. lxxxiv. pt. i. p. 33.

[3] *Id.* The writer speaks of Burton's "Anatomy of Melancholy" as, for many years, a waste paper book, till Dr. Johnson brought it into fame.

[4] Granger, by Noble, vol. i. p. 267.

mounted, whilst it cannot escape notice, that the limitation of time within which an estate can be now claimed by a stranger is materially narrowed.

The "History" was dedicated in 1700 to the Earl of Bridgwater, first Lord of the Admiralty.

Gough, in his "British Topography," gives some interesting particulars connected with this work. He says, "Mr. Forester of Bradfield, in this county [Hertford], father of Dr. Pulter Forester, Chancellor of Lincoln, and nearly related to Sir Henry Chauncey, has made great additions to Sir Henry's book, which copy was in the hands of the late William Forester, Esq., the elder brother, who died about 1767.

"Mr. Cole has another copy, with many MS. additions, by the late Browne Willis. A third copy, with large MS. additions, by Peter Le Neve, is in the library of the Society of Antiquaries.

"Paul Wright, B.D., formerly Curate and Lecturer of All-Saints, Hertford, now Vicar of Oakley, in Essex, having received some MS. papers relating to Sir Henry Chauncey's 'History of Hertfordshire,' proposes to publish an accurate edition of that elaborate work, with continuations to the present time, from his own actual view of every parish, as well as from the communications of others, that nothing may be wanting to make this work as complete as possible."[1]

These MSS. were left by Sir Henry himself, and

[1] "British Topography," vol. i. p. 420.

were afterwards possessed by N. Salmon, LL.D., whence they probably came into the hands of Mr. Wright. "Neither;" *i.e.* Salmon and Wright, "were capable of doing it properly."[1]

We are unable to gain any account of these MSS. An edition of Chauncey was published some years since at Bishop's Stortford; but it is believed that the edition of 1700 continues to maintain its ground.[2]

Dr. Paul Wright is thus noticed by Mr. Cole:—"He is Rector of Oakley, near Saffron Walden, in Essex, and, in 1769, at the commencement at Cambridge, printed bills for a new edition, with additions, of Sir Henry Chauncey's 'History of Hertfordshire.' He then plagued me for assistance in it; but I soon found him to be a most odd and extravagantly ridiculous person, and by no means qualified to undertake such a work. He wanted me and others in the University to sign a paper of recommendation to be received a member of the Antiquarian Society, which I declined. However, he got one somewhere; for, in December, 1770, he was admitted a Fellow of that Society."[3]

There is a curious incident as to the rise and pro-

[1] Granger, by Noble, vol. i. p. 267.

[2] Other interesting particulars respecting this celebrated work will be found in "The Librarian," by Savage, 3 vols.—vol. i. pp. 49—63; and in Upcott's "British Topography," vol. i. p. 333.

[3] Nichols's "Literary Anecdotes," vol. ix. p. 786; and see p. 787.

gress of Clutterbuck's elaborate description of the county of Hertford. Some one referring to Chauncey for information as to an estate, in his postscript, asks if there "is any probability of a history being begun? taking Chauncey for its guide. From the number of resident proprietors it could not want encouragement, assistance, or support."[1]

In the next number appeared two letters upon the subject. One was from a Mr. Malcolm, who, encouraged by William Strode, Esq.,[2] was seriously inclined to enter upon the task; but a disappointment put an end to the idea.[3] The other, a much more important letter, was from Clutterbuck himself. This note fully informed the literary world that the work was begun, that it had met with the general encouragement, so much desired from the resident gentry, and ended by soliciting communications from correspondents upon the subject.[4] It was completed soon afterwards, and the author pointed out as a reason for his undertaking, several defects in Chauncey of a material character, which would be a sufficient warrant for a more correct history.[5]

With regard to the plates, the completest copy is

[1] "Gent. Mag.," vol. lxxix. pt. ii. p. 600.

[2] One of the well-known Strode family.

[3] "Gent. Mag.," as above, pp. 692, 693.

[4] *Id.* p. 693. A very laudatory view of the work appears in vol. lxxxvi. pt. i. p. 425.

[5] "Gent. Mag.," vol. lxxxvi. pt. i. p. 425.

said to be in the Cracherode Collection in the British Museum.[1]

It has been considered that the appointments of Recorder of Hertford, and Steward of the Borough Court of that place, had their weight in turning the attention of the Judge to the celebration of his county.[2] This is a likely conjecture. The scenes with which we are familiar naturally create an impulse in some way to illustrate them. Thus, Southey and Wordsworth were bewitched by the fascination of the lakes.

That Sir Henry was anxious about his work is evident, from a letter dated March 20, 1711, and addressed to Robert Dale, Esq., Herald's Office, near Doctors' Commons. It is from Ardeley, now Yardley:—

"Sir,—I am in a great straight for that part of Domesday book which concernes Hertfordsheir that I lent you, and I shall own the kindnesse if you will adde a copy of the sheet that was wanting when I delivered it, which you said you would supply me with, for you know the engagement I lye under in my Preface to correct the errors which may be discovered in the 'Antiquities of Hertfordshire,' a promise lately claimed from me by the gentlemen of that

[1] *Id.* vol. lxxix. pt. ii. p. 1023. An analysis of the history, with a list of the plates and pedigrees is referred to in a monthly publication, entitled "The Librarian," by Mr. J. Savage, p. 1024.

[2] Noble's "Granger," vol. i. p. 267.

county at their last Sessions of the Peace, and, perusing the erratas, I find I cannot performe that taske without the view of these papers, which makes me earnestly desire you would send them to me by Brown, a higlar, whose horses stand at the 'Oxford Arms,' in Warwick Lane, near Newgate Market, and comes out of town every Friday, in the forenoone, before twelve of the clock, and it will come safe to me at Ardeley; and if you shall please to let me know the health and welfare of yourselfe, your lady, and family, and the changes and alterations in your offices, it would be a great diversion to your old friend. And if you could at any time of leisure take a trip to Ardeley, and let me know it, horses should attend you at Ware, or Broadwater, or such other place as you shall like better, for nothing is more pleasant to me than the society of my old acquaintance, especially Mr. Dale.

"I am, with all respect,

"Your most humble servant,

"(Signed) H. CHAUNCEY."[1]

Chauncey tells a singular story in his account of the Manor of Chisfield. Graveley was the adjoining parish to Chisfield, but the bounds were subject to great discussions and uncertainties. Upon one occasion the two Incumbents met in perambulation, and

[1] Nichols's "Literary Illustrations," vol. iv. p. 79.

such a contention arose that one was killed on the spot. The churches were not distant above half a mile.[1]

Clutterbuck says, "The question is now scarcely worth investigation."[2] We cannot concede this in a moment. The beating of the bounds is one of the most solemn exhibitions of parochial dignity. It is a holiday for the charity-boys, and an animal, even a human being, may be available for the useful purpose of marking a particular division. We have known a worthy lord of a manor seized upon and roughly made use of to mark the ceremony of bumping the limits of the parish.

[1] "History and Antiquities," p. 369.
[2] "Herts," vol. ii. p. 302.

WILLIAM SALKELD.

Serjeant-at-Law, 1715.

[The MSS. referred to in this life are in the possession of W. J. Salkeld, Esq., of Blandford. From Mr. Salkeld and the Rev. R. Cutler, of Queen's Gardens, the author has received much attention and assistance.]

WILLIAM SALKELD was descended from a very ancient family in Cumberland.[1] The Salkelds possessed the Manor of Corby, upon the attainder of Andrew de Harcla, by a grant from Edward III. to Richard de Salkeld, Knight. Afterwards came Hugh de Salkeld, John de Salkeld, and Richard de Salkeld. The latter died in 17 Hen. VII.

In the Church of Wetheral, near Carlisle,[2] between the north aisle and the chancel are the effigies of a man and woman in alabaster, which seem to represent this Richard and his wife with this legend in old characters, almost obliterated:—

"Here lies Sir Richard de Salkeld, that knight,
Who in this land was "mickle of might;"[3]

---

[1] Hutchins's "Dorset," ed. 1774, vol. i. p. 91. "The Salkeld family is almost the only one, from father to son, in Dorsetshire. Females have broken the lineage."—MS. letter.

[2] Not far from the Eden, and on the other side of the river, a little farther to the west, is Corby Castle.—MS.

[3] Henry the Fifth, Shakespere.

The Captain and Keeper of Carlisle was he,
And also the Lord of Corkbye;[1]
And now he lies under this stane,
He and his lady dame Jane.
The eighteenth day of Februere
This gentle knight was buried here.
I pray you all that this do see
Pray for their soul and for charitie,
For as they are now, so must we all be."[2]

Hutchinson writes thus:—"Mr. Sandford, who left a MS. of Cumberland says, 'The last Thomas Salkeld sold Corby to the Lord William Howard, third son of Thomas, great Duke of Norfolk, great grandfather to the now Earl of Carlisle, and grandfather of the now brave Monsieur Francis Howard, great housekeeper and horse-courser, and in all jovial gallantries expert and beloved of all men, and Lord of Corby Castle his mansion-house, and has many towns adjacent, and [an] estate of £2,000 per annum, and his mother, sister to the late Lord Widdrington, and his wife, daughter to one of the most famous families of Gerard, in Lancashire.' "[3]

William Salkeld was born at Fallodor, or Fallodon, in Northumberland, in 1670, the eldest son of Samuel Salkeld, Esq., of the same place. This Samuel was of Fallodor and Swinhoe, near Newcastle, properties which his son inherited. He died intestate in 1699,

[1] Or Corby.

[2] Burn's "Cumberland," p. 335.—Hutchinson's "Cumberland," vol. i. p. 164.

[3] "History of Cumberland," vol. i. p. 164.

and letters of administration were granted to William Salkeld. The Serjeant obtained Fifehead Nevil, in Dorsetshire,[1] by marriage with Miss Ryves, an heiress, whose family was then very powerful in that county. It is feared that his unexpected decease left his estate in confusion, for he also seems to have died without a will. A pocket-book, found amongst his effects, contained "a note, that the owner of the estate owed him £2,000; but nothing was done about it until after some years, when his son came of age, and then the parties in possession proved too many for the children."[2]

Serjeant Salkeld was educated at Oxford, and, on the 2nd of May, 1692, he was admitted a student of the Middle Temple. In 1698 he was called to the Bar,[3] and, probably, went the Northern Circuit, although for this we have no authority.

He lived much at Fifehead Nevil, a village in the hundred of Pimperne, Dorset. There was a manor and a farm (that is, a fee-farm) there. They went through

[1] The value of Fifehead was about £300 a year.

[2] MS. This must be a mistake. Twenty-six years had elapsed before the son attempted to disturb the title of the possessor of Swinhoe. Circumstances also involving legal complications excluded any hope of success. Some letters upon the subject are in the hands of Mr. Salkeld, of Blandford. As, however, they do not relate to the life of the Serjeant, we forbear from inserting them. They are only three in number; two from the eldest son, claiming the estates; and one from the possessor, refusing to give any account of his title.

The subscriptions are curious.

"Your unknown humble servant."

The dates are February and April, 1742.

[3] MS.

who had the small-pox, and that he caught the infection and died, having previously declared that he believed he should die if he caught it. The trial was of some length, but the Chief Justice, Raymond, summed up favourably, and a verdict of not guilty delivered these two men from certain execution.[1]

Sir John died September 5, 1731, and was buried at Petersham, in the churchyard.[2] His wife, Margaret, has the year 1741 on her tomb; his daughter, Mary, wife of Lord Chief Baron Ord, of Scotland, that of 1749.[3] His eldest son threw himself from a two-pair of stairs window, in a fever, and died instantly.[4] Lady Darnal was the daughter of Sir Thomas Jenner, Knight, and the present representative of the Lord Chief Baron is the Rev. Daniel Capper, of Lyston, in Herefordshire.[5]

[1] *Id.* pp. 397, 430, 462.

[2] Lysons's "Environs of London," vol. iv. p. 605. The date marked on his tomb, according to Lysons, is 1731.

[3] Lysons, as above. [4] Luttrell, vol. iii. p. 312.

[4] "Notes and Queries," 2. vol. iv. p. 242.

[From Lysons's "Environs of London" (Ed. 1811) vol. i. p. 293, it appears that there is a tombstone in Petersham Churchyard to the memory of Sir John Darnell, Serjeant-at-Law, buried 1731, and his daughter, wife of Robert Ord, Lord Chief Baron of the Exchequer in Scotland, who died in 1749. On the preceding page it is stated in an extract from Reid's "Weekly Journal," October 7, 1721, that after the burning of Petersham Lodge, the Earl and Countess of Rochester removed to the house of Mr. Serjeant Darnell; and on page 293, that "Macky in his journey through England about the year 1724 speaks of a magnificent palace at Petersham then lately built by Serjeant Darnell; this house is occupied by Mrs. Millar as a ladies' 'school.' "]

JOHN TOLLER.

Serjeant-at-Law.

[These notes concerning Serjeant Toller have been kindly given to the author by Edmond Chester Waters, Esq., of the Inner Temple; a descendant.]

SERJEANT TOLLER was the last but one of a long line of Lincolnshire squires, who had been seated at Billingborough Hall, in Kesteven, from the reign of Henry the Eighth.

His father, John Toller, Esq., of Billingborough Hall, was High Sheriff of Lincolnshire in 1707, and married on the 19th June, 1684, Elizabeth, daughter of Thomas Nethercoats, Esq., of Nettleham, a descendant of the well-known Henry Rands, Bishop of Lincoln, one of the compilers of the Liturgy.

John Toller, their eldest child, was born 10th of April, 1685, at Billingborough Hall, and was baptised on the 22nd of April following. He was on the 15th of April 1702, admitted a pensioner at Emmanuel College, Cambridge, of which college his father had been a Fellow Commoner and M.A.; and his brother Richard was afterwards a Fellow. He left college without taking a degree, and entered at Lincoln's Inn on the 10th of December, 1705, by which Society he was called to the Bar on the 2nd of July, 1712.

He married at Chicheley, Bucks, on the 18th of September, 1718, Catherine, daughter of Sir John Chester, Bart., of Chicheley Hall, and after his mar-

riage, he resided, until his father's death in 1732, at Ryhall Hall, in Rutlandshire, where his family had for some generations possessed an estate.[1]

He was admitted on the 24th of December, 1724, a member of "the Gentleman's Society at Spalding," which was founded by his kinsman, Maurice Johnson, of Ayscough Fee Hall, Deputy Recorder of Stamford. He was made Serjeant-at-Law on May 10, 1736, with Sir William Fortescue, Sir Thomas Parker, and other barristers of distinction.

He died of the shingles, on November 14, 1737, aged fifty-three, and has a monumental tablet in Billingborough Church. His widow was the sole executrix of his will, and the guardian of his three children. His only son Brownlow succeeded him in his estates, and died without male issue, on September 4, 1791, the last of his ancient name; and his posterity are now wholly extinct. But the Serjeant had also two daughters, Frances and Catherine. Frances was great grandmother to Edward N. Conant, Esq., of Lyndon Hall, Rutlandshire; and Catherine was great grandmother of Edmond Chester Waters, Esq., of the Inner Temple, who has supplied these notes concerning his ancestor.

Mary Toller, the sister of Serjeant Toller, was grandmother to Sir John Cradock, G.C.B., the first Lord Howden. Serjeant Toller is traditionally believed to have been Deputy Recorder of Stamford to the Marquess of Exeter.

[1] Blore's "Rutland," p. 51.

SIR JOHN CHESSHYRE.

Serjeant-at-Law, 1705—Queen's Serjeant, 1711—King's first Serjeant, 1726.

[For the MS. the author is indebted to Mr. Thomas Cheshire, of Liverpool.]

JOHN CHESSHIRE, or Cheshire, was born, probably, at Hallwood, near Runcorn, in Cheshire; at all events he lived at Hallwood.[1]

Great complaint is made by the author of the "Nomenclature of Westminster Hall"[2] with regard to the spelling of the names of lawyers. He cited Chesshyre as an instance.

We can give another still more remarkable. It is that of the famous Serjeant Benlowes. He was called Benloes, Bendelows, and *Bindloss*.

John Chesshyre was born on the 11th of November, 1662.[3]

On the 16th June, 1696, he was entered at the Inner Temple.

He was invested with the dignity of the coif on the 9th, or rather the 8th, of June, 1705,[4] in company

[1] "Gent. Mag.," 1868, p. 659.

[2] Bound up with the "Biographical History of Blackstone."

[3] MS. Thomas Cheshire, of Liverpool. Therefore later than 1656.—See "Gent. Mag.," as above.

[4] 5 Ann.—Wynne, p. 45.

with fifteen others. Their motto was, "Armis Legibus," and their dinner in the Middle Temple Hall, honoured with the company of the Dukes of Devon, Somerset, and Bucks, together with the usual guests —the Ministers of State and the Judges.[1]

Mr. Chesshyre became a Queen's Serjeant on the 27th of November, 1711. His patent was renewed by George the First, and, on the 19th of January, 1727, upon the promotion of Sir Thomas Pengelly to be Chief Baron, Serjeant Cheshire was appointed His Majesty's Premier Serjeant-at-Law.[2]

The Serjeant was engaged in some of the most remarkable trials of his day. In 1719 he was counsel against the unfortunate youth, John Matthews, of early talent, yet the dupe of others, who was charged with high treason, before Lord Chief Justice King and ten Judges, for publishing "Vox Populi, Vox Dei." "A vain, weak, conceited young fellow, buoyed up by the Jacobites."[3]

For the Crown: Mr. Bootle; the Attorney-General (Lechmere), Serjeant Cheshire. For the prisoner: Mr. Hungerford and Mr. Ketelbey. The libel asserted the right of the Pretender to the Crown of England, which was a treasonable writing. The Serjeant followed the Attorney-General.[4] The prisoner was most

[1] Luttrell's "Diary," vol. v. p. 561.

[2] 13 Geo. I.; Wynne, p. 102; 30th January, 1726.—"Notes and Queries," 2 vol. ix. p. 491.

[3] "State Trials," vol. xv. p. 1328, n.

[4] *Id.* p. 1338.

ably defended by Hungerford and Ketelbey, fearless advocates, although their cause was by no means that of the people of England.

"A boy, a youth, and an apprentice (as the Counsel for the King observe)," said Hungerford. "I thank them for that observation; that is an age which is usually exempt from malice and design." Both must be proved.[1] It was likewise insisted, that this was a new and most severe penal law. But the jury made but a short story before they pronounced the fatal verdict. This boy of eighteen was reprieved from time to time, probably in the hope of his making disclosures; but although he was convicted on the 14th of October, 1719, he was kept in suspense till November 6th, 1720, and then executed, aged nineteen.[2]

The Serjeant was again Counsel for the Crown. In 1722 two bailiffs, named Reason and Tranter, arrested Mr. Lutterell for debt. He submitted, but complained that he was taken in the street, and returned to his lodging with the officers to get the money. Here, unfortunately, the bailiffs began to abuse their prisoner. They called him names, and demanded three guineas for civility money. This conduct, combined with the disgrace of an arrest in the street, enraged Mr. Lutterell, and he went up stairs for a pair of pistols. There was then a struggle of a violent character, and he undoubtedly struck the first blow with a cane, and

[1] "State Trials," vol. xv. p. 1359. [2] *Id.* p. 1403.

used his sword. Had all matters been peaceable he would have paid the money; but there was anger on both sides, and Mr. Lutterell received some wounds from a sword, and one from his own pistol (which was said to have gone off by accident), which caused his death. He had resolved, upon a sudden heat, not to be taken away. The Judge blamed the bailiffs for allowing their prisoner to return to his abode, and the jury found them guilty of manslaughter. The speech of the Serjeant was at once fair and dispassionate.[1]

We will just refer to the famous cases of the Wardens of the Fleet, who, with difficulty, escaped serious consequences for their conduct to some of their prisoners. In the trial of Huggins, Serjeant Cheshire was the leader, for, in those days, the King's Serjeant took precedence of the Attorney and Solicitor-General. The Judges were Page and Carter, and a special verdict was found, which resulted favourably for the prisoner; indeed, all the gaolers were fortunate enough to be acquitted, even those who ran the serious hazard of being tried upon an appeal after a verdict of Not Guilty.[2]

These events happened in 1729, when Sir John had attained his highest rank of Prime Serjeant.

And now, having arrived at the close of his legal career, we may mention that rather remarkable book, a fee-book, kept in a state of preservation, and handed down to us.

[1] "State Trials," vol. xvi. p. 8.

[2] *Id.* vol. xvii. pp. 309, 311.

The fee-book commences Michaelmas Term, 1719.

The names of nearly all the causes and cases are stated throughout, with the dates:—

		£	s.	d.
	"Total fees, Michas. 1719 to Michas. 1720	3,805	13	0
Average for	„ 1720 to „ 1721	3,669	10	0
the 6 years	„ 1721 to „ 1722	3,464	18	6
£3,241 per	„ 1722 to „ 1723	3,392	5	6
annum.	„ 1723 to „ 1724	2,868	19	6
	„ 1724 to „ 1725	2,246	15	0

"NOTE.—This Michas. Term (1725) I reduced my bisness, and ceased to go into other Courts, as formerly, and confined my attention on the Bisness of y^e^ Court of Common Pleas, contenting to amuse myselfe w^th^ Less^r^ bisness and small^r^ gayne, being in Nov^r^, 1725, of the age of 63.

		£	s.	d.
	"Total fees, Michas. 1725 to Michas. 1726	1,148	15	6
Average for	„ 1726 to „ 1727	1,645	11	0
the 6 years	„ 1727 to „ 1728	1,393	9	6
£1,320 per	„ 1728 to „ 1729	1,465	8	0
annum.	„ 1729 to „ 1730	1,204	17	6
	„ 1730 to „ 1731	1,006	1	6

"Sat^y^ 10, Nov^r^ 1, was detained from West^r^ by an inflamacon in y^e^ left eye, and returned not ag^n^, nor was out until 6 Dec^r^, 1731, to my Chamb^rs^."

From this time to the 26th April following the fees were very trifling in amount.

"26 Ap^l^, 1732. First day of Easter Term Acquainted Judges y^t^ I found it time to quit attendance at Westm^r^, and I told Mr. Att. and Soll^r^. gen. I w^d^ reckon myselfe obliged to Att^d^ the Kings bisness, as

occasion should offer, and I sh[d] be tho[t] or found able. All comended my resolution."

After this date, and down to November, 1733, Sir John appears to have attended Court but seldom; and between November, 1733, and 22nd March, 1736-7, his fees were for opinions only.

Sir John Chesshyre kept a particular account of his expenditure. Some of the entries in the disbursement book are curious, for their minuteness as well as character. The last entry is under date 15th April, 1738, in which year, as before stated, he died.

The Clerks' fees in 1717-18 (the only years in which they are mentioned) were: on a fee of one-half guinea, 3d.; one guinea, 6d.; and two guineas 1s.; very different from the Clerks' fees at the present time.

I may add that among Sir John Chesshyre's papers and correspondence I found several letters of Chesterfield (*the* Chesterfield), who had borrowed £20,000 of the Serjeant.

(Signed) ROBERT COLE.[1]

Thus, for six years, commencing with Michaelmas Term, 1719, Sir John Chesshyre made an annual income of £3,241. Being then sixty-three years of age, he limited his practice to the Common Pleas, and, during the next six years, made in that one Court £1,320 per annum.[2]

[1] "Notes and Queries," 2. vol. vii. p. 492.
[2] Jeaffreson's "Lawyers," vol. i. p. 294.

Sir John died on the 15th of May, 1738.[1]

In Runcorn Parish Church is his monument. In the north-eastern angle of the aisle two pyramidal mural monuments of grey and white marble may be seen. One is inscribed thus:—

"In Memory of Sir John Chesshyre,
Who departed this life
On the xv. of May,
MDCCXXXVIII.
" 'A wit's a feather, and a chief's a rod;
An honest man 's the noblest work of God.' "

On the other there are inscriptions to Arthur Rawdon and Arabella Rawdon, of Hallwood, in Cheshire; after which,—

"Here also lieth the body
Of Sarah Chesshyre,
Widow of William Chesshyre,
Late of Hallwood, Esq.,
Who died Dec. xix.,
MDCCLXXVII.,
Aged lxxvii."[2]

The widow of Sir John died on the 1st of January, 1756.[3]

Sir John probably had no children, for his nephew, William Chesshyre, succeeded to his estate. The Rev. Robert Chesshyre was his eldest brother, and Vicar of Runcorn. He married the daughter of his predecessor, William Fynmore, M.A., Archdeacon of Chester, and he was buried at Runcorn on the 28th

[1] MS. Thomas Cheshire, of Liverpool.
[2] Ormerod's "Cheshire," vol. i. p. 498.
[3] "Gent. Mag.," vol. xxvi. p. 42.

December, 1739, leaving a son, who was High Sheriff of Chester in 1741.[1]

In the churchyard of Burton Hastings, in the Hundred of Knightlow, Warwickshire, on a flat stone in the chancel, is this inscription:

"The remains of Mr. John Cheshire,
Who died 29th Oct., 1704, aged 69."[2]

Sir John endowed a school at Halton, in Lancashire; and he added a library.[3]

And he is recorded to have given £100 to the Charity School at Isleworth in 1719.[4]

[1] "Gent. Mag.," May, 1868, p. 659.
[2] Dugdale's "Warwickshire," vol. i. p. 153.
[3] MS.
[4] Lysons's "London," vol. iii. p. 120.

WILLIAM HAWKINS.

Serjeant-at-Law, 1723.

WILLIAM HAWKINS, the eminent author of the "Pleas of the Crown," (a book treating of all kinds of crimes and misdemeanors, and, but for the anachronism, we had said the twin brother of Hale, in their great criminal works, descending from the simplest proposition to illustrations of the seventh general head), was of the family of the distinguished seaman, Sir John Hawkins. This Admiral was the earliest English adventurer in the Slave Trade. Queen Elizabeth approved of his doings, and granted him permission to wear for his crest "a demy-Moor, in the proper colour, bound with a cord." He obtained his knighthood for his services as Rear-Admiral against the Armada.

John Hawkins, his descendant, married Mary, daughter of Edward Dewe, Esq., of Islip, and grandniece of Thomas Tesdale, Esq., one of the founders of Pembroke College, Oxford. William Hawkins, the Serjeant, was the second son of this gentleman. The Serjeant had two wives. The first was Miss Jenyns, sister to the Member for Cambridgeshire. The second

was Miss Ram, of Coleraine, Ireland, sister to the Member for Gowry.[1]

He was born about 1673. In 1689 he became A.B., of St. John's Cambridge, and A.M. 1693.[2]

It appears from the books of the Inner Temple that William Hawkins was admitted a member of that Inn on the 10th of February, 1700. Another William Hawkins was admitted on the 24th of November, 1701. One of these must have been the Serjeant.

He was created a Serjeant, February 1, 1723; or, according to Wynne, in April, 1724.

"The dark places of the earth," saith the Scripture, "are full of the habitations of cruelty."[3] Where the truths of the Gospel are not felt, where there is no moral virtue, where education is absent, where the grosser vices prevail, there is apt to be cruelty. Cruelty to those over whom absolute power attaches; as in servitude, identified by the awful deed of Elizabeth Brownrigg; cruelty to the lunatic, under the ferocious delusion of a keeper, that every inmate of the house may be his enemy; cruelty to children, through the wrong-headedness or licentiousness of a

[1] Burke's "Commoners," vol. ii. p. 215, n. See Polwhele's "Devonshire," vol. i. p. 302. It is worth noticing that the Tauntons of Oxford sprang from this second wife of the Serjeant by the female line, and, of course, Judge Taunton, of the King's Bench.—See also Bourne's "English Seamen under the Tudors," vol. ii. . . . .

[2] "Graduati Cantabrigienses," p. 223. There was also a William Hawkins, of St. John's, who became B.A. in 1709.—*Ibid.*

[3] Psalm lxxiv. 20.

vicious nature; cruelty, with vengeance, under a mistaken idea of wrong, as where smugglers in the time of George the Second, seized upon an Officer of the Customs, and murdered him with the most deliberate and barbarous tortures. But the celebrated cases in which Serjeant Hawkins was engaged, although in a great degree partaking of the atrocity of cruelty, differed somewhat from all the cases to which we have above drawn attention. Cruelty to persons incarcerated for debt.

In 1729 great complaints were made of the mode of treatment by the Wardens of the Fleet of their prisoners. There was a report from a Committee of the House of Commons appointed to inquire into the state of the gaols in the kingdom, so far as related to the cruel usage of the prisoners.

> "And how can I forget the generous band
> Who, touch'd with human woe, redressive search'd
> Into the homes of the gloomy jail?" [1]

With regard to the Fleet, it appeared to the Committee that an unfortunate upholder had, in 1725, been carried into a stable and confined there (being a place of cold restraint) till he died, and that he was in good health previously. It appeared also that the prisoners were, well or ill, treated in proportion to their means. Some had a "handsome room and bed

[1] Thomson's "Winter," quoted in "State Trials," vol. xvii. p. 297.

to themselves," some were "stowed in garrets, three in one bed, and some put in irons."[1] Houses were kept as an intimidation to prisoners confined, unless they consented to extortion.

A miserable debtor, in particular, named Castell, was a sad instance. By presents, and giving what was called security, he obtained the liberty of the rules; but, at length, being wearied with demands, calculated to injure his family and his creditors, he refused to pay any further exactions. He was, upon this, actually sent to a place where the small pox was raging, although he protested that he had never passed through that disorder. One of the Wardens was even remonstrated with by his own agents; but in vain. Mr. Castell was forced into the infected place, and there he died in a few days.[2]

Several other instances of cruelty in what was denominated "the Strong Room," were brought before the Committee. This wretched place was a vault, like those in which the dead were interred, and where bodies lay prior to the coroner's inquest. It had neither chimney nor fire-place, nor any light, except what came over the door, or through a hole, eight inches square. Besides other horrors, this room was built over the common sewer; and evidence was given that a Portuguese was kept manacled and shackled for

[1] "State Trials," vol. xvii. p. 300.

[2] *Id.* pp. 300, 301. However, at the trial a very different account was given as to this alleged compulsion, and with success. Prejudice ran very high.

nearly two months, and until five guineas were paid to one of the Wardens.[1]

The statements at the conduct of this Warden (Bambridge) are hardly credible. They will be found at length in the "State Trials;"[2] but they were very considerably exaggerated.

The issue was, that in pursuance of the Resolutions of the Committee, Huggins and Bambridge, the Wardens, and several of their assistants, were sent to Newgate, and the Attorney-General was directed to prosecute.[3]

In May, 1729, Huggins was tried before Judge Page and Baron Carter for the murder of Mr. Arne. The King's Serjeant (Chesshire), the Attorney-General (Yorke), and the Solicitor-General (Talbot), were, amongst others, Counsel for the Crown.

The case was sought to be established by several witnesses. The defence was, that the deputy, if anyone, was accountable, and testimony of the highest description was adduced to show that Mr. Huggins was a man of great humanity.

[1] "State Trials," vol xvii. p. 302.

[2] *Id.* p. 302, *et seq.*

[3] No less a person than General Oglethorpe was seriously interested in these benevolent inquiries. He well knew the unfortunate Mr. Castell, and visited him in his sorrows. He was the Chairman of the Prison-Visiting Committee, consisting of fourteen Members of the House of Commons. He presented to the House the first Report of that Committee, which he read in his place, and then moved that the King should be requested to direct his Attorney-General to prosecute. The motion was unanimously carried. A second Report was subsequently presented.—"Memoir of General James Oglethorpe," London, 1867, pp. 16—32.

various ownerships, and, in the times of the civil war, were sequestered from their rightful proprietors. Robert Ryves, of Fifehead Nevil, compounded for a return of this property; and Hutchins says, that Serjeant Salkeld afterwards became the purchaser of it.[1] But this is a mistake, as it came by marriage.[2] Hutchins was more correct in his account—that "the son now possesses it."[3] The grandmother, Mrs. or Madam Ryves, "a most efficient old lady," took to the children upon the decease of the Serjeant, who only reached the age of forty-five. She undertook their advancement in the world, for the widow did not long survive.[4]

Whatever may be the rule now, it was customary in the days of Salkeld to offer written proposals to a lady whose hand the suitor desired, and the more so if she was of consideration and estate.

This pact or covenant was well known to the ancients. Juvenal tells us of "Conventum tamen, et pactum, et sponsalia." Conventum would be the marriage articles. It would be idle to mention instances of modern times. Shakespere's account of the pledge between Posthumus and Iachimo concerning the chastity of Imogen, gives the idea perfectly, although the subject was different:

[1] "Dorsetshire," ed. 1796, vol. i. p. 163; 3rd ed., vol. i. p. 270.

[2] MS.

[3] Hutchinson's "Cumberland," vol. i. p. 163. A portion of the Salkeld estate was parcel of the Manor of Ramsbury, and paid an annual quit rent to it.—*Id.* vol. iii. p. 250.

[4] MS.

"I embrace these conditions; let us have
Articles betwixt us."

In Walter Scott's life the same idea, elegantly expressed by the Marquis of Downshire, is developed. Mr. Scott was proposing to Miss Carpenter, when the Marquis, her "friend and guardian," was apprised of it by the suitor. "I received your letter with pleasure," Lord Downshire writes, "instead of considering it as an intrusion. One thing more being fully stated would have made it perfectly satisfactory; namely, the sort of income you immediately possess, and the sort of maintenance, Miss Carpenter, in case of your demise might reasonably expect.

"As children are, in general, the consequence of a happy union, I should wish to know what may be your thoughts or wishes upon that subject. I trust you will not think me too particular; indeed, I am sure you will not, when you consider that I am endeavouring to secure the happiness and welfare of an estimable young woman, whom you admire and profess to be partial and attached to, and for whom I have the highest regard, esteem, and respect.

"I am, Sir,

"Your obedient, humble servant,

"DOWNSHIRE."

Thus also William Salkeld won Miss Ryves. The young lady's proposals were,—that her estates and

property at Fifehead Nevil and elsewhere should be taken and received as of the value of £2,000.[1]

Then follow articles, three in number, as to the settlement of her estates, and the conveyance of them to William Salkeld. Mr. Salkeld's articles, four in number, succeed. The first is very curious:—

"The said W. S. doth humbly conceive himself an equivalent, if he be of double the value of the young lady's estate. Three to one is the full proportion in men of no prospect or education; and, therefore, he thinks upon allowance in this respect, he can't fairly, strictly,[2] be required to be worth above £4,000. This he is worth, and offers to demonstrate as a par to the fortune here offered him. But he humbly conceives he will not be bound to shew his title tenure, unless he has an augmentation of the lady's fortune, and then he will undertake to make it appear he has a title to £3,000, more or upwards, as far as necessary by the rules of equality in these cases.

(2.) "Being thus worth £6,000, *i. e.* £4,000 his own, and the young lady's £2,000 added to it, he offers now any security for £2,000 in jointure."[3]

The two other articles relate merely to legal matters of arrangement. The articles were duly made, and signed by William Salkeld, on the 4th of November, 1700, in which his estates at Swinhoe and Fifehead Nevil are agreed to be settled upon himself, his wife, and his children.

[1] The lady gives the schedule of her property, the net value being £2,631.
[2] Sic.
[3] Salkeld MSS. penes W. J. Salkeld, Esq., of Blandford.

An agreement to the same effect was signed on the same day by Miss Ryves. The marriage accordingly took place.[1]

This eminent lawyer had now been for seventeen years at the bar. We are not informed of his success on the Circuit, but in London he had, undoubtedly, acquired a great name. As a reporter, he was, in that day, unrivalled. Few have equalled him at any time in the skill required for that purpose. He was now fast advancing in the legal wheel of fortune, and on the 24th of January, 1715, he was made a Serjeant-at-Law.[2] He was, probably, the "Salkeld," mentioned in the pedigree of Towneley. John Towneley was the third son of Charles Towneley, of Towneley, and "being destined for the study of the law, was placed in the office of the famous "Salkeld." However, Mr. Towneley betook himself to a military life.[3] The Serjeant, however, did not live long to enjoy his honours, although it is recorded on his monument that he was Chief Justice of South Wales.

He died on the 14th of September, 1715, at the age of forty-five, or six,[4] leaving three sons: William, Robert, and Charles, and three daughters; and, as we have already said, his wife did not long survive him. He was, probably, buried at the Church of Fifehead. The epitaph or memorial there is handed down to us, and

[1] MS., penes W. J. Salkeld, Esq., of Blandford.
[2] Wynne, p. 98.
[3] Burke's "Commoners," vol. ii. p. 265.
[4] His age on the tombstone is marked, "44" only.

it is supposed that one similar was placed at Falloden.[1]

"Hic juxta situs est Gulielmus Salkeld, Serviens ad Legem,
Australis Walliæ
Judex primarius, Falladonne in Com^us. Northumbr. natus,
Filius primogenitus
& hæres Samuelis Salkeld, ejusdem loci Ar.
Oxoniæ educatus, medii Templi,
London studiis perfectus. Duxit in uxorem,
Mariam Ryves, filiam unicam & hæredem,
Jôhis Ryves de Fifehead Nevill, Ar. quam post quindecim
Annor^um. connubium tribus liberis utriusque sexûs,
Superstitem reliquit."

Praises of his learning and domestic virtues, and resolution to maintain the law follow:—

"Quas" [the liberties of his country) "licet ipse vixerat periclitâs anxiè aspicere, vixit etiam (Regnante Georgio)[2] restoratas et stabilitâs gaudenter videre, ut sûma cum voluptate fateri *se omnia tuta vidisse.*
Ob. 14 Sept^r., 1715, annæ ætat^is 45."[3]

Mrs. Serjeant Salkeld seems to have occupied his chambers in the Temple after his decease; for a letter of condolence from her kinsman, Joseph Nicholson (a clergyman, who married a sister of the Serjeant) addressed to her there, is extant, and in the possession of Mr. Salkeld, of Blandford. We give an extract:—

"Whitt, *Nov^r.* 11*th*, 1715.

"DEAR SISTER,

"I am afraid when I tell you I condole with

[1] MS.

[2] This shows clearly a reference to the troubles in the reigns of William the Third and Queen Anne, for he died in September, and the rebellion of 1715 broke out in November.

[3] MS.

you for the loss of the best of brothers, it will but renew your griefe, and tho' you have lost the best of husbands, so have I y^e^ kindest friend in y^e^ world, but yet I hope your prudence will guard you ag^st^. imoderate griefe, w^ch^. I am sure when we consider the state of things here, we cannot but know the uncertainty of y^m^. w^ch^. may caution us against having any manner of dependence on y^m^."

The letter continues with religious sentiments, and warm expressions of feeling towards the children, and ends with an acknowledgment the writer has received from Mrs. Salkeld.

It is signed,

"Your ever sorrowfull and afflicted brother,

"JOSEPH NICHOLSON."

The postscript is worthy of attention.

"This had come to your hands far sooner if an unfortunate rebellion had not happened in these parts, w^ch^ I hope you 'l please to excuse. The rebells are said to be in Lancashire, and I hope to be able to give you in a short time an account of their being suppressed."

There is another letter in the same custody, from another Nicholson to the Serjeant's second son, concerning the disputed ownership of Falloden and Swinhoe, under date of August 11, 1741, in which

he depicts the dangers of Hounslow Heath in those days.

"A chaize and pair is ready to wait on you, with one of His Majesty's Guards (if worth acceptance) to escorte you and good lady over Hounslow Heath, from those insolent tribes of banditty that often annoy the place."[1]

With respect to the Serjeant's sons: William, the possessor of Fifehead, died in 1782, unmarried. He was living there in 1745. He was Steward of Cranborne Chase.[2] Robert was the second son. He never lived at Fifehead. He married his first cousin, the daughter of James Salkeld the younger, brother of the Serjeant. James died in 1712. Of the two daughters by this marriage, one died unmarried; the other married a surgeon, named Green.

Robert Salkeld married, secondly, Sarah, the widow of P. Ruffe, by whom he had one son, William, a physician (of course, a grandson of the Serjeant), and he was buried in the Temple, where there was a tablet to his memory. To the grandson, while practising at Dorchester, William Salkeld, his uncle, left the paternal estate at Fifehead. The physician married first Eliz. Palmer, one of Sir Joshua Reynolds's nieces, who died without issue, about a year after the marriage. His second wife was Anne, the eldest sister of James Clitherow, of Boston House, near Brentford, a man of

[1] MS. [2] MS.

large possessions. Unfortunately for his sister, he left them to a relative. He was always called Colonel Clitherow, because he was a Colonel of the Middlesex militia.[1] William, the physician, is represented as a very agreeable man, "pleasant and witty." He spent his days in the study of all the sciences of his time, so that he verified in a high degree the "utile dulci."[2]

This Salkeld, the physician (if we may so call him, for there is no proof that he rose higher than the degree of M.B.) had two sons.

1. William James, who was in the Engineers. He died at an early age from fever, brought on by exertion in repairing and rebuilding the damages of a great hurricane in the West Indies. A stone was put up in a church at St. Lucia to his memory. . . . . .

2. Robert, father of the present Mr. Salkeld, of Blandford. He became heir of the Fifehead property upon the death of his brother, and he had, besides, a good living, Fontmel-Magna, and some lands in the same parish, left to him by a connection of the family. He was a man of wonderful activity, and he entered into all the county affairs, and during the Reform Bill contest, he was "up night and day," promoting the election of Lord Ashley (now Lord Shaftesbury) for Dorset. Alas! Fifehead was doomed. He was led by a friend who had sunk his all in a colliery speculation in Wales, to embark in that hazardous undertaking.[3] "He *lost every thing that he could.*" And,

[1] MS. [2] MS.

[3] We have known cases of this kind. The weekly expenses, before the fate of the undertaking can be ascertained, are almost fabulous.

as common as provoking, the same mines, subsequently, yielded fortunes to others. This gentleman had a large family, and the children have well maintained the name of Salkeld. We must speak of one in particular, Philip, although our chief business is, of course, with the Serjeant. This Philip was the chief actor in one of the most heroic deeds of the Indian war; at the storming of Delhi. The order was given to blow open the Cashmere gate before daylight, but, owing to some delay, the day appeared and the gallant man was shot down in the strife.[1] Nevertheless, the Victoria Cross was instantly sent to him from England, although, as he was mortally hurt, it probably did not reach him before his death. A cadetship was bestowed upon his brother. . . . . .

But there was a third son of the Serjeant. His name was Charles. He had one son who died at the age of six, and one daughter, who married Thomas Dashwood, of Sturminster. Charles, the youngest son, settled at Reading; and it has been supposed that he was connected by marriage with the well-known

[1] MS. Ackerman published a coloured print of this exploit amongst others, at the recommendation of the Rev. Richard Cutler, a friend of the Salkelds, and presented him with six copies. These still hang up in the farmers' houses at Fontmel, where Philip was born, and where his father was Rector.

"I, in conjunction with the gentry and clergy, set up by public subscription an obelisk in the centre of the churchyard, to perpetuate the remembrance of Philip's gallant conduct, with an appropriate inscription from my pen, by the request of the other subscribers. This obelisk is considered one of the lions of the Vale of Blackmoor, although so many years have passed since its erection." The Rector had, at his own cost, the largest school in the then wild district of the Vale, and those who are now grey-headed, fondly call to mind Master Philip."—MS. Rev. R. Cutler.

Simeon, of Cambridge; and probably the marriage of his cousin with Richard Simeon might have given rise to the opinion. This Charles had a daughter, whose descendants in Dorsetshire possess a good share of the family pictures.[1] Two portraits of the Serjeant, and one of his wife, are at Blandford; the property of W. J. Salkeld, his great great grandson.[2]

The Serjeant had three daughters. Mary, the eldest, married first, Edmund Gay, of Blandford; secondly, Thomas Waters, of Blandford, by whom she had a son and three daughters. Elizabeth married the Rev. James Dibben, Rector of Fontmell Magna. She died in 1772. The Dibben's were an old Dorsetshire family, now extinct. Anne, the third daughter, died unmarried in 1741.[3]

Now, with respect to James Salkeld, the Serjeant's brother, he had four daughters. The eldest married, as we have related, her cousin Robert. The youngest was the wife of Richard Simeon, of Reading. The two others died unmarried.[4]

There was a John Salkeld, a learned Jesuit, who had travelled much, but allowed himself to be converted by James the First, and was called, by way of sarcasm, "the Royal Convert." He got a living of £300 a year, but was deprived of it by Cromwell.[5]

The arms of Salkeld are: "Vert, a frette argent."

[1] MS. [2] MS. [3] MS. [4] MS.

[5] MS. There is an account of him in Wood's "Athenæ." See Vol. iii. by Bliss, p. 488.

Serjeant Salkeld is celebrated for his legal Reports, which not only possess great merit as a collection of notes, but likewise as being, for the most part, the judgments of Lord Chief Justice Holt.[1] In a "Report of Cases determined by Lord Chief Justice Holt from 1688 to 1715," a handsome compliment is paid to Salkeld in the Preface.

"The method observed in Salkeld's Reports, has had the general approbation, therefore is imitated in this collection."[2]

The Serjeant contemplated at one time "A Law Pocket-book." The arrangement is alphabetical, according to his Reports, but unfortunately it stops at the end of "C."

The manuscript is in the possession of Mr. Salkeld, of Blandford. . . . . .

Had death not intervened, he would probably, have been, in the absence of adverse politics, a King's Serjeant and a Judge.

[1] There is a valuable edition of them by Evans. Hutchins says, that two volumes of them were published in 1717, and reprinted in 1735. See also Bridgman's "Legal Bibliography" (Salkeld.)

[2] "Sir John Holt's Cases." In the Savoy: London, 1738, p. 111.

SIR JOHN DARNAL, JUNIOR.

Serjeant-at-Law, 1714.

SIR JOHN DARNAL, junior, was a son of Sir John Darnal of the Inner Temple, and grandson of Ralph Darnal, of Loughton's Hope, near Pembridge, Co. Hereford. He was of the Inner Temple, and was made a Serjeant in 1714, and a Knight in 1724.[1]

In 1719 we find him appearing for the Crown in a remarkable case. A clergyman, with the licence of the Bishop of Rochester (Atterbury) and of the Rector of Chiselhurst, came down to that parish to preach two sermons for the children of St. Ann's, Aldersgate, with a view to a collection for them. The schoolmaster, with four or five more, carried down some of the children to Chiselhurst. It seems that the gathering of these alms was made quite a party affair, so much so that when the principals came down the Saturday prior to the sermons, they were immediately arrested, and carried before the Magistrates. The

[1] C. J. R. in "Notes and Queries," IV. vol. ii. p. 42. "Mr. Woolrych is welcome to the subjoined note, and if he could add to the information about Sir John Darnall, senior, I should be glad to hear from him, as he claims a place among the worthies of Herefordshire; C. J. R."—*Ibid.*

defendants pleaded their licence, but the Justices replied, "they cared not for Archbishops or Bishops." However, they were released for that day, and on the following (Sunday) the first sermon was preached by Mr. Hendley, with the aid of the Rector and his Curate in conducting the service. The collection then commenced, but it happened, that one of the Magistrates, before whom the parties had been taken, was present. The people were giving very liberally, till the communion paten[1] was handed to the Justice. Not only did he refuse his alms; he seized the Collector, declaring the whole matter illegal, and prohibiting it on the spot. Then the party-feeling peeped out. "The children were vagrants," said he, "sent about begging for the Pretender." The church then became the scene of an indecent struggle. Mr. Hendley called out from the pulpit, and the Rector from the altar, "Proceed." But the Collector answered that they could not. Then the Rector came and said he would collect in person, and Mr. Hendley, calling for a Prayer-book, read the Rubrics in favour of the proceedings, admonishing the Justices for disturbing Divine service, and threatening a complaint to the Bishop. The Justices said, they cared not for the Bishop nor them either, and strove to stop the collection. The matter now assumed a very remarkable appearance. The congregation were crowding to give; some, kept back by force, threw their money into the plate. One of

[1] Paten—a plate. "The floor of heav'n
Is thick inlaid with patens of bright gold."

the Bench (a Mr. Farrington) made a snatch at the plate to take the money. Upon this the Rector ordered that it should be brought to the altar, and he took one paten, Mr. Hendley the other, and each placed the alms decently upon the altar. Then Farrington pressed to *come within the rails*, but Mr. Hendley held the door, telling him that his place was not there, and forbade him from touching the money. The next actor in this irreverent attack was none other than a constable with a long staff, beckoned by Sir Edward Bettison and Captain Farrington, and the order was given to disperse, upon pain of the guilt of a riot. But the matter was by no means over. The Rector and the preacher informed these gentlemen that the service of the church was not finished. Neither had the prayer for the church militant been read, nor the blessing given. If there was a riot, the Justices themselves were the cause. Other unseemly actions were suffered, but the alms were ultimately consigned to the custody of the Bishop. We must believe in the story related in the "State Trials." In the evening (Sunday evening), the Rector, the preacher, and three others who brought the children down, were taken into custody, and bound over to the Quarter Sessions at Maidstone as rioters and vagrants.[1] The recognizance was fully obeyed, and, no bill being found, the prisoners moved to be discharged, but fresh bail was demanded by the Bench for their appearance at the next Assizes, and then an indictment was pre-

[1] "State Trials," vol. xv. pp. 1407, 1409.

ferred in earnest. The strange charge was, that the defendants were seditious people, intending, under pretence of collecting charities, to "procure to themselves unlawful gains," and so a conspiracy was alleged. Another charge, or count, was for extortion.

For the Crown appeared Sir John Darnal, as the leader; for the defendants, Serjeant Comyns,[1] and the celebrated Sir Constantine Phipps was on the same side. The Crown relied upon the Acts against *vagrants and wanderers* from their parishes. The defendants insisted upon their licence. Lord Chancellor Cowper and Lord Keeper Wright had encouraged such charities. If this indictment were sustainable, there would be an end of Charity Schools. . . . .

The Judge, Sir Littleton Powys,[2] summed up against Mr. Hendley, remarking that Cardinal Alberoni had joined in the licence so much trusted to, and that the collection was made in a manner similar to that adopted by the Cardinal in Spain. So it was put to the jury as a double tax, not a free gift. And a verdict of guilty being returned, a fine of a noble, 6s. 8d., was imposed upon each, with an intimation that, if the defendants did not like the verdict, they might bring a Writ of Error. A larger fine being urged upon the Judge, he refused it, but with a caution for the future.[3]

[1] The author of the well-known "Digest;" afterwards Lord Chief Baron.

[2] For very many years on the Bench, first as a Baron of the Exchequer, then a Judge of the King's Bench.

[3] "State Trials," vol. xv. pp. 1412, 1414.

As curious a part of this affair as the trial itself was the letter of Judge Powys to the Lord Chancellor (Parker) concerning the whole of these proceedings. He relates the transaction with sufficient fairness, but complains of the Bishop of London, for sending a circular letter to his clergy to collect charities for the poor vicarages in England, which he considers still more dangerous than the alms-takings of Hendley. The letter is one of a bigoted and severe Judge. "A man of Rochester," he writes, "worth nothing, was convicted before me of drinking the Pretender's health. I ordered him to be whipped in open market twice, till his back was bloody, with a month between the first and second whipping."

"And at Lewes a man of Rye was convicted before me for drinking the health of King James the Third, and saying, he knew no such person as King George. I fined him £100, and told him that by his paying it to King George, he would certainly know there is such a person."[1]

Some of Sir John's last remarkable cases were those of Hales and Kinnersley for forgeries and obtaining money by false pretences.[2] And again, he was counsel for Bambridge and Corbett upon an appeal of murder, brought by Mrs. Castell. Bambridge was warden of the Fleet, and the charge was, that these persons had placed the deceased, against his will, with a prisoner

[1] See the letter in full, "State Trials," vol. xv. pp. 1414—1422.
[2] "State Trials," vol. xvii. pp. 161, 229.

Judge Page summed up, and, speaking of the character which the prisoner had received, referred the jury to a case not then long since, in which a person produced twenty-seven testimonies to his character; but, added the Judge, there was no doubt of his having committed the act charged against him, and he was found guilty. The jury were out for two hours and a half, and then found a special verdict.[1] And here we have to relate the part which Serjeant Hawkins took in this matter. His name does not appear in the list of Counsel for the prisoner, and this, possibly, is the only case in the "State Trials" where his advocacy is recorded. His great knowledge of the criminal law, doubtless caused his retainer for the prisoner upon the solemn deliberation of the Judges in considering this special verdict. The argument took place in Serjeants' Inn Hall before all the Judges. Serjeant Sir John Darnal (junior), Serjeant Eyre (afterwards Chief Justice), *Serjeant Hawkins*, Peere Williams (the Reporter), Strange (afterwards Master of the Rolls), and Foster (Sir Michael Foster of after days), for Mr. Huggins. The points had been previously argued in the King's Bench by Willes (afterwards Chief Justice) for the Crown, and Serjeant Eyre for the prisoner.[2]

In 1730 Lord Raymond, Lord Chief Justice,[3] delivered the judgment of the Court. The Bench were

[1] "State Trials," vol. xvii. p. 367. [2] *Id.* p. 370.

[3] His monument is in King Langley's Church, Hertfordshire.

in favour of the defendant. The facts found did not amount to murder. He was Warden; but it was found that he had a deputy. "He shall answer as superior for his deputy, civilly, *but not criminally.*" The Lord Chief Justice perused the arguments on both sides. "He must be adjudged not guilty," said Lord Raymond. And he was discharged.[1]

Serjeant Hawkins was employed to defend Bambridge, the other Warden, upon the trial for the murder of Mr. Castell, but he only examined some witnesses.

Judge Page, at the close of the case, told the jury that there was not the slightest proof of duress, and virtually directed an acquittal. The vexatious proceeding of appeal was put in force by the widow, and counsel, as in treason, were allowed in such a serious event (for there could be no pardon upon conviction), to address the jury. Serjeant Darnal and Serjeant Eyre performed this duty, and Serjeant Hawkins helped with the evidence. The Lord Chief Justice (Raymond) summed up, but the jury acquitted the accused.[2]

Nevertheless, notwithstanding these acquittals, very serious cruelties must have been perpetrated under some authority.

The public feeling was very hostile to the officers of the prison. Another man was charged about the same time, the Deputy Keeper and Head Turnkey of

[1] "State Trials," vol. xvii. pp. 370—382. [2] *Id.* pp. 383—462.

the Marshalsea, with no less than four distinct murders of prisoners; but he likewise was acquitted[1]—"*to the satisfaction of almost everybody.*"[2]

It is pleasing to survey the ground where the Fleet once stood, with the reflection that the place of bondage which created such indignation in the last century, and which Dickens has celebrated as the temporary abode of Mr. Pickwick, exists no longer.

Serjeant Hawkins never rose beyond his coif. He died about the year 1746.

[1] "State Trials," vol. xvii. pp. 462—564.

[2] *Id.* p. 564. All these prosecutions were ordered by the King, upon an address from the House of Commons, and they were conducted by the most powerful men at the Bar, and yet all were unsuccessful.—*Id.* p. 616.

MATTHEW SKINNER.

Serjeant-at-Law, 1723-4—King's Serjeant, 1730—the King's First Serjeant, 1734—Chief Justice of Chester.

[The author is indebted to the kindness of Allan Maclean Skinner, one of Her Majesty's Counsel, for the use of a book of valuable memorials concerning the families of Skinner and Skynner.]

"SKINNER," in common with other names, is familiar and interesting to those who love legal records. The spelling singularly alternates in the pedigree, the ancestral name of the present Queen's Counsel having been "Skynner;" and the same is recorded as to Matthew, whose life we are writing, and whose ancestor was "Skinner."[1]

The great grandfather of the Prime or First Serjeant was Robert, who passed through many vicissitudes.

He was Rector of Pitsford, Northamptonshire, in 1628; Rector of Launton, near Bicester, in 1631; and Minister[2] of Green's Norton, near Towcester, in 1636. This "*Rectory*" (for such it was) was given to him

[1] MS. [2] Rector.

by the King, as Bishop Elect of Bristol, "to encourage him to accept of that poor see."[1]

In 1641 he was translated to Oxford, but being, in that year, one of the bishops who subscribed to the presentation, he was impeached of high treason, and committed to the Tower, where, "continuing eighteen weeks, to his great charge, he was released, and retired to Launton. In 1643 the Parliament took Green's Norton from him, which he had held *in commendam* with Launton.

However, in 1660, he was restored to his bishopric, and, in 1663, became Bishop of Worcester.

He died in 1670, aged eighty, and was buried in Worcester Cathedral, where a stone, with an inscription, will be found.[2] He remembered his children in his will. "To my sonne, Matthew Skinner, my biggest guilt cup, with a cover, and one of my guilt plates.—To my sonne, Robert Skinner, my grate guilt tankard." He then disposed of more plate to his other sons, and his daughters. Fine linen was a wonderful gift in the times of those long gone before us. "To my sonne, William Skinner, one feather bed and bolster, blankett, and coverlett, thereto belonging; two paire of fyne sheets, two paire of hempen sheets, fower pewter dishes, one dozen of plates, one

[1] A few "Memorials of the Right Rev. Robert Skinner, DD., Bishop of Worcester, 1663, with Notices of some of his Descendants and other Members of his Family." Printed (not published) for preservation by members of the family, p. 3.

[2] *Id.* pp. 4—6.

diaper tablecloth, one sideboard cloth, one dozen of napkins, and flaxen tablecloth, one sideboard tablecloth," &c.[1]

In those days great value was doubtless set upon the Bishop's numerous domestic stores, which the will most carefully distributed.

Matthew, of the "biggest guilt cupp, with the cover," was born in 1624, and died in 1698. He was buried in Northamptonshire. He was restored to his fellowship at the Restoration, although married. "He resided at Welton, near Daventry, and, having an estate about £600 a year in Oxfordshire, was returned by the Commissioners in 1662 as one of the gentlemen qualified for the honour of being made a Knight of the Royal Oak."[2]

We are now approaching the subject of this memoir. For Robert Skinner, the Law Reporter, was the eldest son of Matthew, and the eldest son of Robert was the Serjeant.

Robert was born at Stratton Audley, Northamptonshire, in 1655. He was admitted a Gentleman Commoner at Trinity College, Oxford, in December, 1670. He became B.A. in 1674, in 1673 a Student of the Inner Temple, and, in February, 1681, he was called to the Bar.[3]

He married Anne, the eldest daughter of William

[1] A few "Memorials of the Right Rev. Robert Skinner," &c., p. 17.
[2] *Id.* pp. 18, 19.
[3] *Id.* p. 20.

Buckby, Serjeant-at-Law,[1] whose wife was Mary, the only daughter of Lord Chief Justice Raynsford, of Dullington, Northamptonshire.[2]

His "Reports," which were published by his son in 1728, are still highly esteemed.[3] At an early age he was Judge of the Marshalsea Court; and, as he died on the 20th March, 1697-98, he belongs to the list of eminent and diligent lawyers who have died young. His father died in the same year, aged seventy-four. He was buried in Northamptonshire, probably at Stratton Audley. His son was buried in St. Faith, under St. Paul's.[4] The wife of Robert, and mother of the Serjeant, died in 1718, and was buried within the rails of the chancel of St. Mary's Church, Bath.[5]

Matthew Skinner, the eldest, (not the third) son of the Reporter, was born on the 22nd of October, 1689. At the age of fourteen he went to Westminster. In 1709 he was elected a Student of Christchurch,[6] and, in the same year (June 20), was entered at Lincoln's Inn.[7]

[1] Burke's "Commoners," vol. iv. p. 751.

[2] "Memorials," p. 19. "A fine portrait of Raynsford adorns the Parliament Room in Lincoln's Inn."—*Ibid.* [3] *Id.* p. 20.

[3] 23 Car. II. to 9 Wm. III. They were published in French.—Bridgman's "Legal Bibl.," tit. "Skinner."

In the account of Lintot and his authors by Nichols there is this entry:—

"1726, May 13. For an impression of 1,500 of the 'Reports of Robert Skinner, Esq.,' £350 15s."—"Literary Anecdotes," vol. viii. p. 301.

[4] "Memorials," p. 19. [5] *Ibid.*

[6] See Ackermann's "History of Oxford," vol. ii. p. 97.

[7] "Memorials," p. 19. "William Melmoth, grandfather of John Skynner, Sub-Dean of York, being his surety."—*Ibid.*

On coming of age he acquired the family property at Welton, and, in April, 1716, he was called, and joined the Oxford Circuit.

In 1719 he married Elizabeth, daughter of Thomas Whitfield, of Watford Place, Herts.[1] "He took a residence in Watling Street, London, having been admitted, by purchase from Simon Urling, Esq., Common Pleader of the City of London, the title given to each of the four counsel, to whom, till lately, was given the exclusive privilege of practice in the Lord Mayor's Court. He surrendered this office in 1722 to Thomas Gazzard, who was afterwards Judge of the Sheriffs' Court, and Common Serjeant. He then removed to the City of Oxford, where he continued in full practice for seventeen years, and constantly travelled the Oxford Circuit.

On May 30th, 1721, he was elected Recorder of Oxford, and in Easter Term, 1724, was, with eleven others, made Serjeant-at-Law, giving gold rings with the motto,—'Bonus, Felixque.' At the general election, in 1728, he unsuccessfully contested the Borough of Andover."[2]

On the 11th June he was made a King's Serjeant, and "afterwards, by letters patent, dated May 12th, 1734, the King's Serjeant.[3] He was Treasurer of

[1] Burke's "Commoners," vol. iv. p. 751. See the "Visitation of Somerset." Sir Thomas Phillipps, p. 135.

[2] "Memorials," vol. iv. pp. 19, 20.

[3] "Law Reports of Serjeant Wilson," vol. i., Preface.—"Memorials," p. 20.

Serjeant's Inn, and appears to have provided in 1737 the official mace, still used by that Society, his name being engraved on it."[1]

In 1736 he was engaged in a very important case, tried before Lord Hardwicke in the King's Bench, upon a mandamus to admit the plaintiff to be a freeman of the Port of Hastings. The Serjeant was, with the Attorney-General, for the Corporation, but the details are dry and uninteresting to general readers.[2] There was a special verdict, and the decision of the Court was in favour of the plaintiff.

In 1737 we find the record of his speech upon the famous Edinburgh Riot Bill.

Mr. Serj. Sk——r was the next who spoke, and to this effect:—

"I don't think my bare vote for the commitment of this Bill is enough to acquit me of my duty to His Majesty and my country, without my expressing in a more particular manner my abhorrence of the detestable action which gave rise to the Bill, and giving the reasons why I am for its commitment.

The people, Sir, in all ages and all countries, have been on the side of mercy, and it has been frequently seen here in England, that a criminal has by this merciful inclination of the people, been rescued from the just severity of the laws. But it was never seen, when the mercy of the Sovereign was extended to a

[1] "Memorials," p. 20. "Matth. Skinner, one of His Majestie's Serjeants-at Law, Treasurer, A.D. 1737."—MS. from the original.

[2] "State Trials," vol. xvii. pp. 843—924.

criminal, that the people frustrated this mercy, by barbarously dragging him before the tribunal of their own inhumanity, and embrewing[1] their hands in his blood; this, Sir, is an action of so black a dye, that I think a brand of infamy ought to be affixed upon those who heard of so barbarous a design, and yet were so indolent (to call them no worse) as to make no preparations to prevent it; and upon the citizens, who, while it was perpetrating, had neither inclination nor courage to prevent it; and, when it was over, were so faithful to rebellion and murder as to conceal the authors of it. We have heard a great deal, Sir, from the gentlemen, counsel against the Bill, about the privileges of the Royal Boroughs in Scotland; but this was not much insisted upon by the honourable and learned Member who spoke first against the Bill, who well knows that when a tumult happened in the City of Glasgow, another of their Royal Boroughs, that the Magistrates there were brought into the City of Edinburgh, and this House passed a Bill, "amerciating" the citizens of Glasgow in a sum of £5,000 towards damages sustained by an honourable Member of this House, by their undutiful behaviour in that tumult. Gentlemen, Sir, have been pleased to mention the case of Burton, Pryn and Bastwick in King Charles the First's time. They might have added, that when, by means of the Parliament, these three gentlemen were recalled from their banishment, they were met several

[1] Imbruing.

miles out of town, upon their return to London, by the citizens, who attended them through the city in triumph, and with the greatest demonstrations of joy. But if any such triumphs and honours are designed by the citizens of Edinburgh for their Lord Provost, I hope they shall have no opportunity of paying them till twelve months after the passing of this Bill into a law for which I heartily give my vote.[1]

"In 1738 he resigned his seat for Oxford, becoming by the appointment of his friend, Sir Robert Walpole, Chief Justice of Chester,[2] in the room of the Hon. John Verney, made Master of the Rolls; and it appears, by different letters patent, enrolled in 1739, that he was made Chief Justice of Chester and Flint, and also of Denbigh and Montgomery, at the several salaries of £500, £200, and £30 a year. In these offices, he was in 1740 associated with the Hon. John Talbot, as his Puisne Judge, ancestor of the Hon. John Chetwynd Talbot, Q.C., who by his death in 1752, made vacant the office of Recorder of Windsor, now held by Allan Maclean Skinner, Q.C., on the recommendation of the Right Hon. Spencer H. Walpole."[3]

[1] "Gentleman's Magazine," 1737, p. 647.

[2] See Ormerod's "Cheshire," vol. i. p. 57.

[3] "Memorials," p. 20. "From the second marriage of Richard, the son of Stephen [of Le Byrton's, Ledbury,] with Mary Clynton, is descended Allan Maclean Skinner, born July 14, 1809, at 9, Cadogan Place Chelsea;" "Memorials," p. 61. He was at Eton, whence he went to Balliol, Oxford, and took his degree, May 24, 1832; was called to the Bar at Lincoln's Inn, June 5, 1834; and joined the Oxford Circuit. Subsequently, in 1837, he was appointed a Revising Barrister. On the 26th of June, 1852, he was made

In 1746 Serjeant Skinner was counsel against Lord Balmerino (Lord Kilmarnock and Lord Cromartie had pleaded guilty), who was tried in the House of Lords, in 1746. He led for the Crown, and was involved in the usual common-place sentiments of the day. "France knows," he said, "and will pursue her natural interest; to make us tributary, to make us provincial, to destroy us as a nation, was, and must, and can only be the true design of France."[1] It was manifest that Lewis favoured the Pretender. The Serjeant aggravated the prisoner's crime. He was, he added, a Captain in the King's service, but he left his post and accepted promotion under an enemy. He entered Carlisle at the head of his troop, with sword drawn and drums beating, dressed in the uniform of his new regiment, with a white cockade. He was made prisoner at length, at Culloden.[2]

Lord Balmerino declined to have counsel assigned to him; and the mere shadow of a defence, was an objection on a point of form, of no weight.

It is sufficiently known, that this nobleman was found guilty by an unanimous verdict of his Peers, and that he suffered on Tower Hill.[3]

Recorder of Windsor, and, on the 22nd of June, 1857, he became one of Her Majesty's Counsel. On the 2nd of November following, he was called to the Bench at Lincoln's Inn; and in 1859, August 5, was made a County Court Judge in South Staffordshire, qualifying as a Magistrate for Staffordshire and Worcestershire at the October Sessions, 1859.—"Memorials," p. 61.

[1] "State Trials," vol. xviii. pp. 464, 465.

[2] *Id.* p. 466.

[3] "State Trials," pp. 487, 522.

It seems that the Serjeant's speech was tedious, for Horace Walpole, alluding to Lord Cowper's eloquence on sentencing Lord Derwentwater and others to death, in 1716, observed:—"After the second Scotch rebellion, Lord Hardwicke presided at the trials of the rebel Lords. Somebody said to Sir Charles Wyndham: 'Oh! you don't think Lord Hardwicke's speech good, because you heard Lord Cowper's.' 'No,' he replied: 'But I do think it tolerable, because I heard Serjeant Skinner's.'"[1]

The first Serjeant died at Oxford, on the 21st of October, 1749.[2] He was buried in the Cathedral; and on a slab, placed on a pillar after his wife's death, by their only surviving child, Matthew, is this epitaph:—

"H. S. E.
Matthæus Skinner, Armiger.
Civitatis Oxoniæ Recordator,
Cestriæ Justiciarius Capitalis
Serenissimi Georgii 2di.,
Serviens ad Legem Primarius
Quo hujusce sedis olim alumnus,
Hic, inter socios,
Ossa sua recondi voluit—
Obiit Oct. xxi. mo., A.D. MDCCXLIX mo.
Ætatis lx. mo.
Sub eodem marmore,
Prope Conjugis Reliquias
Repositæ sunt
Etiam Elizabethæ Skinner,
Filiæ Thomas Whitfield,
De Watford in agro Hertfordiensi, arm.
Obiit xxvii. mo. Die, MDCCLX. mo.
Ætatis LX. mo."

[1] "Memorials," p. 20.

[2] "London Magazine," 1749, p. 481.

On a stone over the tomb, is written:—

Hic jacent Matthæus Skinner, arm. et
Elizabetha, uxor ejus, 1761."[1]

The three eldest sons of the Serjeant died young, and were buried in the chapel at Merton.[2]

The kinsmanship of the families of Skinner and Skynner, arose thus:—

The family of Skenner (of Danish origin) was settled at Old Bolingbroke, Lincolnshire, by Sir Robartt Skenner (a Norman knight) at the Conquest. A cadet of the family, John Skynner, settled at Ledbury, in 1444; which John was ancestor of the brothers, Stephen Skynner and Thomas Skynner. Stephen, the eldest, was of Le Byrton's, Ledbury; Thomas, the youngest, of Ledbury. Stephen died in 1557.[3] The eldest son of this Thomas Edmonde, Rector of Pitsford, seems to have altered the spelling from Skynner to Skinner, to which the Bishop, the grandson, Matthew, Robert, and Matthew, the Prime Serjeant, adhered. Stephen and his successors maintained the original vowel for a very long time. At length, Thomas Skinner, the grandfather of the Queen's Counsel, appears to have exchanged the letter y. And Lieutenant-General Skinner, his son, and the present County Court Judge, have abided by the alteration.[4]

But Edward, the fourth son of Stephen, the ancestor,

[1] "Memorials," pp. 20, 21.—"London Magazine," 1749, p. 481.
[2] "Memorials," p. 21. See their epitaphs, written by himself.—*Id.* p. 22.
[3] MS. [4] MS.

was a "Skynner," and his descendants, inclusive of the Chief Baron, maintained the original reading.[1] Hence Matthew, the Serjeant, and the Lord Chief Baron, were cousins. "Among the worthies of Herefordshire," says the diligent chronicler of the "Skynners," we find another member "of this ancient family."

"The Right Honourable Sir John Skynner, Knight, Lord Chief Baron, whose father and mother are described on brass tablets on the floor of the north aisle of the church of Great Milton, Oxfordshire, as 'John Skynner, Esquire, son of Edward Skynner, of Ledbury, and of Margaret Browne, died May 18, 1729.'"

"Sir John, like his kinsman Matthew, Chief Judge of Chester and Recorder of Oxford, was scholar of St. Peter's College, Westminster, to which he was admitted in 1738, and elected in 1742 student of Christ Church, Oxford; and in January 27, 1750, took his degree; B.C.L. Having been admitted a student of Lincoln's Inn, November 21st, 1739, he was, on November 17, 1748, called to the Bar by that Society, and joined the Oxford Circuit; and on the 15th of March, 1757, he was one of the counsel present in Court at the Worcester Assizes, when, between two and three o'clock p.m., as Sir Eardley Wilmot began to sum up in the last cause, a stack of chimneys fell through the roof, killing many. The counsel then in Court, being five in number, saved themselves under the stout table, and of these, four—Aston, Nares, Ashurst, and Skynner

[1] MS.

—after became Judges, the fifth (Mr. Griffith Price, afterwards eminent as a Chancery lawyer), dying a King's Counsel. A graphic account of this is given by the Judge, ancestor of Sir John Eardley Wilmot, Bart., now a Judge of County Courts."

"WORCESTER, 15*th March*, 1757.
"FOUR IN THE AFTERNOON.

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

reason to join me in returning God thanks for this signal deliverance; but if I have escaped, to lose either my honour or my virtue, I shall think, and you ought all to concur with me in thinking, that the escape is the greatest misfortune. I desire you will communicate this to my friends, lest the news of such a tragedy, which fame always magnifies, should affect them with fears for me. Two of the jurymen who were trying the cause, were killed, and they are carrying dead and wounded bodies out of the ruins still, &c.

"JOHN EARDLEY WILMOT."

"He was in 1768 elected Member for Woodstock, in the Parliament which met May 10; and June 19, 1771, became a bencher of Lincoln's Inn, on being made a King's Counsel. April 3, 1772, he was appointed a Puisne Judge for Chester, Montgomery, Flint, and Denbigh, and was re-elected Member for Woodstock. This same year he had the honour of acting as Steward of the Westminster Anniversary. At the general election in 1774, he was again elected M.P. for Woodstock, and in 1775 he showed his interest in Herefordshire, which he always cherished, as the original seat of his family, by subscribing £100 to the Hereford Infirmary, then about to be established. His mother's grandfather, Thomas, in 1644, being on the King's side, accepted the office of Mayor of Oxford, and was Colonel of the townsmen of Oxford, reviewed on

Bullingdon Green by Charles the First. The influence of the family long continued at Oxford, and Sir John was on April 12, 1776, elected Recorder of Oxford, with the freedom of that city. In the inventory of their corporate plate, article 13, is 'a soup tureen, cover, and ladle,' on both, 'the gift of the Right Honourable Sir John Skynner, Recorder of the City, for the use of the Mayor, 1789;' and on each were engraven, as they now appear on the walls of Lincoln's Inn dining hall, the Skynner arms, on a ground sable, a chevron or, three griffins' heads, argent, erazed. He left the Society of Lincoln's Inn, according to custom, November 27, 1777, on taking the degree of Serjeant-at-Law, when his friend, Francis Burton, gave his rings, with the motto 'Morem Servare,' and December 1st, he was made Lord Chief Baron of the Exchequer, and received the honour of knighthood. In December, 1786, he resigned the office of Lord Chief Baron, and on March 23rd, 1787, he was sworn in as a member of the Privy Council. On September 8, 1778, he appointed his friend, Francis Burton, his deputy, as Recorder of Oxford, and afterwards, May 26, 1797, resigned, by deed, the office of Recorder of Oxford, in favour of his friend Francis Burton, then a Puisne Judge of Chester, &c., who (having been Treasurer of Lincoln's Inn in 1792), gave to that Society, dear to them both, the excellent picture of the Chief Baron, by Gains-

borough, bequeathed to him by Sir John, and which now adorns the Parliament room there, in the same spirit as that in which the present Earl of Harrowby has recently given to Lincoln's Inn the portrait of his ancestor, Sir Dudley Ryder, as the most appropriate place for its permanent appreciation. He had the honour, as an old Westminster scholar, to be appointed, April 17, 1780, one of the trustees of Dr. Busby's charity; he always took great interest in Westminster school, and to the last kept up his friendship for his old school-fellow, Sir Elijah Impey. After he had resigned the office of Lord Chief Baron, he retired to the seat he inherited from his mother, Witley Court, Great Milton, Oxfordshire, which he enlarged and beautified, enjoying frequently the society of his old friend, and brother Judge, Ashurst, who resided at Waterstock, the adjoining parish. On her monument in Milton Church, we find that Martha, wife of Sir John Skynner, and daughter of Edward Burn and Martha Davie, died December 4, 1797. It may be pleasing to those who think that the education of eminent men is most frequently conducted by their mothers, to direct attention to the fact, that his father died when he was five years old. Sir John died at Bath, aged eighty-two, and was buried in the vault of his mother's family, in the Church of Great Milton, where, on a plate over his grave, is written:—

"'In a vault beneath
lie the remains of Sir John Skynner,
son of John and Elizabeth Skynner,
one of His Majesty's
Most Honorable Privy Council,
and sometime
Chief Baron of the Court of Exchequer,
who died the 26th day of November, 1805.'"

THOMAS BARNARDISTON.

Serjeant-at-Law, 1735.

THOMAS BARNARDISTON, of the old family of Barnardiston, was of the Middle Temple.

He was called to the degree of the coif on the 3rd of June, 1735.[1]

He died in the vacation after Trinity Term, on the 14th of October, 1752,[2] and was buried in Chelsea Church.[3]

In the unframed prints at Serjeant's Inn, a portrait of Barnardiston will be found.

Serjeant Barnardiston contributed some legal memorials to the profession.

In the history of our Courts, it will be found that some judicial minds are adverse to the recognition of some writers as authorities. Others, again, have paid to the very same authors the compliment of approbation. This Serjeant was no favourite of Lord Mansfield. Upon Barnardiston's "Chancery Reports"

[1] Wynne, Serjeant-at-Law, p. 106.

[2] "London Mag." 1752, p. 482.

[3] Lysons's "London," vol. ii. p. 138.—"Reports of Serjeant Wilson," vol. i., Preface.

being cited in his Court, he "absolutely forbade it. It would only be misleading students, to put them upon reading it." He said: "It was marvellous, however, to those who knew the Serjeant and his manner of taking notes, that he should so often stumble upon what was right; but yet there was not one case in his book which was so throughout."[1] According to this, Lord Campbell's allusion to an old lawyer, as "drowsy Serjeant," might be well applicable. Nevertheless, this severe discernment is not, we believe, enforced at this day.

> "'Tis with our judgments as our watches, none
> Go just alike, yet each believes his own."

And the soundness of Lord Mansfield's opinions has been questioned, as not by any means disembarassed of prejudice. For instance, he was no admirer of deep special pleading. Mr. Wallace and Mr. Howarth died nearly at the same time.[2] The former had been Attorney-General, and a considerable scientific lawyer. Howarth, although a good advocate, was inferior in knowledge to James Wallace. Lord Mansfield, being told of their death, "scarcely expressed any concern for Mr. Wallace, but very great regret for Mr. Howarth."[3]

[1] Sir James Burrow's "Law Reports," vol. ii. p. 1142.

[2] Mr. Howarth was accidentally drowned.

[3] "Memoirs," &c., by Letitia Matilda Hawkins, vol. i. p. 254. This lady was daughter of Sir John Hawkins, the author of the "History of Music," and biographer of Johnson.

EDWARD LEEDS.

Serjeant-at-Law, 1742—King's Serjeant, 1748.

THE accounts of the life of Serjeant Leeds, of Croxton, Cambridgeshire, are but sparing. Very little doubt can exist but that he was a descendant of the famous civilian, Edward Leeds, of Croxton. This celebrated scholar held an abundant plurality of preferments. But he had the honesty to resign them when he was no longer able to fulfil their duties. He was, at one time, Canon of Ely and Master of Clare Hall. He held many livings, and was a Master in Chancery. About 1570 he purchased the manor of Croxton of Sir Richard Saonville, and rebuilt the manor-house, and, in the following year, resigned his mastership, and in 1584 his canonry. He died on the 17th of February, 1589, Rector of Croxton, and was buried in the chancel of the church. A monument of stone was erected to his memory, with a small figure of him in brass, and this inscription:—

"Edwardus Leeds, LLD.,
Natus apud Benenden in Comitatû Cantii,
Dudum Magister Aulæ Clare in
Academiâ Cantabrigiensi,

Et tàm in eâdem Aulâ quàm in
Collegio Emanuelis,
Benefactor in primis;
Unus Magistrorum Cancellariæ
Obiit 17 die Feb. A.D. 1589;
Cujus Corpus hic jacet sepultum."[1]

The Serjeant was called to the Bar by the Society of the Inner Temple, on the 29th of June, 1718.

Mr. Leeds was summoned to take the coif in February, 1742,[2] and in Trinity Term, 21 George II. (1748) he was made a King's Serjeant.[3]

He seems to have lived much at Croxton as a country gentleman. He was a Justice of the Peace there in 1740.[4]

He left the Bar in 1755.[5]

Serjeant Leeds married one of the daughters and co-heirs of Governor Collett. She died on the 12th of March, 1757, the year before her husband's decease.[6] Her father's name was Joseph. He was of Hertford Castle, and Governor of Fort George.[7]

On the 5th of December, 1758, the Serjeant died.[8]

[1] Cooper's "Athen. Cant.," vol. ii. p. 65. "Edward Leeds, LLD., born at Beneden, in the County of Cambridge; lately Master of Clare Hall, in the University of Cambridge, and as well a chief benefactor to that Hall as to Emanuel College. One of the Masters in Chancery. Died on the 17th day of February, 1589, whose body here lieth buried."

[2] Wynne's "Serjeant-at-Law," p. 124.

[3] "Reports," by Serjeant Wilson, vol. i., Preface.

[4] Davy's "Suffolk Collections," art. "Leeds."—Cole's "Cambridge Collections," vol. xi. p. 59.

[5] "Reports," as above.

[6] "London Magazine," 1757, p. 148. [7] Davy and Cole, as above.

[8] "Reports," by Wilson, as above.—"Gentleman's Magazine," 1758, p. 243.

The eldest daughter, Anne, or Nancy, married John Barnardiston, Solicitor, of Lincoln's Inn, probably a relative of the Serjeant, but certainly one of the ancient race of the Barnardistons, on the 31st of May, 1754.[1] He appears to have been heir to Edward Leeds, Esq., and from him came the Barnardistons, of the Ryes, Sudbury.[2]

Henrietta, the second daughter, had been married to John Howard, of Cardington, Bedford, the great philanthropist, so lately as the 25th of the previous April.[3]

However, amongst the Serjeant's children, the eldest son attained rank, and became a Master in Chancery. He was Member for Ryegate, but died unmarried. He was possessed of Staverton Park and Wantisden Hall.[4]

In St. Michael's Church, Cambridge, there is a monument to *Robert* Leedes. It has this inscription:—

"Roberto Leeds, nec magna, neo altâ sapientia, par monumentum."[5]

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[1] "London Mag.," 1754, p. 284.—Burke's "Landed Gentry," vol. i. p. 49.
[2] Davy and Cole, as before.
[3] "Gentleman's Magazine," 1758, p. 243.—Davy and Cole, as before.
[4] Davy and Cole, as before.
[5] "Collectanea Cantabrigiensia," Blomefield, p. 45.

WILLIAM WYNNE.

Serjeant-at-Law, 1735.

THIS Serjeant must not be confounded with Serjeant Richard Wynne, who, according to Luttrell,[1] was removed from being a Welsh Judge. William was of much later date, and yet it is doubtful whether he would have appeared in these pages, but for his stout defence of the Serjeants, when their exclusive privileges in the Court of Common Pleas were threatened.[2] "Every one must naturally ask," said he: "What have the Serjeants done to incur the public displeasure? Whose business now-a-days is not to be envied? Why are they to be deprived of the little privilege that now remains, since they can hardly hope for better? Who could conceive such a mischievous project against the society of Serjeants? or what could induce any one to attempt such an innovation without some general or flagrant objection?"[3] His book on

[1] "Diary," vol. vi. p. 54. He lived to a very great age, nearly ninety, dying December 4, 1742; "London Magazine," 1742, p. 623. There are some other incidents relating to him in Luttrell's "Diary," vol. v. p. 564; vol. vi. pp. 299, 317.

[2] 1756.

[3] "Serjeant-at-Law," p. 9.

"the Antiquity and Dignity of the Serjeant-at-Law," although not free from error, is, nevertheless, a valuable authority, and well entitled to be placed by the side of Sir William Dugdale's history.[1]

"Owen Wynne, LLD., of the Gwaenfyndd line, was father by Dorothy, who died in 1724, daughter of —— Luttrell, of four daughters, Katherine, Mary, Elizabeth, and Sarah—not indicated as married at the date of the pedigree—and of one son:—'William Wynne, Esq., barrister-at-law in 1723,—Serjeant-at-law in 1736; died in 1765.' The life of Sir Leoline Jenkins was written by William Wynne, Esq., probably this individual; the papers of Sir Leoline having been bequeathed to his father, Owen Wynne."[2] This Owen Wynne was Warden of the Mint, and Secretary to King Charles the Second.[3]

Luttrell, to whom the Doctor is said to have been related, records:—

"Dr. Owen Wynne is turned out of his place of Warden of the Mint, and one Benjamin Overton (whose father was hanged for a fifth monarchy man) is putt in his room."[4]

He was also deprived of his secretaryship to Lord Shrewsbury. William, the Serjeant, was of the Middle Temple.[5]

[1] "Origines Juridiciales."

[2] "Philippa Swinnerton Hughes," in "Notes and Queries," 4. vol. ii. pp. 40, 41; who, in answer to "Mr. Serjeant Woolrych's query," 4. vol. i. p. 580 has supplied some interesting information.

[3] Burke's "Commoners," vol. iv. p. 555.

[4] "Diary."

[5] *Id.* vol. i. p. 579.

[6] Wynne, "Serjeant-at-Law," p. 106.

In 1723, many years before he received the coif, Mr. Wynne was engaged with that eminent advocate, Sir Constantine Phipps, in the defence of Bishop Atterbury. It was a bold and elaborate display of the criticism of evidence. Mr. Wynne spoke at great length; and again, when it became the duty of counsel to sum up, he very ably and far more amply than his colleague, placed the chief points in the strongest light.[1] It is curious to observe with what freedom that amusing gossip, Horace Walpole, deals with these speeches. And the vindication of his father by Edward Wynne, the author of "Eunomus," is not, in its turn, considered satisfactory. It seems that the complaint, or rather the sarcasm at the expense of Wynne was that he had got access by some means to the Bishop's intended address to the House of Lords, and so availed himself of the best features of the argument.[2] It is very possible that the nobleman so well known by the *soubriquet* of the profligate Duke of Wharton, might have done some act of this kind. For Walpole relates, that "his Grace, then in opposition to the Court, went to Chelsea the day before the last debate on that Prelate's affair, where acting contrition, he professed being determined to work out his pardon at Court by speaking against the Bishop, in order to which he begged some hints. The minister was deceived, and went through the whole cause with him, pointing out where the strength of the argument

[1] See his speeches, "State Trials," vol. xvi. pp. 516, 574.

[2] See the Duke's speech in the House of Lords.—*Id.* p. 664.

lay, and where its weakness. The Duke was very thankful, returned to town, passed the night in drinking, and without going to bed, went to the House of Lords, where he spoke *for* the Bishop, recapitulating in the most masterly manner and answering all that had been urged against him."[1]

However, Walpole was not content with this rather plausible story. He added a note. "Serjeant Wynne served the Bishop in much the same manner; being his Council, he desired to see the Bishop's speech, and then spoke the substance of it himself."[2]

It seems improbable that two persons should forestal, and, as it were, pirate the intended appeal of the Bishop to the House. Mr. Wynne, the author of "Eunomus," entered into an elaborate defence of his father. He affirmed that Serjeant Wynne never saw nor ever desired to see the Bishop's speech, nor ever heard a line of it read. Moreover, Mr. Wynne was never alone with the Bishop during his confinement, and, when sent for, was either in company with Sir Constantine Phipps, his other counsel, or others.[3] The vindication of the son has been called, "stiff, perplexed, and ungrammatical in its phraseology." "The matter consists partly of arguments, obvious, and for the most part weak, and partly of allegations."[4] But the allegations seem to be fair and

[1] "Catalogue of Royal and Noble Authors," vol. ii. p. 132.
[2] *Id.* p. 133.
[3] "State Trials," vol. xvi. p. 516, note *.
[4] *Ibid.*

reasonable allegations, needing little argument to sustain them, and Walpole's insatiable sweep of character is no novelty.

But the test is, the comparison of the speeches. The Bishop's speech[1] was short, complaining of his hardships, with which his counsel had no concern, commenting upon the evidence which was given in Court, and open to all; and adding a remonstrance against his deprivation and ruin, not alluded to by his advocates. Whatever may be the right opinion as to the value of the "vindication," facts speak for themselves, and there seems, according to these, but little ground for the imputation against the Serjeant.

In 1746 Francis Townley, Esq., was tried for high treason. He had been a stout adherent of Charles Stewart. He was tried at St. Margaret's Hill, Southwark, before two Chief Justices and six Judges. The Attorney and Solicitor Generals, Sir John Strange, Sir Richard Lloyd, and Mr. Yorke (afterwards the short-lived Lord Chancellor), appeared for the Crown; Mr. Serjeant Wynne and Mr. Clayton, afterwards a Serjeant, for the prisoner. The case was formidably clear against the accused, and his punishment certain and imminent. But his counsel deserved well of their client, and maintained the independence of the Bar. The witnesses against Mr. Townley were strongly arraigned for their evidence, upon the suggestion that they counted upon a pardon for it. The testimony

[1] "State Trials," p. 585.

was not long. The Commission from the French King being shewn, Wynne insisted that the prisoner ought to have had his cartel of exchange. He had served France for sixteen years, and came over to assist the ally of the French King. So three witnesses were summoned for the defendant, one to establish the foreign Commission, the others to invalidate the character of the Crown witnesses. However, the Crown soon disposed of the Commission. "No man that is a liege subject of His Majesty can justify taking up arms, and acting in the service of a prince that is actually in war against His Majesty."[1] Recourse was then had to destroy the personal character of the principal accusers. It was sworn that they were not to be believed upon their oaths; but the attempt sadly failed, for Sir John Strange, asking the reason of the disbelief, was answered: "I have heard that he was a very base apprentice, and had wronged his master." "So," exclaimed Sir John, "for no other reason than because you have heard he was not a good apprentice, you take upon you to swear he is not to be believed on his oath. I suppose you have other bad apprentices in Manchester?" A dangerous witness to call, for by the Attorney-General: "Did you ever see the prisoner at Manchester at the time the rebel army was there?" "Yes." Attorney-General: "What was he doing there?" "He was Colonel of the Manchester regiment." "What! in the Pretender's service?" "Yes;

[1] By the Court.

in the rebel army." It was a hopeless advocacy for Serjeant Wynne. Lee was the presiding Judge, and the jury speedily convicted Mr. Townley, who was executed, with all the barbarities attendant in those days upon the punishment of a traitor.[1]

In 1735, May 17, fourteen serjeants were called, and, amongst them, Mr. Wynne. On the 3rd of June they took leave of their several societies, receiving the usual payment of ten guineas, in crowns and half-crowns, in a purse.[2] A full account of the entertainment, with its cost, will be found in the Serjeant's own book.[3] "I have been," he says, "the more particular and copious on this call, as it may probably be the last general and regular call."[4]

The Serjeant died in 1765, and was buried in the cloisters of Westminster Abbey.[5]

He married Grace, daughter of William Bridges, or Brydges, Serjeant-at-Law, and he had by her three children.—1, Edward Wynne, Esq., Barrister-at-Law, 1765; 2, Luttrell Wynne, Fellow of All Souls, 1765; 3, a daughter, unmarried.[6]

[1] "State Trials," vol. xviii. p. 329.—See Serjeant Wynne's Speech, p. 344.

[2] This custom still prevails at some of the Inns.

[3] Serjeant-at-Law, pp. 115—123.

[4] *Id.* p. 123.

[5] A monument will be found there with the Wynne arms impaling these of Brydges.—Burke's "Commoners," vol. iv. p. 555.

[6] "Philippa Swinnerton Hughes, in 'Notes and Queries,'" 4. vol. ii. p. 40. This lady refers (p. 45) to "Sketches of the Lives of Eminent Civilians," and to the Right Honourable William Wynne, Judge of the Admiralty and Master of Trinity Hall, Cambridge.

The widow died on the 25th November, 1779, aged seventy-nine.

The Serjeant inherited from the Luttrells the Manor of Polsue, in St. Erme's Parish, Cornwall.

Edward died 26th December, 1784, aged fifty, without issue.

Luttrell died, unmarried, 29th November, 1814. He was buried in the cloisters of Westminster Abbey. He had the manors in Cornwall, which he inherited from his father, and these, with his other estates, he devised to his cousin, Edward William Stackhouse, Esq., of Pendarves, upon whose death the family assumed the ancient name of Pendarves.[1]

Serjeant Wynne published "Observations touching the Antiquities of the degree of Serjeant-at-Law." He gives a list of the Serjeants, beginning at 3 Ed. I., and ending 5 Geo. III. He also wrote "Observations on Fitzherbert's 'Natura Brevium.'"[2]

But he had a taste for literature, and could appreciate other than law authors. He was thinking upon Pope, whose writings he had read, when some one told him that Pope had read Coke upon Littleton, and that he thought it one of the best compositions he had ever read. The Serjeant caught up the bright idea, and exclaimed, that "had the celebrated poet sacrificed as much to Westminster Hall as he did to Parnassus,

[1] Burke's "Commoners," vol. iii. p. 364.

[2] "Biographical History of Blackstone," vol. ii. p. 95, n.

he would have been as good a lawyer as he was a poet."[1]

Edward was the author of "Eunomus," and nephew of Dr. Wynne, sometime Fellow of All Souls.[2] He was at the Bar, but was chiefly known by his legal works. He died of a cancer, December 26, 1784, in the fiftieth year of his age.[3]

[1] "Biographical History of Blackstone," vol. ii. p. 40, n.
[2] Not elder brother.—Nichols's "Anecdotes," vol. viii. p. 456.
[3] Gorton's "Biographical Dictionary," tit. "Wynne, Edward."

SIR SAMUEL PRIME, KNT.

Serjeant-at-Law, 1736—King's Serjeant, 1738—The King's First Serjeant.

[For the MS. notes contained here the author is indebted to Captain Prime, of Walberton, Arundel, the Serjeant's grandson.]

SIR SAMUEL PRIME was one of the most distinguished of the fourteen Serjeants, who were summoned to that rank on the 3rd of June, 1736.[1] Amongst them was Wynne, the author of the "Serjeant-at-Law," Ketelbey (no doubt related to Abel Ketelbey, who, jointly with Hungerford, made a stout defence of the State prisoners, to whom they were assigned as counsel in the reign of George the First,) and Barnardiston, the Reporter, of a good family in Suffolk. The celebrated Michael Foster was likewise included. They gave rings, "Libertas nunquam gratior." Upon this rich call of brothers the following lines, made on the occasion, are recorded:—

"Dame Law, to maintain a more flourishing State,
Having happily compass'd the Mortmain[2] of late;
As erst she call'd over her word-selling crew,
Cries, 'The harvest is great, but the lab'rers are few;

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[1] Wynne's "Serjeant-at-Law," p. 106.

[2] The Mortmain Act—a noble harvest for the lawyers.

Then courage, my sons! here is work for you all;'
And fourteen new Serjeants stept out at the *call*."[1]

The Rev. Richard Prime, Rector of Fornham, All Saints, Hengrave,[2] was the father of the Serjeant. He was the owner, by purchase, of a messuage in Great Saxham. The will of a Richard Prime, his cousin, (it may be) was dated on the 26th October, 1706, and was proved in the diocess of Norwich, 6th Jan., 1712.[3]

The Reverend Mr. Prime must have been nearly related to this Richard Prime, who was an Alderman of Bury, and was buried at Great Saxham, on December the 5th, [1711].[4]

On the Church pavement, amongst other inscriptions, is this:—

"Here lyeth y^e^ body of Rich^d^ Prime,
Gent., of Bury S^t^. Ed^m^., having been
Thrice Chief Magistrate of y^t^ borough,
Who departed this life y^e^ 11th day of
December, 1711,
Aged about 88 years.
Here lyeth the body of Margaret, the wife
Of Richard Prime, Gent., Ald-
erman of the Borough of Bury S^t^. Ed^m^.,
Who departed this life y^e^ 9. of May,
1695, being the 60th of her age."[5]

The will of the *Clergyman* was dated, November 28, 1713, and it was proved in February, 1714.[6]

[1] "Gent. Mag.," 1736, p. 353.

[2] The fourth leet of the hundred of Thingoe.—Gage's "History of Suffolk—Thingoe Hundred," p. 243.

[3] Not 1712.—See Gage, p. 119.

[4] *Id.* p. 243.

[5] *Id.* p. 117, n.

[6] Gage, p. 117.

Samuel Prime was born in 1701. He went to St. John's, Cambridge, where he graduated in 1770, and took his Master of Arts' degree in 1773.[1]

He was called to the Bar on the 5th of June, 1736, by the Benchers of the Middle Temple.

Mr. Prime, as we have said, received the honour of the coif on the 3rd of June, 1736, and was made a King's Serjeant in July, 1738. When a promotion to this rank is made in term it is customary for the new brother to descend from the back of the Court through a lane, made for him. It is rather an imposing ceremony. Within recollection, the oldest Serjeant has been heard to exclaim, upon seeing a new Serjeant advancing in his robes, "I spy a brother." The custom is now disused. Formerly, likewise, the reception took place at Serjeant's Inn. Prime being called to the rank, some one remembered that his crest was an owl, and very malevolently got a figure of an owl placed at a first floor window in the Strand, directly facing Surrey Street, with a label round his neck, on which was written in large characters, "I spy a brother."[2]

The year 1745 was famous for the great event of the rebellion, when the Pretender's army advanced into the heart of England, and struck terror amongst the citizens of London. There was a great display of loyalty. On the 8th of November the Lord Chan-

[1] "Graduati Cantabr.," 1659—1823, p. 382.
[2] Polson's "Law and Lawyers," vol. i. p. 73.

cellor, and all the Judges, the law officers of the Crown, the Serjeants, the King's Counsel, the Benchers of the Inns of Court, and the Bar, assembled in Westminster Hall in their costume, and thence went with great solemnity to St. James's, in a train of nearly two hundred coaches. They presented their humble address and association to His Majesty sitting on the throne, attended by the great officers of State. They magnified the auspicious Government of George the Second, and expressed their detestation of the insurrection, as calculated to make them a "despicable dependent people." As Protestants, they declared their faithful adherence to the Protestant succession. And they concluded with an invocation: "That the Almighty may bless and prosper your councils, give you victory over your enemies, restore tranquillity to your realms, establish your throne on the surest foundations, and perpetuate to latest posterity our present blessings, by a never-failing succession in your royal line." To this highly-wrought effusion (which, however, the exigencies of the moment, no doubt, justified,) the King returned a suitable and gracious reply. The Association had then the honour to kiss hands, and His Majesty subsequently, on the 23rd instant, conferred the honour of knighthood upon several Judges and lawyers, and, amongst others, upon Samuel Prime and Thomas Birch,[1] two of his Majesty's Serjeants-at-Law.[2]

[1] Afterwards a Judge of the Common Pleas.

[2] "London Mag.," 1745, p. 566.

In 1747 Sir Samuel appeared with Sir John Strange as counsel for the defendant, a gun-maker, who was charged with violating the famous Statute of Elizabeth[1] against the unskilful manufacture of goods. The gun-makers of London were the prosecutors of the action in the name of their beadle. And a very curious revelation, probably new to the public, was made upon the subject of the gun-trade. The great man was the gun-maker. The fecundity of his underlings was amazing. They were barrel-forgers, breech-forgers, barrel-filers, barrel-polishers, barrel-loop-makers, lock-forgers, lock-filers, lock-polishers, lock-hardeners, trigger and nail-forgers, trigger and nail-filers, stock-makers, &c. &c.

The master gun-makers of London, after receiving these various *disjecta membra*, or disjointed pieces, merely screwed the whole together.

The defendant's pride was to make the *whole gun*. This conduct, of course, exasperated the chiefs of the trade, and, finding themselves rather in a difficulty in arresting his progress, they invoked the Statute, and impeached his skilfulness.

Strange and Prime had a very cheering case. First, they proved the regular services of their client, as journeyman to various clever artisans.

Then they brought forward his domicile at Tower Hill as a gun-maker. But the crowning point was

[1] Of 5 Eliz.

this. The defendant produced a gun, screwed and put together by himself, without the aid of the barrel-forgers, the barrel-filers, the lock-forgers, the trigger-forgers, and the immense crew of auxiliaries to the master gun-smiths. It was complete, made from beginning to end, without help. It was a plain gun, and had not two shillings' worth of silver about it; but proof was given that the worth of it was three guineas, and that it would shoot exceedingly well. Moreover, the defendant always tried his guns before he used them. A nonsuit was inevitable. So Prime won his cause, and there was an end of the master gun-makers.[1]

On the 23rd of August, 1748, Sir Samuel married Hannah, daughter of E. Wilmot, Esq., of Banstead, Surry, and widow of John Sheppard, Esq., of Ash Hall, or, rather, Compsey Ash.[2] He had by this lady a son, Samuel Prime, of Whitton, Middlesex.[3] This Samuel Prime was a gold-medallist. His place was Neller Hall, near Witton, now a Government school for training bandsmen for the army. His son, Richard, was born in 1784, and became a Deputy Lieutenant and Chairman of the Sussex Quarter Sessions, and, in 1823, was High Sheriff. He, moreover, represented that county in Parliament from 1847 to 1854, when the state of his health compelled his retirement.[4]

[1] "London Mag.," 1747, p. 99. [2] MS.
[3] Burke's "Landed Gentry" (Prime).—"London Mag.," 1748, p. 381.
[4] MS. Burke's "Landed Gentry" (Prime).

Richard possessed Walberton House, Sussex, which is now the property of Captain Arthur Prime, his eldest son.[1]

When Sir Samuel Prime retired from the Bar, Lord Thurlow used to say, "I drove Serjeant Prime from the Bar without intending it. I happened to be walking up and down Westminster Hall with him, while Dr. Florence Hensey was on his trial in the King's Bench for high treason. Serjeant Prime was at that time the King's Prime[2] Serjeant. As such, he had precedence over all lawyers in the King's service. But the ministers of that day, wishing to pay Court to Sir Fletcher Norton, though he had at that time no other rank than King's Counsel, entrusted the trial to him. I happened to make this remark to Serjeant Prime: 'It is a little singular, sir, that I should be walking up and down Westminster Hall with the King's Prime Serjeant while a trial at Bar[3] for high treason is going on in that Court.' The expression struck him; he felt the affront put on him; he went the next morning, resigned his office, and retired from the profession."[4]

Serjeant Prime certainly retired about his time, and was succeeded by Serjeant Whitaker, retaining, however, his nominal dignity. It is, probably, the only

[1] Burke's "Landed Gentry" (Prime).
[2] The First Serjeant. It is a patent office.
[3] A trial at Bar is before the full Court.
[4] Polson, "Law and Lawyers," vol. i. p. 73.

instance of two "first" Serjeants existing at the same time.

This King's First Serjeant died on the 24th of February, 1777, in his seventy-sixth year.[1]

He was buried in the Temple, where a monument, erected by the Benchers to his memory will be found.[2]

Sir Samuel is represented as a good-natured, but rather dull man as an advocate, wearisome beyond comparison. He had to argue an ejectment case on the Circuit. The case excited great interest. The Court was full, and the day very hot. Nevertheless, he spoke for three hours. Early in the cause, a boy managed to clamber to the roof of the Court, and seated himself on a transverse beam, over the heads of the spectators. Overcome by the heat, and the Serjeant's monotonous tones, he fell fast asleep, and, losing his balance, came tumbling down upon the people below. He escaped with a few bruises; but several persons in Court were severely hurt. "For this offence the Serjeant was tried at the Circuit Table, found guilty, and sentenced to pay three dozen of wine towards the mess, which he did with the greatest possible good-humour."

Upon the occasion of another lengthy oration, the Counsel on the other side rose to address the drowsy jury. "Gentlemen, after the long speech of the

[1] "Gent. Mag.," 1777, p. 96. "He was the Sir Fletcher Norton of his time," said a contemporary, "notwithstanding Lord Thurlow's remark, and the subsequent retirement of Sir Samuel." [2] MS.

learned Serjeant." "Sir, I beg your pardon," interrupted Mr. Justice Nares, "You might say, you might say, after the long *soliloquy*, for my brother Prime has been talking an hour to himself!"

An anecdote, told by the famous Dr. Barnard, Head Master of Eton, describes Sir Samuel Prime as one of the "most inflexible serious pleaders of his day." The lawyer went upon one occasion to pay a visit to the College, and the Master was doing the honours. Amongst other places, they visited a town appropriated to the Collegers, called the *Lower Chamber*. Here they found Battie, the able physician, who had been rambling with some of the boys over the favourite scenes of his youth. He knew Barnard intimately, and admired, "with passion," all his jesting powers. A conflict ensued, which Barnard, then my host, he said, made alive to me, though at second hand. He fell upon Battie as a *delinquent Colleger!* The other fell upon him in return as a *partial Master*, who, as all the boys would have told him, if they dared, *spited* him.

The Serjeant, all astonishment, with smiling civility, after the scene had closed, asked Barnard what it *meant*; "for the gentleman," said he, "appears of an age to have escaped from your dominion over him, and he had no college *habit* upon him." Barnard (with difficulty keeping his countenance) told him it was a

[1] Polson, "Law and Lawyers," vol. i. p. 72.

kind of practice between them, to *keep their hand in*. "Oh! it was *facetious* then, was it?" said the Serjeant. "Oh, yes! I see it was, and, upon my word, Sir, it was excellent of the kind." Barnard, who was an admirable mimic, personated the Serjeant, when he favoured his company with this pleasantry.

Prime, it may be easily understood, had not a conception of humour. Yet he frequently convulsed the Court. Ridicule did not detract from his real merits as an able advocate. He would tell his facts before the jury, "dryly, but weightily," as he found them in his brief. Speaking upon one occasion, he first extolled his own witnesses, and then hastened to depreciate those of his adversary. Having thus called attention to his "gentlemen of repute," "What!" said he, "is the enemy's battle array?"

"Two butchers and a taylor,
Three hackney coachmen and a corn-cutter.
But, in the rear of the column,
An alderman of London, *solus*."[1]

From his personal appearance, he surely must have been the Serjeant alluded to in Miss Hawkins's "Anecdotes," as famous for his long nose. The Serjeant she celebrates "(Serjeant P——)" had a considerably long "nose." One day he was thrown from his horse, and, a countryman coming up, looked earnestly at him, as he helped him to rise, and inquired if he was not hurt. On being answered in

[1] Nichols. "Literary Anecdotes," vol. viii. p. 553.

the negative, the fellow grinned, and said: "Then, your ploughshare has saved you."[1] The author of "Law and Lawyers," is still more positive. He tells the same story, with very slight differences. "I zee zur," said the rustic, grinning, when he had raised the Serjeant from the dirt, and found that he was not hurt! "Yer *ploughshare* saved ye."[2] Nevertheless, notwithstanding these little jests, he must have been a very able man, else he could not have reached the dignity of the King's First Serjeant.

The Serjeant at one time possessed lands in Barrow, which was in the first leet of the hundred of Thingoe, Suffolk. This estate was known by the name of Mundeford's Manor.[3] It seems, that he was a trustee of property in Suffolk.[4]

[1] "Anecdotes," vol. ii. p. 312.
[2] "Polson," vol. i. p. 74.
[3] Gage's "Suffolk—Thingoe Hundred," p. 16.
[4] *Id.* p. 243.

WILLIAM WHITAKER.

Serjeant-at-Law and King's Serjeant, 1759. The King's First Serjeant.

WILLIAM WHITAKER was the last who had the patent of the King's "first" Serjeant. The King's Serjeants also are made by patent; other Serjeants are called by writ. Serjeant Shepherd did not hold this office. He was only one of the King's ancient Serjeants. It might, upon this, be supposed that the title of the First or Prime Serjeant had been entirely abolished. But that was not so. The author has a letter from the late ancient Serjeant of Her Majesty, "James Manning," in which he says: "Lord Truro offered to make me Prime Serjeant," that is, First Serjeant, Prime Serjeant being rather the *Irish rank*, "but I refused. It would have cost me £70," (a patent *office*, be it observed,) "without any real promotion. I should only have walked over my own head."[1] The learned ancient Serjeant, probably, did not, at the moment, reflect that the renewal of that high rank would have helped much to support the dignity of the coif, although he would not have attained to any fresh precedence.

[1] MS.

Serjeant Whitaker, contemporary with Glynn and Adair, was for the most part, like Davy, on the side of the Government. Thus, in the North Briton case, when the journeymen messengers brought their action against the King's messengers, he was for the defendants.[1]

He had attained to the honour of the coif on the 6th of February, 1759, and "went out," to use the customary phrase, *King's* Serjeant on the same day. It was by no means uncommon for a barrister to gain these promotions, as it were, by accumulation, or *per saltum* (as you may choose to express it.)[2] Again, he was counsel for Lord Halifax when Wilkes proceeded against that nobleman, for seizing his papers. The King's messenger gave an unfavourable testimony for the Government. He said that he "pickt the lock, and swept away every paper he found." The tide had set in against all arbitrary proceedings, and the Serjeant was again on the wrong side.[3]

He was likewise engaged as leading counsel in the well-known case of the Right Hon. G. Onslow against Mr. Horne.[4]

Whitaker was a man of much humour and pleasantry. He maintained his customary facetiousness, even in the House of Lords. He was conducting an examination at the bar there, and, an objection being

[1] "Annual Register," 1763, p. 88.
[2] "London Magazine," 1759, p. 108.
[3] "Annual Register," 1769, p. 150.
[4] *Id.* 1770, p. 165.

taken to some question, counsel were ordered to withdraw, and there was a deliberation of two hours. Nothing was resolved on, and, when he was readmitted, he was requested to put the question again. With great cleverness, he answered: "Upon my word, my lords, it is so long since I put the first question, that I entirely forget it, but, with your leave, I'll now put another."[1]

He was going to Oxford in company with a Mr. Murphy, and, in the lane of a country village, his carriage was stopped. A waggon was delivering fat and offal to a tallow chandler. He was fretting at this, when a horseman came up to the side of his chaise, remarkable for his thinness. He began teasing the Serjeant with an account of the number of miles he had ridden on that day, and the still greater number he had to go before night. Whitaker heard him patiently for some time, but, at length, with a vivid hatred of the fat and offal which had stopped him. "And what mighty matter is all this, Sir, considering that you have just sent your *insides* before you, and have now nothing to carry but the *case?*"[2]

Serjeant Walker was not remarkable for grace. Yet two ladies, of rank and fashion, were praising his *dancing* in Whitaker's company. The latter remarked, that really the ladies must have mistaken the individual. They insisted they had not. Well, he would put one question to the ladies. "Was it upon his hind

[1] "Polson's "Law and Lawyers," vol. i. p. 75. [2] *Id.* p. 74.

legs or his fore legs that Serjeant Walker moved so gracefully?"[1]

He was on the Norfolk Circuit. A friend at one of the Assize towns, offered him a bed. The next morning the lady of the house asked how he had slept, and hoped that he had found himself comfortable and warm. "Yes, Madam, yes, pretty well on the whole. At first, to be sure, I felt a little queer, for want of Mrs. Whitaker; but, recollecting that my portmanteau lay in the room, I threw it behind my back, and it did every bit as well."[2]

In 1769 he found himself in a position to stand for the County of Middlesex. Against him was the formidable Wilkes; Colonel Luttrell and Mr. Roache were the other candidates. The great patriot, however, was overwhelming. He polled 1,143 votes; Colonel Luttrell 296, the Serjeant 5.[3]

The learned Prime Serjeant died of apoplexy, on the 17th of October, 1777. He was Treasurer of Serjeant's Inn at the time of his decease.[4]

His son, the Rev. E. Whitaker, appears to have been a benevolent and useful man. He had a great hand in promoting and supporting "The Refuge for the Destitute." He was honourably mentioned in 1806, as the son of the late Serjeant.[5] He was born in

[1] Polson's "Law and Lawyers," p. 75. [2] *Ibid.*

[3] "Annual Register," 1769, p. 89.—Nichols's "Literary Anecdotes," vol ix. p. 460.

[4] "Gentleman's Magazine," 1779, p. 508.

[5] "Annual Register," 1806, p. 453.

1750, and was well known as a theological writer. He obtained some small preferment, but died Master of an Academy at Egham, in 1818.[1]

There was an Edward Whitaker, a Serjeant in the reign of George the First. In 1721 Richard Gipps, of Badley, Esq., sold the manor of Farnham St. Genoveve or Genevieve to him. But it seems that he sold it in 1731 to Samuel Kent, Esq.[2]

It has been found difficult to obtain any details of the early life of this eminent person. Whitaker, in his "History of Whalley," gives a memoir of the celebrated Dr. Whitaker, but adds: "I have never been able to trace his descendants."[3]

[1] Gorton's "Biog. Dict.," title "Whitaker" (Edward) where a list of his works will be found.

[2] Page's Supplement to "Suffolk Traveller," p. 715. [3] P. 497.

EDWARD WILLES.

Serjeant-at-Law, 1740—King's Serjeant, 1742—Lord Chief Baron of the Exchequer in Ireland.

EDWARD WILLES, of Newbold, near Leamington, was one of the distinguished legal men who have borne that name.

He has been confounded with the well-known Chief Justice, and with Judge Willes of the King's Bench, the son of the Chief Justice.[1] He was, however, a cousin of the Chief Justice. His son was the Rev. Edward Willes; and a descendant, it may be a grandson, is still the head of the family.[2]

Willes, or Willis, or Willes,[3] is an honourable name. The Chief Justice's uncle was Bishop of Bath and Wells, and his first cousin, Catherine, was the third wife of Sir Alexander Powell, Recorder of New Sarum.[3]

The race of Willes, of Newbold Comyn, or Comin, must have been ancient. In the chancel of All Saint's Church, Lemington Priors (as the name was then spelt) are these monumental inscriptions:—

"Here lyeth the body of Mrs. Bridget Willes, the late wife of Edward Willes the elder, of Newbold Comyn in this parish, Gen^{t}., and daughter of

[1] MS. [2] MS.

[3] Pronounced like an Iambic.—"Burke's Commoners," vol. i. p. 375.

Abraham Murcott, late of Cubington, in this County, Gent., deceased, who, after fifty years' faithfull wedlock, departed this life, the 11th day of November, 1718, in the 78th year of her age."[1]

On another:—

"Memento Mori."

"Here lyeth interred the body of Bridget Willes, who was the wife of Edward Willes the younger, of Newbold Comyn within this parish of Lemington Priors, Gent., and daughter of Aaron Rogers, of Warwick, Gent. She departed this life the fourth day of November, 1694, and in the 19th year of her age."[2]

"This family was originally of Napton, in Warwickshire, where Richard Willys, Willes, or Willis, was possessed of lands about the year 1450. His great-great grandson, Richard Willis acquired in 1530 the manor of Fenny Compton in that county, and lies buried there. This manor is still in the possession of his descendants in the female line. A younger son of one of the Willeses of Fenny Compton purchased Newbold Comyn about the end of the sixteenth century. The father of Sir John Willes (the Chief Justice) the Rev. John Willes, Rector of Itchington, Warwickshire, died in 1700, and he was the younger son of Peter Willes, Esq., of Newbold Comyn."[3]

The following account of the promotions of the family of Willes, will help to extricate them from the confusion which indifference or omission has caused.

[1] Dugdale's "Warwickshire," vol. i. p. 368. [2] *Ibid.*

[3] MS. There is a pedigree of the family in the College of Arms—Harl. MS.; taken partly from the parish register of Sutton, Northamptonshire. And Berry's "Gencalogies, Berks," gives an extensive pedigree, p. 2, of Willis, including the Chief Justice and the Judge, but the name of the Lord Chief Baron does not appear.

The subject of this memoir was of Lincoln's Inn, and was called to the degree of the coif on the 11th of January, 1740. In Hilary Term 1742, he was a King's Serjeant and Attorney of the Duchy. On the 7th of March, 1757, he was appointed to be the Irish Chief Baron, and he held that dignity until the 5th of September, 1766.[1]

In that year he had a pension assured to him and his assigns of £1,000 per annum.[2]

Smyth, the author of the "Chronicle," is by no means complimentary to this Chief. "The Court of Exchequer," he says, "found in Willes a feeble and inadequate Chief Judge, who was little aided by the other Judges of the Court. "This serious defect was supplied by the Herculean talent of Anthony Malone. Whilst he acted as Chancellor of the Exchequer, his colleagues enjoyed a judicial sinecure, at least in the equity line. This extraordinary man had so universally read and accurately retained the whole system of English equity and law, that its most intricate principles or insignificant rules were equally familiar to him."[3]

There is a note in the "Law Reports" of Mr. Serjeant Manning, who was assisted by Mr. Granger, afterwards a King's Counsel, which contains a great

[1] MS. Table, prefixed to Serjeant Wilson's "Law Reports," vol. i.; Smyth's "Chronicle of Great Law Officers of Ireland," p. 248. Patent, March 29, 1757. In 1761 his patent was continued to him. We find him at the Cork Summer Assizes, 1759; Cork Spring Assizes, 1764; and at the Spring and Summer Assizes for Cork, 1765.—MS.

[2] Smyth's "Great Officers of Ireland," p. 144. [3] *Id.* p. 309.

mistake as to Serjeant Willes. It is in a note, and it might have escaped the Serjeant, who was not likely to have been ignorant of the circumstance.

Speaking of Lord Chief Justice Willes, it is there said of him that "even when a Serjeant, he had chiefly practised in the Court of Chancery,"[1] thus accounting for a legal opinion, which he gave. The omission of his name from the catalogue given by Wynne, not a solitary instance of this kind, has no doubt tended still more to mislead inquirers.[2]

But there is a blunder as to the judicial position of the Willes family, although one far more excusable, in Smyth's "Law Officers of Ireland."[3] If the author had stopped at the granting of his pension in 1766,[4] he would have done well, but he goes on to affirm his promotion to be Solicitor-General in England at that date.

Now, it is a singular coincidence, that an Edward Willes was undoubtedly made Solicitor-General in England in the summer vacation of 1766. And the author of the "Irish Judicial Chronicle," it may be, immediately concluded that this person must have

[1] P. 202, n. 2.

[2] Wynne places the promotion of John Willes, Esq., Attorney-General, as Serjeant and Chief Justice in 1737. But *this* Edward Willes was not made a Serjeant till 1740, so that it ought to have occurred to every one that they were distinct persons. John Willes, the Chief Justice, was a scholar at St. John's Hospital, Lichfield School, since joined to the adjacent seminary of Edward the Sixth [Bp. Smyth.]—R. Ackermann's "Hist. of Oxford," pp. 11, 12.

[3] P. 252.

[4] *Id.* p. 144 and n.

been Chief Baron Willes. It might have occurred to a writer, that it was improbable for a Judge to receive a retiring pension, and, at the same moment, to become a law officer of the Crown in the sister country. . . . . .

Edward Willes, the Solicitor-General, was the son of Sir John Willes. Sir John was made Chief Justice of the Common Pleas in 1737, upon the death of Sir Thomas Reeves. Edward Willes was advanced to a seat in the King's Bench in 1768, being then in office. He was a King's Counsel, but the Chief Baron was a Serjeant.

We need not say more upon the subject.

The widow of the Chief Baron survived him for some years. She died April 21, 1783.[1]

[1] "Annual Register," 1783, vol xxvi. p. 238.

JOHN GLYN.

Serjeant-at-Law, 1763.

[The Author desires to acknowledge the kind aid of Mr. W. Prideaux Courtney, of the Ecclesiastical Commission Office, especially with reference to the Cornish Serjeants.]

GLYN AND ADAIR, nearly contemporaries, were two of the remarkable men of their period. Both were men of the people, both lawyers of the highest eminence, both parliamentary orators; both were Recorders of London, and, to descend for a moment into the puerility of coincidences, each obtained his election over his competitor by one vote. Glyn, however, was the more popular man, although his aspirations were scarcely so high as those of many zealots and demagogues of our own day. His espousal of Wilkes's cause, which he adopted at once with earnestness and success, had, beyond doubt, its force in fanning the flame of liberty, of which he was so ardent an admirer. And his subsequent acquaintance with Wilkes had a material influence in confirming his liberal politics. Yet he was far more sincere than Wilkes. Wilkes, in his latter days, was a courtier and a frequent attendant at the *levées*. The King, on one of these days, inquired

of Wilkes after his old friend Serjeant Glyn. "My *friend*, Sir!" replied Wilkes; "he is no friend of mine; he was a Wilkite, Sir, *which I never was.*"[1]

John Glyn was descended from the Glyns[2] of Cornwall. The name was derived from the manor of Glyn, in that County, and the property presents us with a remarkable instance of an estate returning to the family which once owned it. The purchaser was William, the eldest son of Nicholas Glyn, who was the lineal descendant of Gregory Glyn, Seneschal to the Duke of Cornwall in the reign of Edward the Third. After some time, the manor passed into the hands of another William Glyn, and he was the father of the subject of this memoir, "that married Prideaux, of Padstow," as Hals relates.[3]

The future politician was born in 1722, and the issue of his eldest brother becoming extinct, he succeeded his nephew in the inheritance in 1762.[4] This young man, the nephew, was said to have had considerable abilities, and even learning; but also to have

[1] Jesse's "Reign of George the Third," vol. i. p. 505.

[2] Glyn has not, in probability, any connection with the Saxon words, gline, or glen. A word of very similar sound in one of the Celtic dialects, denominates a spear, and this agrees with the family arms, which are: Argent, the heads of three fishing spears, or tridents, with their points downwards, 2 and 1, sable; Gilbert's "History of Cornwall," vol. i. p. 173. Glin, Glyn, in the parish of Cardinham, is a name taken and given from the ancient natural circumstances of the place where lakes, pools, and rivers of water abound; and groves of trees, or copps, flourish and grow. See also Glyn, of Glyn, *C. S. Gilbert.*—"Topography of Cornwall," pp. 123, 125, 126, 907.

[3] Hals, in "Gilbert," as above, vol. i. p. 171.

[4] Burke's "Landed Gentry."—Glyn.

adopted such singular and eccentric habits that he remained for years without speaking a single word, communicating his thoughts by writing. A verdict of lunacy was at length obtained against him at the Cornwall Assizes, but much to the general dissatisfaction of the county, as interested motives were readily imputed to the uncle, and his mother felt so strongly on the subject, that, being heiress of an ancient family, Nicholls, of Trewane, in St. Kew, she devised nearly the whole of her possessions in honour of her son's name to Mr. Glyn, of Heliton, probably of the same stock, but very distantly related.[1]

On the 24th of January, 1763, Mr. Glyn was made a Serjeant. His strong opinions, and his advocacy against the Crown, probably hindered his further promotion. For he was never made a King's Serjeant.

In cautiously examining Glyn's career, we shall not find him unreasonable in his love of freedom.

He met with men of unscrupulous manners and conduct when party interests were at stake, "bulls of Basan," as furious against just innovation, as he, by any possibility, could have been in opposition to what he conceived to be oppression and tyranny.

An instance of his fair dealing may be found in the opinion which he gave concerning the legality of those obnoxious raids—press-warrants. The Lord Mayor desired the opinions of Wedderburne, Glyn, and Dun-

[1] Gilbert, vol. i. p. 173; and see p. 305.

ning upon the lawfulness of these sudden invasions of public freedom. The opinions of these lawyers were favourable to the impressment. They said, that "all private interest must give way to the public safety" in times of danger and necessity, and that the Lords of the Admiralty, under the authority of Orders in Council, might compel persons pursuing the employment and occupation of seamen to serve.[1] This answer, however, by no means went the length of justifying promiscuous pressing, which was too often resorted to.

Other instances of the Serjeant's impartial judgment may be discovered.[2] We shall refer hereafter to his remarkable address in the case of Mr. Gilham, in which he honourably announced his withdrawal from a prosecution, instituted by the anger of popular feeling against that magistrate.

One of his early triumphs in the cause which he had espoused was the case of the King's messengers, who had seized No. 45 of the "North Briton." He led, with the powerful aid of Dunning, Wallace, and others, against an array of the King's Counsel.[3]

In the following year (1764) he was again counsel for Mr. Beardmore against the messengers, who had

[1] "Mr. Serjeant Glyn has just left me. I find him a most ingenious, social, pleasing man, and the spirit of the Constitution itself."—Lord Chatham to Dr. Calcraft—"Grenville Papers," vol. ii. p. 62.

The Serjeant is frequently mentioned in the correspondence.

[2] Annual Register," 1770, p. 232.

[3] The Attorney and Solicitor-Generals—Whitaker, Nares, Davy Serjeant, and Yates. Damages £300.—"Annual Register," 1763, p. 88.

locked up Mr. Beardmore for two days under a suspicion that he was connected with the "Monitor," debarred him from writing, and from seeing his friends, except in the presence of the messengers. The Crown lawyers strove in vain to escape an adverse verdict, or to mitigate the damages, and Glyn had the glory of obtaining £1,000 for his client. But juries are controllable, and one of the well-known quicksands in our law is a rule to set aside the finding of a jury on account of excessive damages, or, it might be, to reduce it. So, notwithstanding the universal plaudits of the spectators, the attempt was made. The arguments lasted two days, but the verdict was established.[1]

We have now fully entered upon the tempests which assailed No. 45 of the "North Briton." In April, 1763, the King's messengers entered Wilkes's house, with the intention of seizing him. Wilkes's name not being in their warrant, he threatened the intruders, who waited until the next morning, when they carried him before the Secretaries of State.[2]

It is a mark of the times, that he was committed to the Tower, although his captors knew at the moment that a Habeas Corpus had been granted by the Court of Common Pleas.[3] With Wilkes, however, we have no interest in this place, except as to his alliance with Glyn, and that we shall find not to be inconsiderable. He was discharged upon the Habeas Corpus, not on

[1] "Annual Register," 1764, p. 72.
[2] *Id.* 1763, p. 135.
[3] *Id.* p. 136.

the ground of the illegality of general warrants, but because, as a Member of the House, he was exempt from arrest for libel.[1]

In his speech before the Court of Common Pleas he offered them thanks from the whole of England. "They will be paid you," said he, "together *with every testimony of zeal and affection to the learned Serjeant*,[2] who has so ably and constitutionally pleaded my cause, and, in mine, (with pleasure I say it) the cause of liberty."[3]

The fire blazed furiously. The Member for Middlesex sued the Under Secretary of State for seizing his *papers*, and, with the Serjeant as his counsel, and a most auspicious special jury, another verdict against the Crown for £1,000 was achieved. This was the case of general warrants. The great Lord Camden was on the Bench, and denounced the conduct of the messengers. "If my opinion be erroneous," he said, "I 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."[4]

The famous Serjeant, however, was not so successful

[1] Jesse's "Reign of George III.," vol. i. p. 192.

[2] Glyn. "Annual Register," 1763, p. 141.

[3] Glyn gained very great credit and honour by this defence. It is said, that no other lawyer would accept the responsibility.—Harris's "Life of Lord Hardwicke," vol. i. p. 348.

Probably many declined the task, either through fear of opposing the Government, or reluctance.

[4] "Annual Register," 1763, p. 145.

before Lord Mansfield, for his client was found guilty of publishing an obnoxious number in the "North Briton," and also the essay on "Woman."[1]

Glyn now appears for him upon his surrender to the outlawry, his immediate commitment being demanded by the Crown. Such is the magnificent uncertainty of our law, that Lord Mansfield declared both parties to be wrong.

Wilkes had voluntarily given himself up. Therefore he could not be legally in Court, for he was outlawed, and there was no warrant to take him. For the same reason Serjeant Glyn could not have his writ of error.[2] The outlawry was reversed, but the Serjeant's client had judgment against him for the libels.

He was in the same year counsel for John Williams, who had been re-publishing the "North Briton" in volumes.

"In the matter of libel," said the advocate, "Juries were the proper Judges of the law, as well as the fact. They had the right to determine whether the defendant had published the 'North Briton' with the intent alleged."

Lord Mansfield is said to have stopped Glyn short and to have declared, in a strong and menacing manner, "That if Serjeant Glyn asserted that doctrine again, he would take the opinion of the twelve Judges upon it." Lord Mansfield was no friend to the inde-

[1] "Annual Register," 1764, p. 50.

[2] *Id.* 1768, p. 93.

pendence of juries, especially in cases of libel, so that the decision of the judicial Bench, which would, probably, have pronounced for the view of the Chief Justice, would, in the absence of an interposition of the Legislature, have formidably threatened the freedom of the jury. Glyn, observant, saw, avoided the snare, and submitted. "Thus, by a device of Lord Mansfield, the rights of juries upon this great point hung, as it were, upon a single thread."[1]

If Lord Mansfield had friends and admirers, he had bitter enemies. The author of the "Anecdotes" just quoted, in an indignant spirit against the Judge for the threat used towards Glyn, exclaimed, "Well might Judge Willes say, '*Mark him!*'"[2]

Now, this had reference to a letter inserted in "Old England," or the "Broadbottom Journal," December 27, 1746, containing a character of Lord Mansfield, and attributed to the Lord Chief Justice Willes. It commences: "I should be sorry to see a Scotchman upon an English Bench of Justice for several reasons, which I hope may occur to the wisdom of the great in power, before such Judges are appointed. An Englishman ought not to be put under the dominion of a Scot."[3] The lengthy and libellous epistle then went on to insinuate the enmity of this "Scot" (whoever he might be) against juries and the Habeas Corpus

[1] "Anecdotes — Biographical, Literary, and Political." London, 1797. Longman & Seeley. Vol. i. pp. 236—238.

[2] *Id.* p. 238.

[3] "Anecdotes," as above, vol. i. p. 211.

Act, and then broke out, with "Attend to this, oh! ye Southern Britons, and mark him for ever."[1]

That this letter, which cannot aspire to be even a poor imitation of Junius, could have been written by a learned Chief Justice on the Bench of the Common Pleas is fictitious on the face of it. So high a dignitary would not attack his Majesty's Solicitor-General. Besides Sir Dudley Ryder, the Attorney-General, who, after nearly twenty years' service under the Walpole administration, became Chief Justice, stood in the way of Murray, so that we must regard a pamphlet of this kind merely as an effusion of scurrility and ill-nature.[2]

Mr. Murray did not attain his elevation until ten years afterwards, upon the premature death of Ryder, whose patent, as Lord Harrowby, was actually in preparation.

In 1765 Glyn again appeared as a serious antagonist to the noble Judge. It had been alleged in a well-known pamphlet of the day[3] that Lord Mansfield had altered the record in the case of Mr. Wilkes at his own private house. This supposed act was, amongst others, noticed with censure in the letter. The publication naturally gave great offence, and it was resolved that the printer should be punished.[4]

The ordinary course would have been by indict-

[1] "Anecdotes — Biographical, Literary, and Political." London, 1797, Longman & Seeley. Vol. i. p. 216.

[2] It may be found at length in those "Anecdotes," vol. i. p. 211.

[3] Letter or libels, and warrants, &c.

[4] "Anecdotes," vol. i. pp. 79, 242.

ment, or a criminal information; but, to use the words of Lord Mansfield's hostile critic, "He did not choose to trust a jury with the cause." He preferred to treat the audacious act as a contempt of Court.[1] So it followed that a motion was made for an *attachment.* Glyn and Dunning appeared for the defendant, and so earnest was the latter, that he was named as the author of the tract. Some thought that Lord Camden, (no friend to the Lord Chief Justice), had written it.[2] However, it was denied upon affidavits for the prosecution, that there was the slightest truth in the libel, and, indeed, it was most improbable. But this surmise was commented upon, and turned to account by the defendant's counsel. For they argued (Lord Mansfield not being mentioned by name in the letter), that the character drawn by the writer had no resemblance to that of the Judge. And they wound up with strong remarks upon the unconstitutional mode of proceeding.

Sir Fletcher Norton, Attorney-General, was by no means tame in his reply, and Morton, with Wallace, were persistent for severe punishment. The Solicitor-General, De Grey, said little.

Mr. Justice Wilmot, presiding in the absence of the Chief, said, "that the Court would take time to consider."[3]

A very curious judicial embarrassment soon oc-

[1] "Anecdotes," vol. i. p. 243.
[2] *Id.* p. 244.
[3] *Id.* pp. 244—251.

curred. The Judges discovered what they considered to be a fatal error on the record. It stood thus:—"The King against John Wilkes." But it should have been "The King against ———," [the defendant, the printer]. It was intimated that the blunder might be amended, with the consent of the defendant's counsel; but, without such consent, *not*. It is a fact, that the blot had been overlooked by all the counsel, and, when Glyn and Dunning heard of it, they gave no heed. However, the next day, just as the Court of King's Bench was rising, Lord Mansfield suddenly went away, and Mr. Justice Wilmot called for the defendant's counsel.[1] Dunning was in Court, and Glyn was overtaken as he was stepping into his carriage. Judge Wilmot then begged the counsel to allow the amendment. Dunning took the alarm, and, thinking that the intention was to *shift* the ground of accusation, insisted on a fresh rule and fresh affidavits, and refused. Glyn professed himself astonished. He could not consent. Sir Joseph Yates and Sir Richard Aston followed in the entreaties to amend, and Wilmot again interposed his warm and earnest solicitation.

There was a pause. At length Glyn rose and moved to discharge the rule. Sir Fletcher assented, "If the learned Serjeant would add to his motion, that it was in consequence of the mistake." But Dunning was too wary. "There would then be," he said, "by

[1] "Anecdotes," vol. i. pp. 251, 252.

strong implication, ground for a fresh rule." And neither persuasion nor argument could save the Bench from these obstinate dissentients. Enfin, the senior Judge, asked Serjeant Glyn, *as a gentleman*, to give his consent.[1] Now, Wilmot, about to become Chief Justice of the Common Pleas (and to whom the seals were subsequently offered), was a humane, religious man, so that those days were in strange contrast with ours, when it is not very likely that the Court would beseech an advocate to "let them off" from a gross mistake, as a gentleman. However, although the Judge and the Serjeant lived upon terms of intimacy, "As a man of honour, I cannot consent," replied the Serjeant.

The altercation, or remonstrance, having lasted two hours, at length ceased, the judicial being unable to quell the forensic spirit.

But the lawyers had by no means reckoned without their host. Had they assented, they had compromised their client, and surrendered the honours of a free advocacy. Lord Mansfield, they knew, had no mind to suffer the printer to escape. Accordingly, on the next day, the Solicitor of the Treasury brought down a fresh amount of criminatory matter from the latter, with fresh affidavits, and a new rule was obtained for a writ of attachment against the unfortunate defendant.[2]

It was easy for Mr. Dunning to protract the evil

[1] "Anecdotes," vol. i. pp. 252—255.

[2] *Id.* pp. 255, 256.

day for answering these new gravamina; and now the serious drama was drawing to an end. In July, 1765, the Ministers resigned. Mr. Yorke, indeed, the new Attorney-General, was willing to continue the prosecution, but the Marquis of Rockingham, a very aimable man, interposed, and the proceedings dropped.[1]

The conduct of Glyn, upon the trial of Mr. Gilham, reflects much honour upon him. He was acting constitutionally, but a noble feeling predominated. There was a considerable riot at the King's Bench Prison, the intention of the rioters being to bring Mr. Wilkes to the House of Commons. The soldiers, however, were ordered out, and, the Riot Act being read, some persons were killed. Mr. Gilham was the magistrate, but he spoke in a very friendly manner to the people, and warned them against throwing stones, for if they persisted, the Guards must fire. Just at this moment a stone struck him on the side of the head. He fell back two or three yards, and came forward again. "If this be the case," said he, "We shall be all killed; you must fire." The word was given, and some deaths took place. As soon as this evidence was given against Mr. Gilham, Mr. Serjeant Glyn rose, and addressed the Court. "I call no more witnesses; your Lordships will never find me acting a part against humanity

[1] "Anecdotes," vol. i. p. 258. The accounts of matters respecting Lord Mansfield in these "Anecdotes" have decidedly a very partial colouring against the Judge. We give them as they are; but they should be received with caution, and viewed with critical care.

and candour. I am not now pressing this gentleman's conviction; I opened the law, that where it was absolutely necessary for suppressing a riotous mob to fire; there the Magistrate was justified: the application thereof from facts is the whole question; with respect to me, I shall not say a word more about it."[1]

The learned Serjeant was a candidate in 1768 at one of those turbulent elections, which distinguished the county of Middlesex.

Sir William Beauchamp Proctor was his opponent. All went on smooth the first day, until the afternoon, when a rumour got abroad that Glyn was at the head of the poll. Upon this the mob rose, and the business of the day at once ended in confusion. Many freeholders were hurt, and, on the following day, a spirited letter from Glyn appeared in the papers. After several strong remarks, he relates the riotous incident:—

"A desperate set of ruffians, with *Liberty* and

[1] An acquittal was immediately directed, and a copy of the indictment granted to Mr. Gilham.—"Annual Register," 1768, p. 233.

The following remarkable letter upon this occasion appears in a recent publication, disclosing the unusual circumstance for respite before conviction, from the King:—

"Richmond Lodge, *July* 8, 1768, M. 45, P^t. 9 P.M.

"LORD WEYMOUTH,—

"Though adverse in general to signing a respite previous to conviction, yet on so extraordinary an occasion, I do it with pleasure, as I think it my duty in the most public manner, to show my countenance to those, who, with spirit, resist the daring spirit that has of late been instilled into the populace."—Jesse's "Reign of George III.," vol. i. p. 508.

Mr. Gilham, however, was acquitted.

Proctor in their hats, without the least opposition, without the least provocation, or cause of quarrel, [were] destroying those who did not lift up a hand in their own defence. Sir William, on whom I called to go with me and face this mob, made me no answer, and left me. I remained the last man upon the hustings." "However, I live, gentlemen, to assert, not so much my election as *your* rights; and I pledge myself to you, that your blood, so wantonly shed yesterday, shall be vindicated, and the charge brought home, both to the hired and the hirers. Whether, as your representative, or as a private gentleman, I pledge myself to you to go through with this business, or perish in the attempt."[1]

After several days' polling the numbers were: for Mr. Serjeant Glyn, 1,524; Sir W. B. Proctor, 1,278.

The number polled was said to exceed by 42, the greatest ever known at any preceding election.[2]

We again find the Serjeant's name in connection with Wilkes, when the latter aspired to an aldermanic gown. He was elected, but doubts were raised as to his eligibility. The great men were divided in opinion. In his favour were the Attorney and Solicitor Generals, Mr. Yorke, Mr. Serjeant Glyn, and Mr. Serjeant Leigh. On the contrary, Sir Fletcher Norton, Eyre, Recorder, and the Common Serjeant. The question

[1] Dated from Bloomsbury Square.—"Annual Register," 1768, p. 193.

[2] "Annual Register," 1768, p. 197.—See *Id.* 1769, p. 102, as to a petition presented by him and others from Middlesex.

was then put in the Court of Aldermen, whether Mr. Wilkes should have notice of his election, and it passed in the negative.[1] Nevertheless, in the next year, a motion for swearing him Alderman of Farringdon Without was carried without a division.[2]

Lord Camden was no longer Chief Justice of the Common Pleas, but Sir John Wilmot was his independent and conscientious successor. Another action brought against Lord Halifax for the seizure of Wilkes's papers was tried before the new Chief Justice. Glyn, whose address was elegant and spirited, led on one side, and Whitaker on the other. The evidence of the King's messenger was plain, quaint, and to the purpose. He picked the lock, "and swept away every paper he found." The direction of the Judge was to give liberal, but not excessive damages, and the jury awarded £4,000 by their verdict. However, this sum was thought so small by the populace, that the jury were compelled to make their escape privately.[3]

In 1770 the Serjeant was engaged to defend Mr. Almon for selling Junius's "Letter" to the King;[4] but, although the defendant was convicted, and punished with much moderation,[5] the printers and actual publishers of the same document were acquitted at Guildhall in a few months afterwards, Glyn being again the

[1] "Annual Register," 1769, p. 92. [2] *Id.* 1770, p. 99.

[3] "Annual Register," 1768, p. 150. Great prices were given for admittance to the Court, but at 3 P.M. people got in for 5s. 3d. That was a gold coin of those days.

[4] "State Trials," vol. xx. pp. 803, 831. [5] *Id.* p. 847.

counsel.[1] Woodfall, although found guilty of "printing and publishing," so successfully appealed to the full Court, as to obtain what is called a *venire de novo*, a proceeding equivalent to a new trial.[2] According to one report of this case a singular scene occurred in Court. Lord Mansfield in summing up observed, that if there was nothing criminal in this "Letter" of Junius, the verdict of guilty would do no harm, would be attended by no consequences. The Court would consider of that. They were the only judges of that. My brother Glyn has admitted that the truth or falsehood of a libel, whether public or private, however prosecuted, is out of the question. At this assertion "every man in Court was shocked." Serjeant Glyn was astonished, and was urged by several counsel and his friends to contradict it. Upon this, he asked them, "Good God! Did I admit anything like what Lord Mansfield says? Did I, by any incorrectness in the expression, or by any mistake, use words that could be so misunderstood or misinterpreted?" Every one around assured him that he had not. Upon which the Serjeant arose and very modestly assured his Lordship that "he had never admitted what his Lordship supposed." "Oh! I find I was mistaken," said Lord Mansfield, "My brother Glyn is of a different opinion."[3]

[1] "State Trials," vol. xx. p. 870. The case of Mr. Miller.

[2] *Id.* pp. 895, 903, 921.

[3] *Id.* p. 902. The editor calls this a flippant and partial report, although it is the fullest on the subject.—*Id.* p. 895, n.

However, in this year (1770), Serjeant Glyn had been moving against the judicial doctrine of libel in the House of Commons, and Lord Mansfield, five years after his first threat, made an effort to bring the question, not before the Judges, but the House of Lords. Nevertheless, whether his courage failed him, or that he was restrained by prudence, he only gave a paper to the House containing the opinion of the King's Bench upon one of Junius's "Letters." And the House was summoned for a certain day, when his Lordship only said, "that he had left the paper with the clerk, that their Lordships might read, and take copies of it." Lord Camden asked, "if he meant to have his paper entered on the journals?" "No! no!" was the reply, "only to leave it with the clerk." On the next day Lord Camden attacked the Chief Justice on the subject of this paper, but the Judge refused to be explicit, or to answer any interrogatory, and so the matter passed off.[1]

About this time (1770), Mr. Horne, the famous Horne Tooke, appeared upon the political stage, and Mr. Serjeant Glyn was his successful advocate. A verdict having been found against his client in an action for aspersing the character of the Right Hon. G. Onslow at an election, his arguments in favour of the close alliance between the right of petitioning and freedom of debate, were such as to induce the Court

[1] "Anecdotes," vol. i. pp. 238—240.

to grant a rule to set aside the verdict. He appeared in support of this rule with Whitaker against him, and insisted upon freedom of debate, and the privilege of canvassing the character of representatives, especially where it was admitted, as in this case, that no damage for the words spoken could be proved. The Court was perplexed, and deferred their judgment.[1] Ultimately they gave judgment against the plaintiff, and in favour of Mr. Horne.[2] The words complained of were, "As for instructing one of our members to obtain redress, we may as well instruct the winds, the water, or the air, for should he (Mr. Onslow), promise his assistance, I will not believe him."[3]

In this year Serjeant Glyn made a memorable motion to inquire into the conduct of the Judges in Westminster Hall, particularly in cases connected with the liberty of the press. This was intended to reach Lord Mansfield, who was supposed favourable to an encroachment upon the rights of juries.[4]

A popular and constitutional counsel like Glyn, was naturally employed to defend the publishers of Junius. A strange incident occurred during one of these trials. Glyn had made his speech, and the Judge was delivering his charge, when a juryman started up and cried out, "You need not say any more, for I am determined to acquit him." The Attorney-General moved to have

[1] "Annual Register," 1770, p. 165. [2] *Id.* 1771, p. 96.
[3] *Id.* p. 97.
[4] Campbell's "Chief Justices," vol. ii. p. 484. December 6, 1770.

the man removed from the jury, but Glyn was too shrewd not to see the difficulty of doing that, and the trial was put off.[1]

Glyn was a considerable favourite in the City, which stood staunchly by him. The citizens are occasionally interested in the election of their Recorder, and the Aldermen, in whose hands the appointment rests, would not wilfully elect an unpopular advocate for their Judge. In the noisy period when Wilkes's patriotism was in full triumph; upon the promotion of Baron Eyre, who had presided for nine years amongst them, the City cast their eyes upon Glyn. He was the City Counsel, often the chief step to the higher offices. Eyre, the Recorder, who held this post, gave great dissatisfaction, so that, after a warm discussion, he was dispensed with before he became a Judge by a vote of 106 to 58, and John Glyn, Esq., Serjeant-at-Law, was the lawyer to be "advised with, retained, and employed."[2]

The election for Recorder took place on the 17th of November, 1772. Every Alderman was present. The Serjeant had 13 votes; Bearcroft, the famous King's Counsel, and afterwards Chief Justice of Chester, 12, and Hyde, senior, City Counsel, 1.[3] Another sign of his popularity consisted in the increase of his salary. The old stipend was £180, which the Common Council

[1] "Annual Register," 1770, p. 165. [2] *Id.* 1770, p. 155.
[3] *Id.* 1772, p. 138; "Gentleman's Magazine," 1779, p. 535.—"List of Recorders."

usually made up to £400. The services of Mr. Eyre earned an addition of £200; but Mr. Serjeant Glyn had the handsome increase of £400 voted to him, the total amount being consequently £1,000.[1]

It should be observed, that he was Recorder of Exeter as well as London, and that he died in the enjoyment of both these honours. In 1769 he is said to have greatly distinguished himself at a numerous meeting of the freeholders of Devon, held at the Castle of Exeter. It was there agreed to petition the King on the violation of the right of election, "by a late decision in the House of Commons,"[2] which was his own case.

In 1771 he was counsel for the Lord Mayor. The publication of Parliamentary proceedings had been strictly forbidden by the House. The prohibition was eluded in various ways, but, at length, some journals having grown more bold, the printer, Miller, was about to be arrested on the authority of the Speaker's warrant. But the tables were turned. A struggle having taken place, Wilkes suddenly appeared, and had both carried to the Mansion House. In vain did the Serjeant-at-Arms protest. The Lord Mayor, Wilkes, and Oliver, attended, discharged the printer, and committed the messenger for the assault. Glyn could not save them from their own determination to become martyrs. They, therefore, went to the Tower, from March till May. Wilkes refused to appear, and

[1] "Annual Register," 1779, p. 228.

[2] *Id.* 1769, p. 137.

triumphed. And all the proceedings against the printers being dropped, from that day the debates were freely reported.[1]

Glyn presented in April of the same year a petition to the House from the father of young Allen, who was killed by the military during the riots of 1768.[2]

Soon afterwards he was retained in a very remarkable case, the action being founded in a strange delusion. Mr. Townsend refused to pay his assessment of the land-tax, and, being distrained upon, he retained Serjeant Glyn. Everything was quite regular, but Mr. Townsend insisted, that in order to levy taxes, the consent of all the representatives of the people must be asked. Mr. Wilkes, although duly elected, had been expelled; and, therefore, that consent had not been obtained. Glyn had great difficulty in launching his case. It was quite indefensible. He said, "That if Middlesex were not fairly represented the jury would find for his client," and he produced the poll-books, &c., to prove the due election of Wilkes. Lord Mansfield quietly asked, "If there was any legislative power in the country? if so, they must find for the defendant;" and the evidence offered by the Serjeant was rejected.[3]

In May, 1773, he received the thanks of the free-

[1] "Annual Register," 1771, pp. 98—100.—Jesse's "Reign of George III.," p. 495.

[2] *Id.* 1771, p. 196.

[3] *Id.* 1772, p. 174.

holders of Middlesex, united with the same honours to Wilkes. Glyn's merits were his conduct in Parliament, his defence of the rights of the nation at large, and of Middlesex in particular. It was determined to support him and the Alderman at the next election,[1] a pledge which the electors faithfully fulfilled.[2]

It is a great thing to plead the cause of persons who conceive themselves entitled to a prescriptive right. Commoners are a very difficult class to meddle with. Rather than yield their customs, they will linger in gaol. At least, such was the feeling when arrest and imprisonment were more frequent. The freemen of the corporation of Newcastle, had, as they believed, the inalienable right in a common called "The Town Moor." The Magistrates and Common Council said that this right should, for the future, be held at their pleasure. At the Assizes, however, at eleven at night, came Mr. Serjeant Glyn. The town was illuminated, the bells were set ringing, and the populace dragged the Serjeant's carriage to his lodgings.[3] He wins his cause. It was the Commoner's jubilee. Nothing but Serjeant Glyn was to be heard in the streets. He narrowly escaped being killed by their kindness, being dragged through the streets in his coach. The free-

[1] "Annual Register," 1773, p. 98.—*Id.* 1774, p. 152.
[2] *Id.* 1774, p. 157. [3] *Id.* 1773, p. 124.

men have agreed to have a print of him put up in every company's meeting-house in the town.[1]

In 1771 General Mostyn sent a Mr. Fabrigas, a merchant from Minorca in the King's dominions to Carthagena, which belonged to Spain. Before this transportation, the merchant had been confined in a place devoted to capital offenders only. His wife and family, who came to him with food and bedding, were refused admittance. He was fed for six days upon bread and water, and lay on the bare floor without covering. In 1773 Mr. Fabrigas, having returned to England, brought an action against the General. Serjeant Glyn very ably conducted the case for the merchant, and contested Serjeant Davy's proposition (which he strove to support by evidence) that a Governor's power extended to banish all dangerous persons. Serjeant Davy endeavoured to prove the humane disposition of the Governor, and the bad character of the plaintiff. But Glyn kept strictly to the text. He did not dispute the excellence of the Governor's qualities. He was not there to make uncandid inquiries into General Mostyn's behaviour. He stood as the advocate of a foreigner, to seek reparation from an English jury for the wrongs which the plaintiff had received. It had not been sufficient to torment him with imprisonment and banishment. His domestic character must be ransacked. He must be a bad father, a bad husband, and a bad citizen.

[1] "Annual Register," 1773, p. 126.

The Serjeant "fell somewhat beyond the line of an advocate," when he saw his client ignominiously traduced by every method of illegal cruelty, more fatal to his repose and happiness than the utmost excess of corporal sufferings.[1] The counsel then enlarged upon the case itself, and ended his able address by insisting that the Minorquins would be sooner reconciled to Great Britain by having their grievances redressed by the verdict of a British jury, than by "their being kept under the rigour of military discipline, and being ruled by the coercive sway of a rod of iron."[2] Judge Gould summed up, admitting the just right of a Governor to repress sedition, even the seeds of it, upon its first appearance. But the Judge went on, and paused at the adage in Magna Charta: "*Nullus liber homo exuletur*." Lord Coke had said, that the King could not send a man Lord Lieutenant to Ireland against his will. Few, however, he believed, would, "in the present age, recoil at the royal proposal."[3] The jury withdrew for two hours, and then delivered their verdict for Mr. Fabrigas, with £3,000 damages.[4] The rule for a new trial being discharged, a writ of error was allowed upon a bill of exceptions, but, after two long and learned arguments, in which Glyn was concerned, its judgment was affirmed.[5] The powerful advocate was not so successful in his defence of Miller,

[1] "Annual Register," 1773, p. 183. [2] *Id.* p. 188. [3] *Ibid.*
[4] *Ibid.* See the "State Trials," vol. xx. p. 81.
[5] "State Trials," vol. xx. p. 238.

the Printer of the "London Evening Post," who was sued for *scandalum magnatum* by Lord Sandwich. The libel charged that nobleman, as First Lord of the Admiralty, with the corrupt disposal of places within his gift. The poor printer had, in reality, no defence, for, although there was a tampering for the sale of places, Lord Sandwich was manifestly innocent. Glyn must have perceived this, for he abandoned the particular case, and strove to rouse the jury to a belief that this was no other than an attack upon the liberty of the press. He claimed freedom of discussion for the printers of England, so that men in office might not commit errors with impunity. Lord Sandwich, he said, was happy in a spotless character, hitherto unimpeached, happy in an integrity unsullied. The proof of publication rested upon a man whose employment it was to act as a "spy upon the press." This disgraceful office had been erected towards the close of the infamous reign of Charles the Second, and persons employed in the infamous trade, were generally to the last degree infamous themselves. The Serjeant then denounced the real agent, who, unknown to the plaintiff, had been treating for offices, and branded the action accordingly as a malicious prosecution. He then called witnesses, but to no purpose. They exonerated Lord Sandwich. One of the defendant's counsel asked a witness, "Who the person was through whose interest Mrs. Brooke could procure the place." "Not Lord Sandwich," Mr. Dunning facetiously said;

"It must be Mr. Breslaw, the juggler." Lord Mansfield, of course, directed a verdict for the plaintiff, and the jury gave him £2,000.[1] . . . . .

It is rarely that an eminent Nisi Prius advocate is found in a criminal Court, the more so when he has not practised extensively in that line of his profession. Serjeant Coleridge, almost exclusively known in the Civil Court, defended, and, with success, Gould the murderer. Serjeant Shee also, a Nisi Prius lawyer, defended Palmer, the poisoner. There are other instances. We have now to relate a case in which the Recorder was retained to defend a lady for poisoning a person of fortune, with whom she cohabited. The case was tried at Croydon at the Summer Assizes in 1775, before the Lord Chief Baron Smythe. The doctors were first called to prove this extraordinary charge. A brassy taste, attributed to corrosive sublimate, was the symptom relied upon. There were *two* salivations. When a weak solution of the sublimate was administered by the doctor, Mr. Scawen, (for that was the name of the deceased) said: "That was the taste." All the medicines were given to him by the prisoner. Mr. Scawen, however, had been treated for an ulcer in the arm, and rubbed with mercurial ointment, which produced salivation. The *brassy* taste, however, was succeeded by an ulcer in the mouth, which threatened mortification, upon which strong suspicions of poison being entertained, Mr. Scawen was removed to the house of his surgeon.

[1] "Annual Register," 1773, p. 178.

Here he took common bark, and lost the brassy taste. He made a fresh will, and died in a very few days. The projected defence was disclosed by the cross-examination. The second salivation was produced by the first, the original mercury rubbed into the arm remaining in the system. That was the defence. Hence the disagreement of the doctors. "Dans le fond, il est toût science: et bien souvent il dit des choses tout à fait relevées." The surgeon just mentioned swore that the second salivation must have owed its origin to a second exhibition of mercury. Here the Chief Baron naturally inquired as to the appearances of the body, when the doctor's singular reply was, that "*he did not open the body, as there was no occasion for it.*" The defence began to brighten, rather unexpectedly, upon the cross-examination of the next witness. Young, another doctor, rather differed from the positive surgeon as to the second salivation, and several others admitted a similar doctrine. . . . . .

This was the principal testimony. There was some rheumatic medicine, but the prosecution alleged, that there was neither *brassy* taste nor mercury in it.

The prisoner was allowed to have her defence read by the clerk. She had been seduced *by one of her own sex*, and brought to Mr. Scawen. She was prevailed by artifice to remain in his house, but her father's heart was broken by her conduct. Mr. Scawen had well educated her, and had shown so much kindness to

her, that she tenderly loved him, and for many years had convinced him of her affection and gratitude. She had acted as his nurse for the last six years of his life, during an illness without intermission, and had sacrificed her rest to give him his food and physic. She was, moreover, received by the whole family as Mrs. Scawen.

This statement, read during the agitated feelings of the prisoner, could not but weigh strongly with the jury. Then came the crushing testimony for the prisoner. Very eminent men declared that the second salivation was very common, and that, as soon as the mercury was reproduced, the brassy taste returned. The famous Dr. Brocklesby asserted, that he had lately made a solution of a very small particle of corrosive sublimate. He wetted his tongue with it, and it immediately gave a *brassy* taste. He dined heartily after it, but, in the evening, the *brassy* taste returned. Another surgeon deposed, that there was a portion of mercury, even in the rheumatic tincture.

A Miss Smith saw the deceased take some of the tincture, which made him very sick, upon which the prisoner expressed great uneasiness, and advised him not to take any more quack medicines. . . . . .

Notwithstanding this evidence, the jury were absent for a quarter of an hour, when they found a verdict of acquittal.[1]

[1] "Annual Register," 1775, p. 233. Mr. Lucas and Mr. Cooper for the Crown; Serjeant Glyn, Mr. Cox and Mr. Peckham for the prisoner.

The precipitate conduct of the Government towards Mr. Sayre is the next case which calls for our notice with Serjeant Glyn as the advocate. In October 1775, Mr. Stephen Sayre was captured at his house in Oxford Street, under a pretence that a forged draft had been issued by the bank in which he was a partner, and his papers were seized. But he was taken to Lord Rochford's on a charge of high treason. This accusation, made by one Adjutant Richardson,[1] was, that Sayre had expressed an intention of seizing the King's person as he went to the Parliament, of taking possession of the Tower, and overturning the Government. It turned out that Mr. Sayre had only expressed himself very freely concerning the contest in America, and that he feared there was not spirit enough in the country to bring about a change of men and measures. Mr. Sayre admitted this, in his answer to the Adjutant, but repelled any idea of seizing the King. He was going on denouncing informers when his lawyer demanded admittance, and stopped him from saying anything more. The information being read the second time, Mr. Sayre smiled, and Reynolds, the lawyer, observed that the whole was too ridiculous to be seriously attended to. Nevertheless, his client was committed a close prisoner to the Tower. Upon his remonstrance, Mrs. Sayre was permitted to see him, but all the satisfaction that the Lord Mayor could obtain was to see Mr. Sayre at the

[1] This Adjutant Richardson was in the Guards.—"Annual Register," 1775, p. 243.

window, when they bowed to each other. Counsel was immediately retained for him, in case he should be brought to trial. They were Serjeant Glyn, Dunning, Serjeant Adair, Lucas, Dayrell, Alleyne, and Arthur Lee.[1] In a few days afterwards, the prisoner was bailed by Lord Mansfield. The Chief Justice, looking at the warrant of commitment, said, that treasonable practices only formed the accusation, and that he should have set Mr. Sayre at liberty *had no counsel attended for him.*[2] Mr. Sayre thanked his Lordship, and hoped he would always act in the same impartial manner according to the constitution. "I hope so too," said Lord Mansfield: "*Let us both act according to the constitution, and we shall avoid all difficulties and dangers.*"[3] However, on the 13th of December, these recognizances were discharged before Mr. Baron Burland at the Old Bailey, upon the motion of Mr. Arthur Lee, his counsel.[4]

Mr. Sayre subsequently obtained a verdict against Lord Rochford in the Court of Common Pleas, but it was set aside, notwithstanding the ingenious arguments of Serjeant Glyn, upon an appeal to that Court.[5]

We may add, that one of the last great cases in which Glyn was concerned, was an action by Mr. Rafael, an Armenian merchant, against Harry Verelst, Esq., Governor of Bengal, for assaulting and imprisoning him in the East Indies. The verdict was

[1] "Annual Register," 1775, p. 239. [2] *Id.* p. 242. [3] *Ibid.*
[4] *Id.* p 243. [5] *Id.* 1777, p. 210.

for £4,000, but points of law being raised, the matter was argued before De Grey, C. J. and his brethren, by Glyn for the merchant, and Adair for the Governor. The Serjeant succeeded upon this occasion, and the verdict was supported.[1]

His health was now declining, and the hey-day of his career as a politician was over. Even Wilkes had abated in his fancies for liberty, and had retreated from Dr. Johnson's anathema, that patriotism was "another name for a scoundrel." But the city were reluctant to part with Glyn, their long-tried favourite. The Court of Common Council unanimously resolved that he should be represented by a Deputy, when incapable of giving his attendance. He was present, and returned thanks for a "very great favour conferred upon him."[2] On the 16th of September, 1779, he expired,[3] at the age of about fifty-seven years.

On the 21st of July, 1763 (the year after he came into the possession of Glyn) he was married to Susannah Margaret, daughter of Sir John Oglander, Bart., of Nunwell, in the Isle of Wight,[4] and granddaughter of Elizabeth, one of the Strodes.[5] By this lady, he had three sons:—Edmund John, his heir;[6]

[1] "Annual Register," 1776, p. 120.

[2] Less than a year before his death.—"Annual Register," 1778, p. 210.

[3] *Id.* 1779, p. 218.—"Gentleman's Magazine," 1779, p. 471.

[4] "Gentleman's Magazine," 1763, p. 362.—Burke's "Landed Gentry, Glyn."

[5] MS.

[6] Born June 2, 1764. "Gentleman's Magazine," 1764, p. 302. Edmund John Glyn built a new house at Glyn. But it was accidentally consumed by fire before the whole interior had been completed. This was the Serjeant's

Anthony William, B.C.L., in holy orders, of Fairy Hill, in the Isle of Wight, Rector of Lasnewth, Cornwall, and Kingstone in the Isle of Wight. It is singular that this clergyman should marry into the Oglander family, nearly forty years after the alliance which his father made with a daughter of the Baronet. The third son was Admiral Henry Richard Glyn, who was born on the 2nd of September, 1768.[1]

There is a portrait of this celebrated Recorder in the "North Briton."[2] His countenance represents spirit, energy, and truthfulness. The forehead high, the eyes full, the mouth strongly marked. The features denote a man of honest purpose, and the picture, viewed altogether, is an image of firm resolution.

The arms are: three salmon spears, argent, the points downwards, sable;[3] alluding to the custom of hunting or fishing for salmon in the Fowey river passing through the barton or lordship of Glyn towards the sea.[4]

eldest son. It became the property of General Sir Hussey Vivian.—Gilbert's "Cornwall," vol. i. p. 173.

[1] "Gentleman's Magazine," 1768, p. 446. See "Glyn," in Burke's "Landed Gentry," for a full account of the family.

[2] Vol. iv. 1772, title page.

[3] Burke's "Landed Gentry, Glyn."

[4] Gilbert's "Cornwall," vol. i. p. 171.

WILLIAM DAVY.

Serjeant-at-Law, 1755—King's Serjeant, 1762.

WILLIAM DAVY was one of those happy humourists who are destined to enliven the dull routine of justice without descending to buffoonery. There is as much difference between the utterance of a jest born for the ears of the groundlings and wit, as between a clear stream and a frothy bubble.

According to Lord Eldon's reminiscences of the Bar, William Davy, like a well-known Chief Justice in the reign of Charles the Second, learnt what he knew in the King's Bench Prison. He was a grocer at Exeter, and became a bankrupt. But, "by force of a strong natural understanding, he became eminent at Nisi Prius, which such a man may be without knowing much law."[1]

He usually went by the name of "Bull Davy," on account of his manners, and he was originally a druggist, when he became bankrupt. Being once on the Western Circuit, he cross-examined an old countrywoman very rigorously, respecting a circumstance that

[1] Twiss's "Life of Lord Eldon," vol. i. p. 324.

had happened within her observation some years before. "And pray, good woman, said the Serjeant: "How is it that you should be so particular as to remember that this affair happened on a market day?" "Why, Sir," replied the woman, "By a very remarkable token, that all the cry of the city went that Mr. Davy, the druggster, had that morning shut up shop and run away." "I think, brother," said the Judge, "that you want no further proof of the witness's memory.[1]

William Davy was admitted at the Inner Temple, on the 16th of October, 1741.

He was still young in the profession, when having been counsel for the unfortunate defendants who were prosecuted for perjury in Elizabeth Canning's case,[2] for proving an alibi, he appeared to conduct the prosecution against the arch impostor herself. He made a very long and powerful address to the jury, and called many witnesses to prove his case. This was simply that the prisoner had swore to the fact of her having been robbed at Enfield Wash, whereas, the persons accused of robbing her, were at the time at Abbotsbury, in Dorsetshire. Mr. Martin, afterwards Chief Justice of Chester, spoke strongly for the defendant, and produced a body of evidence to support his assertions. Mr. Nares, likewise was zealous for his client, Canning. He avowed that the prosecution had been carried on with more warmth

[1] "Anecdotes of the Bench and Bar," William Henry Grimmer, 1852, p. 40.
[2] "State Trials," vol. xix. p. 275.

and spirit, than any he ever had the honour to attend. "If," said he, "this warmth and spirit spring merely from a zeal of bringing a supposed criminal to exemplary punishment, far be it from me to blame or condemn it. God forbid such a warmth should ever cool, or such a spirit grow degenerate."[1] A reply of considerable length from Serjeant Davy ensued, and, Moreton, the Recorder, having summed up, the jury found a verdict "guilty of perjury, but not wilful or corrupt." This the Recorder refused to receive, upon which, after further deliberation, the full verdict was recorded. . . . . .[2]

However, the matter did not end here. When Elizabeth Canning was called up to receive sentence, her counsel delivered in Court affidavits of two of the jurymen, setting forth that the verdict had not been given according to their consciences. The foreman being sent for, he said, "that these jurymen were the persons who objected to the words, 'wilful and corrupt,' but yet they thought the woman guilty. They thought that somebody had seduced the girl and forged the story for her, in short, they all believed *that*. However, after some argument, and an attempt on the part of the two to obtain a recommendation to mercy, all at last agreed." A new trial was then insisted upon, and the Court was divided, upon which the Recorder observed, that he was sorry to see how strongly the case had become a party affair, and he

[1] "State Trials," vol. xix. p. 451. [2] *Id.* p. 669.

put off the sentence till the next Sessions.[1] On the first day of those Sessions, no fewer than five Judges came to the Old Bailey, and the case was argued. But Willes, C.J., said there could not be a new trial. Here was no mistake. In the case of Ashley and Simons,[2] the Judge took a verdict against the meaning of the jury, but here the verdict was, in effect, general. All abided by it except two weak men who first consented on oath, and then recanted.

Sir John Barnard then stood up, and recommended the prisoner to mercy, trusting that she might have only six months' imprisonment. But the Chief Justice said, that such a sentence would be rather a diversion than a punishment. Collections had already been made for her to a considerable amount. There would be more, besides assemblies of an evening, and as to the pillory, much mischief might be done. So the Court divided, and sentence of transportation for seven years was awarded by the Lord Mayor, five Judges, the Recorder, and two Aldermen, against Sir John Barnard, and seven other Aldermen ; the majority being thus one only. The Chief Justice had concluded by observing that he thought her notoriously guilty.[3]

The Chief Justice Willes, no other than the author of the admirable "Law Reports" which bears his

[1] "State Trials," vol. xix. p. 670.

[2] *Id.* p. 680 cited. In this case every juryman made an affidavit that the verdict recorded was wrong.

[3] *Id.* p. 671, 672.

name, was, nevertheless, a Judge of great humanity. It fell to his lot, two years after Canning's case, to try the colliers in Shropshire, for a serious riot, in a time of scarcity. Of thirty-seven, four died in prison, ten were convicted, but only two executed. The fate of the eight was nearly tragic. The Chief Justice had sent his report to the Attorney-General, with an intimation that four should suffer death. This report was sent to the office of Mr. Pitt, Secretary of State, where it rested, not having been laid before the King. The day for executing all the ten arrived, but there was neither reprieve nor respite. Mr. Leeke, the Deputy-Sheriff, was advised, upon this emergency, even by several gentlemen in the neighbourhood, to leave all the prisoners to their fate. But he judged, and rightly, that the Judge could never have meant this, so that he boldly reprieved all but two, and sent off an express to London. The Lord Chief Justice was then a Commissioner of the Great Seal. He immediately wrote the following letter to Mr. Leeke. "Sir, till I saw your letter yesterday, I was under the greatest uneasiness, for I took it for granted that all the ten rioters had been executed on Saturday last, as that was the day appointed for their execution; and upon my return from the Home Circuit on Thursday last, I found, that by a shameful neglect in one of the Secretary of State's offices, (I do not mean Lord Holdernesse's) no reprieve had been sent down, and, as it was then too late to send one down, I saw no

reason to hope that their execution would have been deferred to a longer time. But, though, to be sure, you have acted contrary to your duty, you have acted a wise, prudent, and most humane part, and you have not only my thanks, but the thanks of some of the greatest men of the kingdom, for the part you have acted on this occassion. I once more thank you for what you have done."

"And am, &c.,

Mr. Leeke's agent in town, wrote to him thus :

"My Lord Commissioner was so affected that it really made him ill ; and he did not, for two days go to the King's Closet, so much he feared the effect it might have upon the King's mind, if the affair was communicated to his Majesty, while it was under that state of uncertainty. Thank God, your prudent and well judged respite has prevented all the uneasiness and mischief that might have happened, and I have the pleasure to assure you, that no step was ever taken that has given more satisfaction than this of yours has done. My Lord Commissioner Willes, waited on the King with your letter, and, this day has directed me to acquaint you by His Majesty's order, that His Majesty entirely approves what you have done, and so does his Lordship, and all the Judges who are in town, to whom it has been communicated."[1]

[1] "History of Shrewsbury," vol. i. p. 582 n.

A remarkable incident is said to have occurred in the judicial life of his son, Edward Willes. Lord Eldon has given us the curious incident. He "had many good qualities, but he was much too volatile and inattentive to reasonably grave behaviour upon the Bench. He was, however, very anxious to do right. He condemned a boy, I think at Lancaster, and with the hope of reforming him by frightening him, he ordered him for execution next morning. The Judge awoke in the middle of the night, and was so affected by the notion that he might himself die in the course of the night, and the boy be hanged, though he did not mean that he should suffer, that he got out of his bed, and went to the lodgings of the High Sheriff, and left a reprieve for the boy, and then, returning to his bed, spent the rest of the night comfortably.[1]

This is a very improbable story. If true, the Judge ought not to have remained on the bench. When a Judge left the Assize town, he was wont to write in the calendar: "*Sus per Coll*," *i.e.*, "Let him be hanged by the neck." Mr. Justice Willes must have been *volatile indeed* to make such an escapade. The truth was, no doubt, that he had frightened the boy, by telling him that he would be hanged, and hence the tale.

Lord Kenyon was compelled by the law of his day to pass sentence of death upon a woman for larceny. She fell down, as dead. The Chief Justice was much

[1] Twiss's "Life of Lord Eldon," vol. i. p. 327. The present cautious and accomplished Judge of the Common Pleas belongs to the same family.

moved. "I don't mean to hang her." A pause. "Will nobody interfere, and tell her *I don't mean to hang her?*"[1]

Mr. Davy was engaged about this time in other cases of importance. He defended Timothy Murphy for forging a will, Mr. Nares, afterwards the Judge, being the leader, but the case was too clear, and the prisoner was executed.[2]

On the 11th of February, 1754, he was made a Serjeant.

Not long afterwards, he was entrusted with the famous case on the Black Act against Barnard, for sending a fictitious letter to the Duke of Marlborough, demanding a genteel support for life, upon pain, on neglect, of using means "too fatal to be eluded by the power of physic." It was signed, "Felton." The Duke was not intimidated. He went to the place fixed for the rendezvous, and saw a man holding a handkerchief to his mouth in a seeming disconsolate manner, looking into the water in Hyde Park. The man remained standing for some time, and then sauntered, upon which the Duke rode up (he had pistols with him) and asked: "Did he want to speak to him?" "No." "Sir, do you know me? I am the Duke of Marlborough, telling you that, perhaps, you may have something to say to me?" "No, my Lord." The Duke came away. But, in a few days, a second letter arrived. It acknowledged the punctuality of the Duke,

[1] MS. [2] "State Trials," vol. xix. p. 693.

and appointed Westminster Abbey for the next meeting. As the fruit of the man's address to be given at that meeting, bank notes to the value of £200 or £300 were intimated. "I have friends who are faithful; but they do not bark before they bite. (Signed) "F." The second challenge, nevertheless, was accepted by the Duke, and received with an equal pretence to ignorance by the man who was seen at the time in the Abbey. Other letters were sent, and, at length, the prisoner was apprehended. Serjeant Davy made a reply to the evidence in favour of Barnard, but evidently weak, and unequal to the overpowering character tendered for the prisoner. The verdict was not guilty.[1]

One of the most infamous conspiracies known to English advocates, has been the attempt (and upon one occasion sadly successful) to take life by regular criminal procedure. One plan has been to incite others to commit robberies, and then, for the sake of the reward, to procure such evidence as would be sufficient to convict them.[2] Davy was counsel for some miscreants of this character. They connived with the prosecutor, that he should be robbed by two strangers, innocent, not of the robbery, but of the conspiracy. He delivered an elaborate argument on the subject, and his clients, although subsequently convicted of conspiracy, were discharged as to the

[1] "State Trials," vol. xix. p. 815.

[2] Another plan was to discover a robbery and charge an entirely innocent person. Kidden fell a victim to this plot.

felony. The Serjeant's opening for the conspirators was sufficiently humorous:—"I have the honour of attending your Lordships as counsel for the prisoners; and I must own, that I could not have been prevailed upon to have been counsel for such a set of rogues, had I not been appointed by your Lordships."[1]

It was necessary that an able lawyer should be found to keep the Glyns and Adairs of the time in check during Wilkes's reign. Serjeant Davy was a good antagonist upon these emergencies. When the demagogue sued Mr. Wood, the Under Secretary of State, and recovered heavy damages, the Serjeant was associated with Sir Fletcher Norton, and Serjeant Nares."[2]

Whilst other eminent advocates were in hostility to the King's messengers in the perilous times of arrest by these officers, Davy was found leading for the defendants against the mighty Glyn, and succeeded with the jury in obtaining a special verdict.[3]

It is worthy of remark, that political principles have an imperceptible effect upon the forensic claims made upon advocates. Their duty is to act entirely with disregard to the desires of governments or the demands of popular feeling, and their conduct is in unison with that obligation. But when their services are sought for in a particular question, they must obey the first

[1] "State Trials," vol. xix. pp. 745, 790, 808.

[2] "Annual Register," 1763, p. 145.

[3] *Id.* 1765, p. 101. See also *id.* 1763, p. 88; *id.* 1764, p. 73; *id.* 1765, p. 101.

call, so that Serjeant Glyn was the man often retained for the cause of the people, and Serjeant Davy was frequently concerned for the authorities. . . . . .

There was in 1769 one of the customary riots at the Brentford Election, and a clerk to an attorney received a blow which caused his death. Sir William Proctor was a candidate, a political circumstance sufficient to account for violence, and Quirk and Balfe were hired, with others, to perform the very doubtful service of keeping the peace. They were so unequal to, and unmindful of this task, that, after a period of quiet, they began at once to knock down indiscriminately all who came in their way. The deceased came within their clutch, and perished. Serjeant Davy was the leading counsel for these men who were indicted for murder at the Old Bailey, and he must, in cross-examination, (for speeches were not allowed in those days) have shaken the testimony as to Balfe. The Judge was favourable in his charge, and there was a feeling of disappointment in the Court when both were found guilty. This verdict was a triumph for the populace. Some persons in the gallery "halloed," and clapped their hands, upon which the Recorder admitted that he had heard such a demonstration upon an acquittal: never upon a conviction.[1] . . . . .

It was, however, very unlikely that execution would take place. The men were respited more than once on account of the powerful interest made for them, and

[1] "Annual Register," 1769, p. 67.

during the consideration of their case, another bill for murder at the same election was presented against Quirk, but ignored by the jury. Quirk was finally reprieved, and Balfe obtained the royal pardon.[1]

The instances cited are simply examples of the part assigned to Serjeant Davy during the tumult. He was almost invariably retained on the side of the Government. He appeared for Lord Halifax against Wilkes,[2] and he was successful in his argument for Lord Rochford, who was sued by Mr. Sayre for false imprisonment.[3]

In 1772 he was counsel in support of the Habeas Corpus granted in the case of Sommersett the negro. Sommersett was confined in irons on board a ship bound for Jamaica, whither he was to be sent as a slave. The argument of Mr. Hargrave, whose presence in Court elicited much congratulation, on account of the rarity of his appearance, is well known. It fell to the lot of Davy to answer Mr Dunning. His concluding words were: "This air is too pure for a slave to breathe in." The negro was set at liberty.[4] The benevolent Granville Sharpe took a great interest in this case. The right of the African slave to freedom, when he touched the English soil, had not been solemnly decided. Mr. Sharp in his Diary states that on the 13th of January, 1772, Somerset, a negro from Virginia, called upon him. On the 24th the case was

[1] "Annual Register," 1769, p. 81.
[2] *Id* p. 105.
[3] *Id.* 1777, p. 210.—"State Trials," vol. xx. p. 1314.
[4] *Id.* pp. 1, 23, 76.

brought into Court, and Davy was the leading counsel for the negro. Mr. Sharp seems to have thought that Lord Mansfield was hostile to his struggle for the African's freedom. However, Mr. Hargrave's powerful aid was procured, and on the 7th of February, the matter came on again before the Chief Justice, Aston, Willes, and Ashhurst. The Serjeant made lengthy and learned address. He held stoutly to his theme. "No man at this day *is*, or *can be* a slave in England." Glyn followed. The case was adjourned. On the 9th of May Mr. Mansfield (afterwards Chief Justice of the Common Pleas,) resumed the argument. And then, some few days having elapsed, Mr. Hargrave gave an interesting historical account of slavery, and declared, that no new slavery under the name of villenage, which had expired, could be introduced. Mr. Alleyne, having been heard, Wallace and Dunning argued the case for Mr. Stewart, the master. Dunning had formerly said, that *no property could exist here in a slave*. It was, therefore, considered strange that he should have been entrusted with the interests of the slave owner, But he was doubtless retained, that his formidable powers might not be called into action for the negro.[1]

[1] The criticisms of the writer of a note in Sharp's "Life," vol. i. p. 132, respecting what he calls professional apostacy, were made in ignorance of the strict etiquette of the Bar. That etiquette is based upon constitutional liberty, for every subject in the realm has a right to avail himself of the services of any lawyer, unless he be otherwise retained, or unless in office under the Crown. Such is the pact under which a barrister enters the profession. How far it may be prudent to employ a counsel of decided opinions to support particular points, is quite another question. . . . . "It is my misfortune," said Mr.

On Monday, the 23rd of June, judgment was given. Lord Mansfield highly complimented the bar for the information they had afforded. He no longer intimated, as before, any intention of referring the matter *to all the Judges*. The Court were clear, they were agreed. "*The power claimed never was in use here, or acknowledged by the law.*" "The man must be discharged."[1]

In the case, however, of General Mostyn, whose interests were committed to his charge, when Fabrigas, the merchant, brought an action for false imprisonment, he was compelled to witness the triumph of Glynn. Nor could he succeed in reducing the heavy damages awarded against his client.[2] It may, however, be safely asserted, that he made the best of a very bad cause.[3] Governors are apt to be precipitate, consequently, they are often unfortunate. A petition from a Minorquim, attended by 150 or 200 men, was not a sufficient ground for imprisoning a person in a severe manner, and sending him into banishment, especially when the Governor had an overwhelming force at hand to frustrate, in a moment, any attempt at insurrection. This threat to excite a revolt was the main feature of the defence. On the other hand, it

Dunning, "to address an audience, much the greater part of which, I apprehend, wish to find me in the wrong."—Sharp's "Life," vol. i. p. 134.

[1] "Memoirs of Granville Sharp," by Prince Hoare, vol. i. pp. 103—142.

[2] "Annual Register," 1773, p. 149.

[3] See an account of this cause *célèbre* in the "Annual Register," 1773, p. 183.—"State Trials," vol. xx. p. 81.

was insisted, that there had been a dispute in the island concerning grapes and wine, and that a petition signed by 150 persons interested in the subject would show on which side the majority of the Islanders were. No question being made but that the Governor had overstepped his powers, the jury had merely to consider the amount of damages, which (as we have seen in the life of Glyn) they assessed at £3,600. . .[1]

Few who have read the periodical literature of the country, are ignorant of the case of General Gansell. Those who are versed in criminal trials know that the General was tried for shooting at a bailiff's follower. He insisted that his door was locked and fast, in which event the law was with him. The evidence in the prosecution went to show the contrary, and that the door was open. One of two pistols was fired through the door, as the General insisted, merely to frighten the bailiff, the other he alleged went off by accident. The contradictions in the testimony were, however, so great as to call forth the animadversion of the Judge (Sir George Nares), who summed up with great impartiality and humanity, and gave his opinion, as far as he could, in the prisoner's favour. Serjeant Davy had the satisfaction of addressing a jury, which did not linger in the box for their verdict of acquital, and of hearing the order of the Court that the General should have a copy of his indictment. And although the clapping of hands was meant as an

[1] "State Trials," vol. xx. pp 99, 146, 175, 183, 238.

ovation for the General, Davy could not help remarking upon the indecency of the exhibition. He was sure the General thanked the Court and the jury, but not persons who forgot decency of behaviour. General Gansell made a low bow and retired from the bar, observing, that trusting to his good cause, he had only brought two general officers to testify to his character. There can be no question but that the Serjeant distinguished himself in unravelling the difficult web of evidence, and he was happily seconded by the calm opinion of a Judge favourable yet equitable.[1]

In 1762, near the end of the year, Mr. Serjeant Davy, was made a King's Serjeant.

We have introduced the Serjeant as a man of some pleasantry. The casual droppings from the wit of a man of humour are too apt to be forgotten. Some, very few, of Davy's have been preserved. There was an action in which the steward of a West Indiaman was plaintiff, and the master defendant. It was brought to recover goods shipped on the steward's account. The master detained them as forfeited by desertion, but the cause of this was shewn to have arisen from cruel usage, and besides the articles did not apply to goods on board. Mr. Serjeant Davy for the plaintiff remarked, that in Oliver Cromwell's time, the words "&c. &c.," were sworn to be observed, and, as far as this case was concerned those were the only precedents he knew of. He got £50 damages

[1] "Annual Register," 1773, p. 191.

from a jury who did not leave the Court.[1] An old saying of his has been preserved, and often remembered. "The farther I journey towards the West, the more I am convinced that the wise man came from the East."[2]

We are not able to vouch for the accuracy of the following anecdotes, as far as the Serjeant was concerned, but as they were related about the time that he flourished, we might almost attribute them to him, as their original, being quite in his own humour.

A learned Serjeant kept the Court waiting one morning for a few minutes. The business of the Court commenced at nine. "Brother," said the Judge, "you are behind your time this morning. The Court has been waiting for you." "I beg your Lordship's pardon," replied the Serjeant, "I am afraid I was longer than usual in dressing." "Oh!" returned the Judge, "I can dress in five minutes at any time." "Indeed," said the learned brother, a little surprised for the moment, "but in that my dog Shock beats your Lordship hollow, for he has nothing to do but to shake his coat and think himself fit for any company."[3]

Another story runs thus. There was a very worthy Serjeant, who after a hard law campaign, was glad to escape from town, for a little ruralizing, and he went to visit a nobleman in the country. He strolled out

[1] "Annual Register," 1769, p. 161.
[2] "Jeaffreson's Lawyers," vol. ii. p. 232.
[3] MS.

for a little ramble, and was expected at dinner as usual. But it happened as the Serjeant was straying through the neighbouring village, that he came across the stocks, and, being surprised with the novelty, examined them with much care and wonder. At last he thought he would slip his own feet in, in order to see how the gentry fared who got into such a scrape. Now, it is in the nature of these things to snap as soon as the victim is enclosed, so that escape can only be administered by a person outside, and the Serjeant was, consequently, caught.

Dinner was announced but no Serjeant appeared. After some time, apprehensions were entertained for his safety. A hundred things were surmised. He might have tumbled down a pit in a fit of Coke upon Littleton, &c. Search was, at length made, and the learned Serjeant discovered in perfect safety, quietly seated in his own lair, though somewhat sore from the experiment. When at dinner, the Serjeant bore the joke with excellent humour. Only he said, there was a provoking carter on the road who treated him very queerly. "How was that?" said the host. "Why" said Mr. Serjeant—"I asked him to be kind enough to let me loose, but the rascal scratched his head, and with a most insolent grin, took me up with noa, noa, old chap! yer be'ant in there for nothing."[1]

[1] MS. This story has been related of Lord Camden, and rather circumstantially.

[The stocks]. Lord Camden once presided at a trial, in which "a charge was brought against a magistrate for false imprisonment, and for putting the plaintiff in the stocks. The counsel for the Magistrate, in his reply,

Brother Davy kept the Court in a continual laugh upon another occasion. Sir Alexander Leith, Bart., M.P., surrendered at the Old Bailey to take his trial upon a capital charge preferred by Benjamin Pope, Esq. It was for stealing a quantity of plate, household furniture, and three horses. The trial took place before the Judges Nares and Buller. The prosecutor swore, that Sir Alexander had instituted suits, both in law and equity, against him, and he was asked in cross-examination, whether he did not consider that a conviction would bar the suits. He calmly replied to this, that he had been told, if Sir Alexander were hanged, that the actions would abate. This disclosure roused the indignation of the Bench, upon which Mr. Bearcroft, Mr. Pope's counsel, replied to some intimation from the Court in these terms: "If I am asked the question by the Bench, I declare there is not a shadow of cause for the prosecution." Sir Alexander had a copy of his indictment granted.[1]

Lord Mansfield was not attached to religious holi-

said, the charges were trifling, particularly that of putting in the stocks, which everybody knew was no punishment at all." The Chief Justice rose, and leaning over the bench, said, "in a half-whisper, 'Brother were you ever in the stocks?' 'In the stocks, my Lord! no never.' 'Then, I have' said his Lordship, 'and I assure you, brother, it is no such trifle as you represent.' He was on a visit to Lord Dacre, his brother-in-law, at Alvelly, in Essex, and walked out one day with a gentleman remarkable for his absence of mind." The confinement in the stocks then ensued upon the nobleman's curiosity, and the absent gentleman walked away, and returned to Lord Dacre's. The countryman then came up and vented his gibe, and the prisoner remained fastened till "some of the Lord Dacre's servants, passing that way, released him."—"Book of 300 Anecdotes," 1858, p. 73.

[1] "Annual Register," 1778, p. 190.

days. He even ordered the doors of his Court to be thrown open on Ash Wednesday. This disregard of Lent was by no means pleasing to many. But, emboldened by success, it is said that the Chief Justice proceeded to suggest business on Good Friday. He announced this very eccentric intention in Court, probably on the Thursday. But Serjeant Davy upon this, addressed the Peer on the instant, and told him that if it were so, his Lordship would be the first Judge that had done it since Pontius Pilate."[1]

The Chief Justice was equally indecorous as to the ceremonials of his own profession. "At the making of a Serjeant, he has been known to laugh so heartily, that he was scarcely able to do that which his office required him to do."[2] Upon another occasion, Lord Mansfield and Davy were kindred wits upon the forensic scene. A Jew came to justify bail in the Court of King's Bench, and Davy was examining him as to his solvency. The Jew was dressed in a tawdry laced suit. The Israelite was pressed in the usual way by the Serjeant: "Was he worth the sum he had sworn to after all his debts were paid?" The Jew was positive, and reiterated his words. But Davy was persisting, when Lord Mansfield, finding that the debt was small, unexpectedly interfered. "For shame, brother Davy, how can you tease the poor gentleman

[1] "Memoirs," by Letitia Matilda Hankins, vol. i. p. 257.

[2] *Id.* p. 255. It is difficult to make out this story, as the Chief Justice *of the King's Bench* has no hand in the making of a Serjeant.

so! Don't you see that he would *burn* for *double* the sum?"[1] Lord Mansfield's occasional remarks, however, were sometimes so unmerciful as richly to deserve a smart repartee, like that which he met with from Davy. It is a mistake to suppose that he was courteous to every one in his Court, except "old black letter Hill." "Serjeant Sayer,"[2] (Mr. Scott, afterwards Lord Chancellor, tells us,) "went the Circuit for some Judge who was indisposed. He was, afterwards, imprudent enough to move, *as counsel*, to have a new trial of a cause heard before himself, *for a misdirection by the Judge.* Lord Mansfield, said: "Brother Sayer, there is an Act of Parliament, which, in such a matter as was before you, gave you discretion to act as you thought right." "No, my Lord," said the Serjeant: "I had no discretion." "You may be right, brother," said Lord Mansfield: "For I am afraid even an Act of Parliament could not give you discretion."[3]

Davy, with his humour, was quite a match for the Chief Justice. Lord Mansfield, by no means profoundly skilled in the higher principles of law, broke out one day against the Serjeant, (who probably was correct, and at all events knew well what he was contesting,) with this gibe; "If this be law, Sir, I

[1] Holliday's "Life of Lord Mansfield," p. 213.

[2] Author of some "Law Reports," and a book on "Costs." He likewise edited Puffendorf. Serjeant Sayer died January 18, 1786.

[3] Twiss's "Life of Lord Eldon," vol. i. p. 323. Serjeant Sayer was not promoted to the Bench.

must burn all my books, I see." "Your Lordship had better read them first," rejoined Davy.[1]

We must not omit to say that, in the year before this, Davy had been counsel in Winchester against Jack, the painter. He led for the Crown, and spoke temperately, though forcibly, against that desperate incendiary. "Let but the English navy be destroyed," he exclaimed, "and there is an end of all we hold dear and valuable."[2]

He must have had a peculiar faculty for cross-examination. In the proceedings against Smith at the Hindon election in Wiltshire for bribery, a case which was hopeless, he showed himself a master of his art, and compelled the truth from a voter, as usual a very reluctant witness. "I will know;" said the Serjeant: "At least you shall swear something." This was after a great amount of fencing. At last the witness said he was no worse than his neighbours. "You were one of the parties making this corrupt agreement to sell this borough?"

"I cannot help it now."

Mr. Popham: "He repents of it."

Davy: "Then you are a sad, repenting, miserable sinner, are you? You made a bargain with the rest of them."

"We consented to it, all of us."[3]

[1] "European Magazine," 1796, p. 318.
[2] "State Trials," vol. xx. pp. 1317, 1319, 1328.
[3] *Id.* pp. 1225, 1247.

The Serjeant did not examine much more.

In the next case, however, against Mr. Hollis, he was, strange to say, counsel for the Crown, although the proceedings arose out of the same transactions. The verdict was guilty,[1] and both were sent to the King's Bench Prison.[2]

In 1776 he stood amongst a powerful array of counsel in support of the Duchess of Kingston.[3]

Davy, although of a very jolly character, does not appear to have been a fighting man. He gave great offence upon the Western Circuit to a gentleman whom he abused with the due license of an advocate. Not understanding the freemasonry of the Bar, this angry person sought both at Winchester, where the offence happened, and at Salisbury, to challenge him; but Scott relates, that the Serjeant evaded all his attempts. Upon which the challenger actually went on to Dorchester, and "knocking at a very early hour at the door of the house where the lawyer lodged, upon its being opened, he walked into the house, and walked from room to room, till he found himself in the room where the lawyer was in bed. He drew open the curtains, and said that the lawyer must well know what his errand was—that he came to demand satisfaction—that he too well knew that the person upon whom that demand was made was unwilling to comply with it, but that satisfaction he must and would have. The

[1] "State Trials," p. 1281. [2] "Annual Register," 1776, p. 143.
[3] *Id.* 1776, pp. 231, 236.—"State Trials," vol. xx. p. 1281.

Serjeant began to apologize. The gentleman said, he was not to be appeased by apologies or words; his honour had been tarnished, and the satisfaction which a gentleman owed to a gentleman whom he had calumniated, he came to demand and to insist upon: 'Well,' said the Serjeant: 'Surely you don't mean to fall upon a naked man unarmed and in bed?' 'Oh no, Sir!' said the gentleman: 'You can't but know in what way this sort of business is conducted between gentleman and gentleman.' 'Very right, then,' says the Serjeant: 'If you give me your honour that you don't mean to fall upon me naked and unarmed in bed, I give you mine that I will not get out of bed till you are gone out of town, and I am in no danger of seeing you again.'"[1]

Very different was Lord Ellenborough, when on the Northern Circuit. He had been very severe one day upon a rich man who had amassed a great fortune by pottery. This happened at Lancaster, and the advocate returned to London. Being at chambers, he received intelligence that the person he had lectured was coming to challenge him, upon which he instructed his clerk, that when the gentleman came, the clerk should stay in the room. He did come, and requested a private audience. "What you have to say, Sir," said the counsel, "may be told before this gentleman." The man of pottery then stammered out his warlike

[1] "Twiss's "Life of Lord Eldon," vol. i. p. 324. A similar Irish story is told by Charles Phillips in his "Curran and his Contemporaries," p. 415.

message, but what was his surprise when Mr. Law, looking him fully in the face, thus coolly addressed him:—

"If it were not for the immense contempt I should incur, I certainly would have a shot at your crockery."[1]

We must give Serjeant Davy the credit of standing well up for his professional gains, a great merit when there are so many attorneys from whom the just honorarium cannot, sometimes, be without difficulty acquired.

He once had a very large brief, with a fee of two guineas only at the back of it. His client asked him if he had read his brief. He pointed with his finger to the fee, and said, "as far as that I have read, and for the life of me, I can read no farther."[2] He was engaged at the Old Bailey, and, a very strong case having been made out, Judge Gould asked, who was concerned for the prisoner, upon which Davy said, "my Lord, I am concerned for him, and *very much* concerned after what I have heard."[3]

He was almost too good humoured to make a bitter joke. Yet he could not always refrain. We cannot applaud this practical jest. Some one said in Westminster Hall, that a solicitor on the Oxford Circuit, had quitted business. So he beckoned to his brother Serjeant N., who was an Oxford Circuiteer, and on his coming up, said to him, "Brother you

[1] MS. [2] Twiss's Life of "Lord Eldon," vol. i. p. 325.
[3] *Ibid.*

are very uncivil not to notice this gentleman, an eminent solicitor upon your own Circuit." N. who as it was said, was all civility to such persons, made a thousand apologies for his apparent neglect, and engaged the solicitor to dine with him on the following day. The solicitor then leaving the two Serjeants, Davy said, "Brother N. this is a bite. The man has just told me he has entirely quitted business; so your dinner goes for nothing."[1]

Such a tale as this reflects but little credit upon William Davy, the King's Serjeant; still it comes from a Chancellor's "Repertory." We would hope that it might be taken with the frequent epigram at the foot of the telegraph. "This requires confirmation."

Yet the following story from the same source seems highly probable, for Davy undoubtedly was not too scrupulous. Scott tells us, that two Serjeants, Davy and Whitaker, agreed to buy two pipes of Madeira. This wine was to make the usual voyage to the West Indies, and be paid for upon their arrival in the Thames. Davy knew that this Madeira was remarkably fine, and knowing that his brother did not like paying his money for nothing, as they were talking together in Westminster Hall, he said, "Brother Whitaker, how unfortunate we have been in not insuring these pipes of Madeira! The vessel on board of which they were, is lost, and our Madeira is at the bottom of the sea, and now you and I have to pay our money for

[1] Twiss's "Life of Lord Eldon," vol. i. p. 326.

nothing." "*Our* Madeira," said Whitaker, "I don't know what you mean, I have nothing to do with any Madeira." "What!" said Davy, "you surely don't mean to deny that we were to be joint purchasers of two pipes, which, for improvement, were to go to the East Indies and back, and now to get off paying your half of what we jointly purchased?" Whitaker positively denied that he had ever entered into any such joint engagement. "Well then," said Davy, "I am glad of it. It is the finest Madeira that ever came into the Thames. The ship and wine are safe, and the *wine is all my own.*[1]

When he was called to account for taking silver from a client and so disgracing the profession, he replied. "I took silver because I could not get gold, but I took every farthing the fellow had in the world, and I hope you don't call *that* disgracing the profession."[2]

The same story appears in the "Bench and Bar," with rather a higher colouring.

Among the traditions of Westminster Hall is one, of a certain Serjeant Davy, who flourished some centuries back in a darker age than the present. He was accused, once upon a time, by his brethren of the Court, of having degraded their order by taking from a client a fee in copper, and on being solemnly arraigned for this offence in their Common Hall, it

[1] Twiss's "Life of Lord Eldon," vol. i. p. 326.
[2] Polson's "Law and Lawyers," vol. i. p. 124.

appears from the unwritten reports of the Court of Common Pleas, that he defended himself by the following plea of confession and avoidance: 'I fully admit that I took a fee from him in copper, and not one, but several, and not only fees in copper, but fees in silver, but I pledge my honour as a Serjeant, that I never took a single fee from him in silver, until I had got all his gold, and that I never took a fee from him in copper, until I had got all his silver, and you don't call *that* a degradation of our order.'"[1]

After a few days' illness, Serjeant Davy died at Hammersmith, on the 13th of December, 1780.[2]

Lysons, speaking of Newington Butts, observes, that he examined the old church there before the workmen began to take it down, and amongst the tombs and monuments, that of William Davy, Esq., Serjeant-at-Law, was at the west end. "His professional abilities are well remembered. He died in 1786."[3]

In Hampstead Churchyard, amongst other tombs, that of Mrs. Davy, relict of Serjeant Davy, is recorded, 1783.[4]

Concerning his property at the time of his death, we have but little information. At one time he could not have been an economist. This trait in his

[1] "Anecdotes of the Bench and Bar," p. 109.
[2] "Gentleman's Magazine," 1786, p. 589.
[3] "Environs of London," vol. i. p. 392. This is a mistake for 1780.
[4] "Lysons," vol. ii. p. 540.

character was developed in Court. It was customary in the last century for bail to be required from debtors more frequently than at present. It was assumed that scarcely any man was solvent until the contrary appeared. A gentleman appeared in the Court of King's Bench, to be responsible for the appearance of the debtor in the sum of £3,000.

It fell to Davy's lot to search out the truth of this, so he thought it a fitting occasion for the display of his bullying pleasantry. "Sir," said the Serjeant, sternly to the bail: "And pray, Sir, how do you make out that you are worth £3,000?" The gentleman stated the particulars of his property up to £2,940. "That all's very good," said the Serjeant, "but you want £60 more to be worth £3,000." "For that sum," replied the gentleman, by no means disconcerted. "I have a note of hand of one Mr. Serjeant Davy, and I hope he will have the honesty soon to settle it." The laughter that this reply excited extended even to the Bench; the Serjeant looked abashed, and Lord Mansfield observed in his usual urbane tone, "Well brother Davy, I *think* we may accept the bail."[1]

[1] Polson's "Law and Lawyers," vol. i. p. 181.

GEORGE HILL.

Serjeant-at-Law and King's Serjeant, 1772.

INTO the early history of this singular composition of eccentricity, learning, isolation, humour, (without a gleam of genius) and vitality,[1] yet not unmixed with kindness, we have in vain tried a diligent search.

But, notwithstanding this suspicious programme, we shall find in Serjeant Hill, a man not to be dismissed without a careful study and subsequent approval of his character. We shall find qualities in him which gained sincere respect, learning which commanded even the Judges of the land, and domestic kindness which won and maintained the affections of his affluent and well born wife.

George Hill was born in 1716. He was of an ancient family of Rothwell, Northamptonshire, where they settled in the early part of the reign of James I.[2] He is said "to have inherited large family estates,"[3] but we are inclined to doubt this, and rather as we shall see hereafter to believe, that he owed a consider-

[1] For he lived to be 92.

[2] "Law Magazine," 1844, p. 331.

[3] *Ibid.*

able portion of the increase of his worldly fortunes, to his marriage with Miss Medlycott, of that county, at least, as far as a life interest was concerned.

Bishop Percy, a very good authority, asserts, that this lawyer was a lineal descendant of the Reverend Martin Hill, of Asserby. This appears from a letter written by the Bishop to Mr. Nichols, of which we give an extract:—

"Dromore, *March*, 29, 1799.

"DEAR SIR,—

"The 'Gentleman's Magazine' reaches this remote part but slowly, so that I did not see till lately your queries relating to Rev. Martin Hill, of Asserby. I suppose you know that George Hill, Esq., the King's ancient Serjeant, is the lineal descendant of the said Martin Hill, because I believe it is so recorded by Bridges; but, perhaps, you do *not* know that my *wife* is a descendant, her mother being Anne Hill, daughter of Joseph Hill, Gent., great uncle of the Serjeant."[1]

Mr. Hill devoted himself early to mathematics and science, so as to have promised great proficiency in those branches of learning; but he at length entered himself at Lincoln's Inn, and seems to have practised as a conveyancer, after some years of close legal study.[2]

He chose the Midland Circuit, but was never in extensive business there. "My choice," says Romilly,

[1] Nichols's "Literary Illustrations," vol. vi. p. 502.
[2] "Law Mag.," 1844, p. 331.

"fell upon that Circuit, because there appeared to be fewer men of considerable talents, or high character as advocates upon it, than upon any other. At the head of it, in point of rank, though with very little business, was Mr. Serjeant Hill."[1]

Mr. Hill was called to be a Serjeant on November 6, 1772, and went out King's Serjeant on the same day. His knowledge of what was called "black-letter law" was so profound as to ensure him a considerable business in cases, although, at the same time, he was by no means without employment as an advocate. His memory was excellent; but we shall have occasion to observe, that the arrangement of his knowledge was irregular. He had a habit of pouring out his legal treasures without reference to the matter in hand.[2] "When much harassed with business, he was accustomed to have a bed made up in his chambers, and, during the latter part of his life, a clerk always slept in his room, in order to run and take a note of any legal thought which the Serjeant was anxious to preserve."[3]

Mr. Hill married Anna Barbara, heiress of Thomas Medlycott, of Cottingham, Northamptonshire, a lineal descendant of Sir Richard Rainsford, Lord Chief Justice of England.[4] He had issue. Barbara, who married Mr. Cockayne, son of Charles, Viscount Cullen,

[1] "Memoirs," vol. i. p. 72.
[2] See the "Law Magazine" for 1844, vol. xxxi. p. 331.
[3] *Ibid.*
[4] *Id.* p. 335.

by Sophia, his second wife, whose descendants inherit all his property.[1]

The story goes, that on the morning of the day appointed for the wedding the Serjeant went down to his chambers as usual, and, becoming immersed in business, forgot entirely the engagement he had formed. The bride waited so long that it was feared the canonical hour would elapse before his arrival. A messenger was accordingly dispatched to require his immediate attendance. He obeyed the summons, and, having become a husband, returned again to his business. About dinner-time his clerk, suspecting that he had forgotten entirely the proceedings of the morning, ventured to recal them to his recollection; fortunately the Serjeant had, at that moment, discovered the case for which he had been hunting, and he returned home to spend the evening in a gayer circle.

Miss Medlycott had been empowered by an Act of Parliament to use her maiden name after her marriage, but the Serjeant did not like her exercising this right. He would not allow her to sign her name otherwise than "Elizabeth Hill," except on important occasions; always observing, if she made any objection, "My name is Hill, and my father's name was Hill, and a very good name is Hill, too!"[2]

Nevertheless, he was very polite, and courteous and considerate towards his wife. He was engaged at

[1] "Law Magazine," vol. xxxi. p. 335.
[2] Polson's "Law and Lawyers," vol. i. p. 76.

Leicester in an important case, and, finding that the trial would extend far into the night, he desired his clerk, in a loud voice—so that the message was heard by all in Court—"to offer his compliments to Mrs. Hill, and to express his great regret that he should not be able to sleep at home that night, as he expected to be detained until very late."

She was said to have been excessively fond of him, although she would not suffer him to leave his house in Bedford Square, in the morning, by the hall-door, lest he should soil the steps which had just been washed. So, to gratify her, the Serjeant went out by the kitchen-steps.[1]

Scott [Lord Eldon] kept an anecdote-book. The following story of Hill appears:—"After Serjeant Hill ceased to attend the Courts of Justice as a pleading barrister, he answered cases, and many were laid before him for his opinion. His habit was to write his opinion, and illustrate it, by mentioning all the cases upon which it was founded, with a great deal of reasoning upon each case. With such a fund of information, others as well as myself, who attended in Courts, frequently were enabled to argue cases ably and powerfully; the merit, however, being the Serjeant's. Upon thus being consulted, he looked for what he certainly ought to have had—a good fee. A case being laid before him with a fee of one guinea,

[1] Polson's "Law and Lawyers," vol. i. p. 77.

the opinion he wrote, which I saw, was, I think, in these words (keeping the guinea): 'I don't answer such a case as this for one guinea.' Geo. Hill, Lin. Inn.' Adding year and day."

Scott was now Attorney-General, and he says,— "The Serjeant always conversed with me very freely. I met him upon our staircase after the long vacation, and he addressed me thus: 'My dear friend, you will be shocked to hear what a loss I have sustained since I saw you.' I expressed great concern that anything should have happened which he had so much cause to lament. 'Oh!' he said, 'he never had so much cause of grief, or suffered such a calamity.' Before I could express another word, he said: 'I have lost poor dear Mrs. Hill.' And then, pausing for some time, during which I felt greatly and painfully on his account, he at last broke silence, saying: 'I don't know, though, that the loss *was* so great, for she had all her property, Mr. Attorney, to her separate use.' "[1]

Mr. Scott seemed to have been a favourite of old Serjeant Hill. When the young lawyer, in 1773, 1774, and 1775, was taking his commons in London, or, as Mr. Twiss has it, "going through the requisite quarterly solemnities," the Serjeant was esteemed the "Leviathan of legal learning."

The "Anecdote" book furnishes the following sketch: "Very shortly after I had entered Westminster Hall

[1] Twiss's "Life of Lord Eldon," vol. i. p. 301; and see p. 325.

(Scott loquitur) as a student, Serjeant Hill, who was a most learned lawyer, but a very singular man, stopped me in the Hall, and said: 'Pray, young gentleman, do you think herbage and pannage rateable to the Poor's Rate?' I answered, sir, I cannot presume to give any opinion, inexperienced and unlearned as I am, to a person of your great knowledge and high character in the profession. 'Upon my word!' said the Serjeant, 'you are a pretty, sensible young gentleman; I don't often meet with such. If I had asked Mr. Burgess, a young man upon our circuit, he would have told me that I was an old fool. You are an extraordinary, sensible young gentleman.' "[1]

Mrs. Serjeant Hill died, probably, between 1792 and 1797.

A friend called upon the Serjeant to condole with him upon her loss. He found the Serjeant sitting, very sorrowful and disconsolate. At last he said, "So, poor woman, you find she is gone?" "Yes, sir; I merely called to condole with you upon the melancholy occasion." "Aye, she is gone! a very good woman! a great loss to me, certainly, sir! But I'll tell you one thing, Mr. ——; if I should ever be induced to take another wife, I would not marry merely for money."[2]

We have related a similar story in some pages past respecting the loss of the Serjeant's wife. The inci-

[1] Twiss's "Life of Lord Eldon," vol. i. p. 93.
[2] Cradock's "Memoirs," vol. iv. p. 149.

dents are, manifestly distinct. It is quite consistent that the Attorney-General should meet the widower on his staircase, and that a friend should call to condole. The subject was the same, and the lament was toned on the same string.

We have somewhere remarked that Lord Mansfield, whose silver tongue never enunciated the persuasive accents of a sound lawyer, was rather contemptuous. when legal learning was actually presented to his attention.

Serjeant Hill, able amongst the ablest in the deep study of black letter, was a good mark for the accomplished Chief. "I have seen the Serjeant (Henry Hawkins, loquitur) standing up in the Court, immovable as a statue, and looking at no object, and arguing in support of his client's cause; so wrapt up in the workings of his own mind, as seemingly, at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole Court, Lord Mansfield would interrupt him with 'Mr. Serjeant! Mr. Serjeant!' He was rather deaf; the words were repeated without effect. At length, the counsel sitting near him would tell him that his Lordship spoke to him. This roused him. Lord M. would then address him with 'The Court hopes that your cold is better.' "[1]

Anecdotes of a man like this Serjeant, into legal

[1] "Memoirs," &c.—"Lætitia Matilda Hawkins," vol. i. p. 255.

lore "delving low;" forgetful, upon occasion, of external objects; the chambers of whose brain were like the hold of a vast ship about to sail laden with a host of indiscriminate luggage; are, as may be supposed, plentiful.

Mr. Polson confirms Miss Hawkins's story of Lord Mansfield's tendency to a joke when Serjeant Hill began to speak. "There was only one man at the Bar to whom Lord Mansfield did not behave with perfect courtesy, and the temptation to *quiz* him was almost irresistible. This was Serjeant Hill, a very deep, black-letter lawyer, quite ignorant of the world, and so incapable of applying his learning, that he acquired the nick-name of *Serjeant Labyrinth*.[1] Yet his pleadings were clearer than his written opinion, which certainly was an absolute hieroglyphic.[2] He

[1] "Law and Lawyers," vol. i. p. 78. This is a very interesting and amusing book of two volumes, *attributed* to Mr. Polson. Of its general accuracy we are hardly competent to judge; but the following passage is open to criticism. Vol. i. p. 213.

"The custom of raising the Chief Justice of the King's Bench to the Peerage immediately after his appointment has not been of very ancient date, in fact, goes no further than the elevation of Lord Mansfield. Parker, Raymond, and Hardwicke, filled the office sometime before they received the honours of the Peerage. Sir Dudley Ryder was ennobled only on his retirement, and Sir John Holt, the *great* Holt, never received the honour at all."

The author might have added, that Sir John Pratt, the father of Lord Camden, and Sir William Lee, were not Peers.

As far as Parker and Raymond were concerned, the remark is correct, although neither had to wait so long as Lord Tenterden.

But Sir Philip Yorke was made Chief Justice on the 30th of October, 1733, and, on the 7th of November following, he became Lord Hardwicke. The "Law Reports" of Sir Thomas Strange, Master of the Rolls, vol. ii. p. 953. Salmon, Chronological Historian, vol. ii. p. 291.

[2] Cradock's "Memoirs," vol. i. p. 248.

lived, in fact, in an intellectual wilderness. In an argument, which turned entirely upon the meaning of an illiterate woman's will, he cited innumerable cases from the Year books[1] downwards, till Lord Mansfield at last asked, 'Do you think, brother Hill, that though these cases may occupy the attention of old women, *this* old woman ever read them, or that old women can understand them?' "[2]

On another occasion, while arguing a point of law, he was sufficiently absent to put his hand into a bag which he had, and instead of a book he drew out a plated candlestick. Some one had put a traveller's bag by the Serjeant, and the joke was, that he was the last man to detect the mistake.[3]

Another story, told of him by Lord Campbell runs thus:—There was a trial in ejectment, and a deed was offered in evidence, which seemed to be an *indenture*. Parchments of this nature usually appear indented, zig-zag. But this deed was cut through

With respect to Sir Dudley Ryder, he was made Chief Justice on the 2nd of May, 1754, and, on the 25th of May, 1756, he died, whilst his patent of a Baron was being made out.

In regarding these promotions, attention should be paid to the question, whether the Chief had been *Attorney General?* The advancement of Parker was very extraordinary. He was only the Queen's youngest Serjeant. Raymond had been Attorney-General. So was Yorke, and *Ryder for many years*. So was not Pratt, nor Lee. Murray, Kenyon, Law, Denman, had held that office. So had not Abbott. Lord Campbell was a Peer before his appointment.

[1] A collection of old law, contained in eleven folio volumes, very interesting to those conversant with such learning.

[2] Campbell's "Chief Justices," vol. ii. p. 571.

[3] "Law and Lawyers," vol. i. p. 78.

straight. The Serjeant was alive this time. This was not an *indenture*, and, therefore, could not be received. The following is a specimen of his recondite argument:—"There must be two parties to an indenture, therefore there are two parts of it; one to be executed by each party; the counterparts must be written on the same piece of parchment, and then cut in a waving line, so that, as a guard against forgery, they may fit in when applied to each other. The instrument is thus called an *indenture*, because it is *instar dentium*." Lord Mansfield: "Brother Hill, hand me up the deed." The noble Chief Justice applied it to his right eye, and closed the left. Looking for some time along its edge, he pronounced judgment. "I am of opinion that this is not a straight mathematical line, therefore it is *instar dentium*, and comes within your own definition of an *indenture*. Let it be read in evidence."[1]

One more. A hole being broke through a wall, separating the houses of the plaintiff and defendant, a question arose, whether there was sufficient evidence to support an action of trespass? Lord Mansfield made a suggestion. The hole was certainly there, and the defendant had used it; but, possibly, it might have existed there long before. The Serjeant was not wont to esteem the opinions of the Judges too highly, and he answered, "in rather an important manner,"

[1] Campbell's "Chief Justices," vol. ii. p. 571.

"I should like any *real lawyer* to tell me whether there be any authority in the books for such a presumption?" Lord Mansfield: "I rather think, brother Hill, that you will find the point mooted in the case of Pyramus and Thisbe, and, in the report of the case, if I remember right, it is said,—

"Fissus erat tenui rimâ, quam duxerit olim,
Cum fieret, paries domui communis utrique.
Id vitium nulli per sæcula longa notatum." [1]

"When the division wall was built, a chink
Was left, the cement unobserved to shrink,
So slight the cranny, that it still had been
For centuries unclosed, because unseen." [2]

Mr. Scott inserted the following story in his "Anecdote-book:"—"Mr. Serjeant Hill began an argument in the King's Bench, in my hearing, thus: 'My Lord Mansfield and Judges, I beg your pardon.' 'Why, brother Hill, do you ask our pardon?' 'My Lords,' said he, 'I have seventy-eight cases to cite.' 'Seventy-eight cases,' said Lord Mansfield, 'to *cite!* You can never have our pardon, if you cite seventy-eight cases.'

"After the Court had given its decision upon the case (which was against the Serjeant's client), Lord Mansfield said, 'Now, brother Hill, that the judgment is given, you can have no objection on account of your client to tell us your real opinion, and whether

[1] Campbell's "Chief Justices," vol. ii. p. 571.—*Ovidius Metamorphoseon.*

[2] *Ovidius Metamorph.*, translated by Dryden, Pope, Congreve, Addison, and others, p. 99.

you don't think we are right. You know how much we all value your opinion and judgment.' The Serjeant said, 'he very much wished to be excused; but he always thought it his duty to do what the Court desired;' and 'upon my word,' said he, 'I did not think that there were four men in the world who could have given such an ill-founded judgment as you four, my Lords Judges, have pronounced.' "[1]

One anecdote, however, is told of him by the same authority, which savours of rudeness on his part. "When Mr. Hotham was made a Baron of the Exchequer, who never had any business at the Bar, but who, by the effect of great natural good sense and discretion, made a good Judge; he gave, as usual, a dinner at Serjeant's Inn, to the Judges and the Serjeants. Serjeant Hill drank his health thus:—'Mr. Baron *Botham*, I drink your health.' Somebody gently whispered the Serjeant, that the Baron's name was not *Botham*, but *Hotham*. 'Oh!' said the Serjeant aloud, 'I beg your pardon, Mr. Baron Hotham, I beg your pardon for calling you Mr. Baron Botham, but none of us ever heard your name in the profession before this day.'"[2]

However, if the Judges now and then relieved their dull labours with a little pleasantry at his expense, he was in his turn, perhaps not quite with equal *bonhommie*, wont, upon occasions to play, as we have justly shewn, somewhat wittily upon them. "When Judges are about to do an unjust or absurd action," he said,

[1] Twiss's "Life of Lord Eldon," vol. i. p. 93. [2] *Id.* p. 94.

"they seek for a precedent in order to justify their own conduct by the faults of others." This was his answer when a Judge hesitated in ruling a point, and asked his learned brother for a precedent. "But in what he said there was neither affectation nor asperity."[1]

We believe, that there are some amusing notes in his MSS. in Lincoln's Inn Library, which gives great colour to the opinion, that he made his profound legal science the engine for castigating in a gentle way some of the little judicial slips of his day.

It must not be supposed that the Serjeant was less abstracted in company than in Court. "The Under-Sheriff" of Leicestershire, says Mr. Cradock, "a very wealthy solicitor at Leicester, invited many friends of the grand jury, the counsellors in the Circuit, and others, to dine with him, as it was a vacant day; and indeed, he gave us a most sumptuous entertainment. I had the pleasure to meet Serjeant Hill, and Counsellor Newnham, and in their company there was generally no lack of either mirth or conversation. If the counsellor now and then trespassed rather too far at the expense of the worthy Serjeant, the antagonist was always able and ready to retort upon him with keen and just severity. Newnham, however, never gave in; for even when Lord Thurlow has been know to hit him very hard, he scarce ever flinched, but always survived the blow, and returned

[1] "Law Magazine," 1844, p. 333.

again crowing to the pit. We staid rather late; the Serjeant that evening was uncommonly pleasant, and in the fulness of his heart, when he retired, by a little mistake unfortunately gave a shilling to his bountiful host, and to our great amusement shook hands with the attendant servant."[1]

The Author of "Law and Lawyers," gives a different version of this story. "Newnham, a King's Counsel, took great delight in 'shewing up the Serjeant.' He was said to have been, on occasion, more successful than Lord Mansfield. But Hill was sometimes victorious over Newnham, and then it was in great glee, and, in triumph, he gave the shilling, and shook hands, as we have just related."[2] A very amusing and characteristic anecdote is told of him in vacation.

He was at his country seat in Northamptonshire, (in which he had, probably, a life interest through his marriage,) and he was reading an old case. It related to the destruction of noxious animals. Here he was disturbed by the hounds belonging to the Pytchley Hunt. The fox took refuge in his shrubbery. The Serjeant perceived Reynard, and immediately ordered his servants to destroy this "noxious animal." This was not enough. He sent his servant to request the master of the hunt to walk in and read *the report of the case before him.*[3] The surprise of the master of the

[1] Craddock's "Literary and Miscellaneous Memoirs," vol. i. p. 84.
[2] "Law and Lawyers," vol. i. p. 79.
[3] *Id.* vol. i. p. 79.

hounds may be easily conceived by the appearance of a venerable figure, dressed in the fashion of the preceding century; and dispensing the law with "gravity and perfect naïveté." This dissipated the wrath of the hunters, and it is said that they cheerfully partook of the hospitality of the King's ancient Serjeant, then in his eighty-fifth year.[1]

Yet, notwithstanding all the eccentricities attributed to him, there is not wanting authority to affirm that he "repeatedly refused offers of advancement to the Bench; preferring to dedicate his time to study."[2]

This may be so, but he would have been a bold Chancellor who would recommend to His Majesty an absent man for a Judge. So inattentive an observer of external things might well have left the wrong prisoner for execution. He might have passed sentence of death for a common larceny, and ordered a convicted murderer to a confinement of three months in Newgate. The mistake might be almost immediately rectified in the latter case, and such events might never have happened. Still it is not wise to trust great responsibilities to a man whose intellect is apt to sleep betimes. We suspect the truth to be that his reluctance to ascend the Bench was well known, and that if any such instruction was ever made, it must have been intended as a savoury compliment.

Still, this rumour must have obtained extensive

[1] "Law Magazine," 1844, p. 332.
[2] "Law and Lawyers," vol. i. p. 80.

belief. "Uniformly refusing all offers of advancement to the Bench, he spent the last years of his life, during which law and mathematics were his amusements, in full possession of his faculties."[1]

But general literature was the study which enhanced the pleasure of his leisure hours. His opinions on trade, (we had almost said free trade) were highly honourable to him. "It was the assertion of the French, that England's trade was the real cause of her naval superiority, as if this detracted from the merits of our seamen."[2] "The increase of trade," said the Serjeant, "principally depends upon a country's constitution. In this, England has always been superior to all lands, and therefore its trade has increased beyond that of any other nation. As to the constitution, England is a free country, and the subjects have always enjoyed a greater security for the safety of their lives and property, than those of any other country ever did."

"It is a notion of some that the protection of the person of the subject depends upon the Habeas Corpus

[1] "Law Magazine," 1844, p. 335. He was on friendly terms with Charles Yorke.—*Id.*

But Lord Hardwicke's son died in 1770, two years before Mr. Hill was made a Serjeant, and he was only Chancellor for a very brief period; any offer, therefore, could hardly have come through him. But he was also, and *subsequently*, on excellent terms with those able and powerful Judges, Sir Simon Le Blanc, and Sir Soulden Lawrence. *Id.* Men capable of comprehending the Serjeant's erudition. They might have looked favourably upon having him for their ally.

[2] "Law Magazine," 1844, p. 333. Memoir of Serjeant Hill.

Act, but it was always enjoyed before; and all that Act did was to make the obtaining that writ more expeditious. The subject's property was also better secured here, as well as his person by trial by jury; and to this security of personal property is owing the desire of obtaining property and a settlement in this, rather than in any other country. The freedom and protection afforded by England's Constitution is the cause of England's superior and extensive trade; and those countries that envy the English, ought to consider how beneficial to mankind are the means by which the English have obtained their superiority in trade; and if they desire to attain to the same, ought to assimilate their arbitrary Governments to the English Constitution, based upon this maxim, '*Sit utere tuo ut alienos non lædas;*' and if the situation of the country would admit of it, the same acquisitions would be the consequence. Such then are the causes of the English superiority in trade, and the consequence of it is a superior military navy; for trade is the nursery of seamen and of the navy."

Whatever his labours might have been, whatever his absence of mind, favourable to longevity it might have been, either his constitution, or easy temperament prolonged his existence to extreme old age.

In March, 1808, Mr. Serjeant Hill died at his house in Bedford Square, at the age of ninety-two.[1]

[1] "European Magazine," 1808, vol. i. p. 233.

"He survived to my time," says Campbell, "and although he had ceased to go into Court, I have seen him walking up and down in Westminster Hall, wearing a great shovel-hat, attached to his head with a silk handkerchief tied round his chin."[1]

It is stated, moreover, that he was frequently consulted by the Judges after he had retired from practice.[2]

At the advanced age of eighty-eight he had conceived an abhorrence, truly English, of an attempt to assassinate Buonaparte. Some such rumour was afloat, and he deemed it his duty to write a letter to the Chancellor respecting it.

We have thought it worth transcribing.

"My Lord,—

"There ought to be an immediate inquiry made by authority, whether any of the King's subjects, or any aliens resident here, have been concerned in the assassination plot; and also an offer made to the French Government to permit them to send over any they please, or direct any other mode of inquiry that this Government can pursue, in order to satisfy them

[1] "Chief Justices," vol. ii. p. 572, n.

[2] "Law and Lawyers," vol. i. p. 83. His opinion was asked by Nichols, "Whether Dunning was as learned as Glyn?" "No!" was the answer. "Everything which Dunning knows, he knows accurately; but Glyn knows a great deal more."

Glyn was reputed the best read lawyer in Westminster Hall.—See *Id.* vol. i. p. 188.

that the English have, in the utmost detestation, any such attempt; and if any of the French here shall be discovered to have been guilty, to send them over immediately; and if any of the English should, to commit them (if not of the lowest class), and prosecute them by law, and, in so extraordinary a case, to procure an *ex post facto* law, if necessary :—for this assertion, I submit to your Lordships the following reasons, viz. :—

"There are *jura belli*, and assassination is a violation of those rights; but it is impossible for any administration to be responsible for the conduct of all who live under it, all they can do is to signify their detestation of so infamous a practice, as Lord Nelson did in the House of Lords—to do all they can in their power to punish it, in imitation of the Roman Consul, to whom an offer was made by one of King Pyrrhus's subjects to poison that dangerous enemy; the Consul sent the traitor to the King with an account of the offer. Likewise a Grecian Government rejected an offer, which, if accepted, would have delivered them from a dangerous foe, merely because Aristides informed them, though it would be effectual, it would be unjust, and they would not so much as receive the communication of what the offer was.

"There are some laws universally received by all civilized nations, and among those there are some that are considered of force, even between nations in open hostility. The assassination of princes, or other rulers,

by those who live under their protection, and, as such, have access to their persons, is so execrable that the encouragers of it are, by the general law of all civilized nations, considered as common enemies to all mankind. And in so clear a case as that the law of nations is part of the law of this country, and so declared by Lord Hardwicke and Lord Mansfield in a case not more atrocious than the present; 3 Burr. 1481, and 4 Burr. 2016; and in the preamble of the Stat. 7 Anne, c. 12, it is recited, that the several actions then depending against the Ambassador of Peter the Great were contrary to the law of nations, and that is mentioned amongst the reasons for enacting that they should be vacated and cancelled, and yet there was no municipal law prior to that statute by which they were void; this Act of Parliament was necessary for preventing war with this great emperor. The present case is more atrocious, and the mischief more extensive, and the consequences more dangerous than that of a war, even with so great a power as that of Russia, for it is necessary to prevent the nation being devoted to destruction by all who might deem them guilty of so foul an act, if they acquiesced under the charge without any vindication. There are many maxims of law; but there is one sovereign, 'Salus populi suprema lex esto.' This maxim is recognised by the Law of the Twelve Tables—Cicero de Legibus, lib. 3, sec. 3—which were derived from the Grecians, and, as far as can be traced, is coeval with human society, therefore

so clear a case as the present cannot want the aid of precedents; but if it did, the above opinions and Act of Parliament are sufficient for all that is contended for, because in this particular instance an *ex post facto* law is, for the reasons alleged, more reasonable than in that above-mentioned, or than the *ex post facto* law for banishing Atterbury, Bishop of Rochester, or than several other *ex post facto* laws."

Probably he was the oldest Circuiteer. He had been a Serjeant for thirty-six years. Romilly found him on the Midland Circuit in the spring of 1784.[1]

The Serjeant was buried in the family vault at Rothwell, and the following epitaph by the late Dr. Bennett, Bishop of Cloyne, is on a marble slab in the church.

"Sacred to the Memory of George Hill, Esq.,
Lord of this Manor and Hundred, and for thirty-five years
His Majesty's Ancient Serjeant-at-Law.[2]

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[1] Serjeant Wilson tells us of a brother very little known to fame, Serjeant Belfield, who went the Western Circuit above sixty times, thirty years, "as I have heard." This lawyer was overturned in his carriage, and died.

The author remembers mentioning this circumstance to Sir James Burrough on the Western Circuit—the Judge's own circuit. Upon which he replied, in his rather rough, but friendly voice, "So have I." Sir James lived in Bedford Square, and he had a country place at Laverstoke, near Salisbury, where his hospitalities were abundant, and well worth the remembrance.

This Judge was promoted late in life, and held his place till the infirmities of years compelled his retirement.

Baron Graham, a tall, north countryman, often to be seen taking his morning walk at seven, used to say, when he had retired, that he always thought the press was pointing at *him*, and giving hints about an ancient Judge. "But now I see it *must* have been my brother Burrough," said the Baron, good-humouredly.

[2] He was a King's Serjeant for about that period, but not so long an Ancient Serjeant.

His superior knowledge, founded on
Tully, and the best ancient Moralists,
Confirmed by the Study of our first
Professional writers, and arranged
In a Memory uncommonly clear,
Stamped his legal opinions with the
Highest Authority, while a Simplicity
Of Manner peculiarly his own,
Made him, in habits, in principles,
And in virtues, so different from the
Fleeting fashions of the day, as
To command respect from all who knew him.
He died Feb^ry 21st, 1808, aged 92."[1]

"He was," according to Romilly, "a lawyer of very profound and extensive learning, but with a very small portion of judgment, and without the faculty of making his great knowledge useful. He seemed to be of the order of lawyers in Lord Coke's time, and he was the last of that race. For modern law he had supreme contempt; and I have heard him observe, that the greatest service that could be rendered the country would be to repeal all the statutes, and burn all the reports which were of a later date than the Revolution."[2]

But he was given to literature and science, so that Sanderson, the blind Professor, would declare, that if "Hill would devote himself to mathematics, he would be the greatest mathematician of the age."[3]

And justice must be done to his domestic virtues.

He was amiable, and universally beloved. He was

[1] From the "Law Magazine," 1844, p. 336.
[2] "Memoirs," vol. i. p. 72.
[3] "Law and Lawyers," vol. i. p. 83.

upright, and his integrity unimpeached.[1] And he was manly withal. He was counsel for the defendant, when he espied the plaintiff in the cause sitting next to the Judge. He immediately rose, and declared, he would not proceed whilst the "indecent spectacle" continued.[2]

His library was magnificent, and, probably, for the most part, left to Lincoln's Inn.[3]

Of conveyancing he was very fond. He used to call "Sir Orlando Bridgman" (the Lord Keeper) the father of conveyancers.[4]

Amongst the Hargrave MSS. in the British Museum an opinion of Serjeant Hill will be found relating to the case of Embargoes in 1777.[5]

He had, likewise, possessed himself of the MS. of Sir James Burrow's "Law Reports," whether by purchase, we are not informed.[6]

His property, in early days, was not considerable.

"I knew him well," says Cradock, "through a great part of my life. He had but a small estate, originally at Rothwell, in Northamptonshire; but he greatly increased it. There was a time, perhaps, when a few thousands, obtained by a marriage, might be very acceptable to him; but some delicacy might have been preserved in the expression of his gratitude."[7]

[1] "Law and Lawyers," vol. i. p. 80. [2] *Id.* p. 132.
[3] *Id.* p. 80. [4] *Id.* vol. ii. p. 59. [5] No. 391, 4.
[6] Advertisement to the 5th edition.
[7] Cradock's "Memoirs," vol. iv. p. 149. Mr. Cradock then goes on to relate the story of the death of Mrs. Serjeant Hill, which we have already given.

"The Berrystead, in the village of Cottingham," say the local historians of Northamptonshire, "is in the possession of Thomas Medlycott, Esq., by his father's late purchase from Mrs. Dove."

"At Collingham, at the end of the north aisle of the church, is a place of sepulture belonging to Mr. Medlycott."[1]

He had by his wife, Miss Medlycott, two daughters. One was married to Mr. Maunsell, of Northamptonshire. The other, Barbara, married William Cockayne, Esq., second son of Viscount Cullen. The former died before the Serjeant, leaving only one child, a daughter. Mrs. Cockayne, with ten daughters, was living in 1808.

His brother, a clergyman, had one daughter. By her first husband she had no children. She then married the Rev. G. Savage, Vicar of Kingston-upon-Thames, and Rector of St. Mary, Aldermary. She was living in 1808.[2]

We must not say more as to the habits of this old brother of the coif. But we will add these brief sentences.

As to his absence of mind, any one who might suppose that he merely forgot the present upon occasion, and then awoke to a return of his memory, would treat this dreamy state as an ordinary instance of infirmity. That was not so. He was buried in the

[1] "Northamptonshire," by Bridges and Whalley, vol. ii. p. 298.
[2] "Gentleman's Magazine," 1808, p. 273.

most profound meditation, having an object in view, which he was working out with the most correct principles of legal learning, and was highly satisfied when he had unravelled the last skein of the tangled web. He found his case. He was content. Yet, with facts not encumbered with much complication, no man could deal more readily than George Hill.

JAMES ADAIR.

Serjeant-at-Law, 1774—King's Serjeant, 1782—Chief Justice of Chester.

SERJEANT ADAIR has no considerable reputation as a great scholar, although he was educated at Cambridge; nor as a writer of the first degree, although he published political and legal tracts. But he was an independent member of the Legislature, a sincere friend to liberty, a formidable adversary to the bigoted tories of his day; for many years a firm friend of Fox, a lawyer of erudition, and practical power in his profession. As a Serjeant, likewise, he was very eminent.

James Adair was born in London. He was the son of an army agent,[1] who was of the ancient Scotch family of Adair. "This family, being of the Geraldines[2] emigrated from Ireland *circa* 1300: acquired Portpatrick, which they subsequently sold to the Montgomeries, but remained seised of large possessions in Galloway till near the close of the seventeenth century. They had previously acquired con-

[1] James Adair, Esq., who died June 8, 1782; "Gentleman's Magazine," 1782, p. 310. In 1772, October 16, another James Adair, Esq., died in Portland Place.—"Gentleman's Magazine," 1772, p. 496.

[2] "E Geraldiniis oriunda."

siderable property in Antrim, to which they eventually betook themselves. Sir Robert Shafto Adair, Bart., of Ballymena, Antrim, and Flixton Hall, Suffolk, is the head of the family."[1] James Adair was "returned the only surviving child and heir male to his grandfather in the estate of Corgie, Wigtonshire, on the 13th of February, 1792.[2]

James Adair was entered at Peterhouse, Cambridge, and took his degrees thus: B.A. 1764, M.A. 1767. He became a Fellow of his College.[3] Some time afterwards he was called to the Bar by the Society of Lincoln's Inn.

Mr. Adair was early in the field as a politician. In 1769, at a meeting of the Middlesex freeholders to instruct Wilkes and Glyn, their representatives, he moved the resolutions concerning the tumult in St. George's Fields, the Riot at Brentford, and the Commission of the Peace.[4]

He took his part likewise in the American War of Independence. Hence, he was naturally found on the side of liberty, and in hostility to war. He moved an important amendment to Lord North's Bills for appointing Commissioners, that the Committee, and not the House, should have the power of nominating the Commissioners. This would be no infringement on the prerogative of the Crown, whilst it would avoid a

[1] MS. He died at Flixton Hall, February 24, 1869, aged eighty-three.
[2] MS. [3] "Gradti. Cantabr.," curâ "Romilly," p. 2.
[4] "Annual Register," 1769, p. 67.

dangerous extension of that powerful engine. The nation, however, was infatuated. Their folly bred and nurtured the virtues and valour of the unknown Washington. Upon this particular motion, such hopeless submission appeared as to deter the opposition from calling for a division, or the ministers from taking any share in the debate.[1] So entranced was the House, that when Lord North had finished his speech of two hours in explaining his bills: "a dull, melancholy silence for some time succeeded.[2]

Adair had much to do with the quarrels between the messengers of the Crown and the Parliament. There seemed to be no reasonable issue except the fruits of heavy damages. Adair had to urge the reverse of the customary prayer of an advocate, a *noli prosequi*. He was against the *nol. pros.* in the following instance:[3]— Whittams, the defendant was a messenger of the House of Commons, against whom an indictment had been found. The prosecutor had no means in this instance of carrying on the case without the aid of the Crown. At all events, the defendant having no counsel, the Attorney-General interfered, and, it being in effect his prosecution, he directed a summons to be served on the prosecutor, warning him that the fatal *nol. pros.* was imminent. Adair attended and remonstrated warmly

[1] "Annual Register," 1778, p. 126. [2] *Id.* p. 133.

[3] A *Noli Prosequi*. "I will prosecute no farther," is in criminal cases what a *Stet Processus* is in civil. Proceedings being taken, and the case ripe for trial, or for judgment, the Crown declares its will. *Nol. Pros.*—We give up the prosecution.

against this exercise of the prerogative, which Lord Holt had condemned as of modern date. It was a denial of justice, for the defendant had no authority to execute the Speaker's warrant.

The ATTORNEY-GENERAL: "I cannot interpose for the Crown to prosecute a messenger of the House of Commons. It was not fit or decent for the name of the Crown to be used in this manner."

Mr. ADAIR: "If the King withdraw, it will operate as a pardon, and so a real injury will befal the prosecutor." The Attorney-General, however, reiterated his principle, and the entry was made.[1]

On the 28th of April, 1774, Adair was made a Serjeant-at-Law.

The Liberal Member (if we may so call him,) now took part in a very important debate concerning the King's introduction of electoral troops into Great Britain without the consent of Parliament. This resolution being moved, the Serjeant spoke strongly to the matter of law, and claimed the Bill of Rights as a statute militating directly against the measure in letter, spirit, and legal construction. The Crown lawyers were, of course, on the other side. An Indemnity Bill was then brought in, stating that doubts had been entertained on the subject: and as the Government were quite safe, Lord North concluded the discussion, with his usual pleasantry. The gentlemen on one side, said the minister, were positive

[1] "Annual Register," 1771, p. 106.

for the legality, others, on the other, as positive for the illegality. He (Lord North) thought there could be no impropriety in stating the law to be doubtful.[1]

The City of London remained, as in our day, attached to the liberal creed. . . . . No sooner had Glyn, their Recorder, sunk under his severe illness, than the Aldermen were invited, on the part of Serjeant Adair, to recognize his services. The election quickly took place. On the 12th of October (Serjeant Glyn having died in September,) the Aldermen met. Mr. Alderman Lee alone was absent. Mr. Howarth, the eminent King's Counsel, who was drowned in the height of his practice, was the opponent. The numbers were: for Adair, 13; Howarth, 12; so that, like his predecessor, he gained the office by a majority of one.[2] Upon the death of Glyn, the Court of Common Council reduced the salary to £600 per annum, but this seems to have been reconsidered, since it was stated by a contemporary writer that, notwithstanding the material lessening of his profits by reason of his seat in the House, he would still enjoy £1,200 a year from the city alone.[3]

In 1780 he was returned for Cockermouth, and afterwards sat for Higham Ferrers.[4] In this year, the famous petitions and associations for the redress of

[1] "Gentleman's Magazine," 1775, pp. 555, 561.—*Id.* 1776, p. 184.

[2] "Annual Register," 1779, p. 229.

[3] "Gentleman's Magazine," 1779, p. 520.—"Annual Register," 1779, p. 229.

[4] Pedigree of Sir Robert Shafto Adair, Chalmers's "Biog. Dict.," vol. i. p. 122.

grievances commenced. "The great, populous, and opulent County of York led the way," and sixty-one gentlemen were named on the Committee.[1] The grievances were an expensive and unfortunate war; a confederacy between the newly liberated colonies and our most inveterate enemies; a large addition to the debt; accumulated taxes; rapid decline of the trade and manufactures of the kingdom; sinecure places; the unconstitutional influence of the Crown. The redress required was a correction of the gross abuses in the public expenditure, and, until that reform should take place, the petitioners insisted, that no further sum beyond the produce of the present taxation should be granted.[2] Middlesex followed York, then Chester, to which succeeded a large accession of counties.[3] These petitions gave rise to long and serious debates. They were well supported by various propositions in the Commons. The first blow was upon the discussion of Mr. Burke's Bill for the abolition of the Board of Trade. The division was called for at two in the morning, when the Ministers were defeated by a majority of eight; 207 to 199. Burke, however, was not afterwards so successful, and means were found to effect the continuance of the Board of Trade. . . . . .

The petitioners, however, had still a considerable standing in the House. The Recorder came quite up to the mark. On the 9th of May he moved a re-

[1] "Annual Register," 1780, p. 85. [2] *Id.* p. 86. [3] *Id.* p. 87.

solution, in substance, that no further sums of money should be granted until the grievances stated in the petition should be redressed. It was quite in vain, it was "*rapidis ludibria ventis.*" When his able and elaborate speech was concluded, the Court party clamoured so incessantly for a division, that the Minister was not suffered to reply. The minority, however, who had previously received the thanks of the country, amounted to the respectable number of 54 against 89.[1] Mr. Adair had previously during the Session, threatened the old idle menace of stopping the supplies, because our relations with foreign powers had not been satisfactorily explained on the first day of the Session.[2] Later in this parliamentary year, he supported Fox's motion upon the subject of sending troops and ships to America, and he took part in the discussion upon the conciliatory bills which were brought in to appease the angry feeling which still existed between the mother country and her emancipated colonists.[3]

When Mr. Pitt and his party came into office, the coalition of North and Fox being overthrown, the City, in general so strongly bigoted to Liberal opinions, surrendered to the popularity of the great statesman. Nevertheless, the Serjeant yielded his allegiance at that time to a new Club called the Whig Club; yet in his office he was irreproachable, although his professional engagements and the pressure of the City business had

[1] "Annual Register," 1780, p. 189.
[2] "Gentleman's Magazine," vol. xlviii. p. 6.
[3] *Ibid.* pp. 200, 675.

great weight in at last severing him from the Corporation, so that in 1789 he resigned with the usual compliments of thanks, but likewise with the honour of the freedom of the City in a gold box of the value of 100 guineas, "for his able and upright conduct." He was, moreover, ordered to be retained, with the Attorney and Solicitor-General, in all causes in which the City was concerned.[1]

In October, 1794, Serjeant Adair was amongst the numerous counsel for the prosecution against Thomas Hardy for high treason,[2] and again, in the case of Horne Tooke,[3] but he does not appear to have taken a leading part upon these great occasions. The verdicts were, it needs not be said, not guilty.

He was, likewise, so disgusted with the Revolutionary principles which were so strongly propounded at the end of the century, that he withdrew from his connection with the Whig Club. But he retained his private friendship for Fox, and zealously promoted the subscription set on foot, to purchase an annuity for the eminent orator.[4]

It is at once interesting and instructive to remark upon the slender grounds which were laid hold of to found charges of a crime not less than high treason. It is dangerous to act upon any other than certain proofs of guilt, for the mob, with scarcely an excep-

[1] Chalmers's "Biog. Dict.," vol. i. p. 122.
[2] "State Trials," vol. xxiv. p. 687.
[3] *Id.* vol. xxv. p. 2.
[4] Chalmers's "Biog. Dict.," vol. i. p. 122.

tion, will ever take the part of the rebellious and unruly; and it is to be lamented, that the Judges of the reign of George the Third, with some splendid exceptions, were not fast friends to constitutional liberty. In January, 1796, Mr. Stone was arraigned in the Court of King's Bench for high treason, and Serjeant Adair was his counsel. He had suffered the loss of his liberty for two years. The real facts were these: Jackson, the clergyman, who poisoned himself in Ireland, on the day before his execution, came from France by way of Hull, as an American merchant. He produced letters of recommendation from J. H. Stone, the prisoner's brother, settled at Paris, to the prisoner. The latter showed him some civilities in London, and advanced him some money on his brother's account. While Jackson was in Ireland, Stone, the prisoner, gave him some statements of the internal condition of the kingdom. This was absolutely the overt act upon which the prosecution relied. That this information was given traitorously was the question. The witnesses for the Crown called Mr. Stone a weak enthusiast, who wanted to bring about a peace for the sake of favouring principles of freedom. But it turned out that the prisoner had discouraged any attempt at invasion. The intelligence sent to Jackson would lead to the same conclusion, according to the argument of his counsel. Adair suggested that the news sent to Ireland was disheartening. "If the motive for causing an invasion was criminal, how could

the motive for preventing an invasion be criminal also?" The worst feature in the case was the correspondence in fictitious names,[1] and the Attorney-General insisted, that, even by forewarning the French Government, the prisoner had shown himself an enemy to England. The Serjeant relied upon the absence of secrecy in the correspondence, and called witnesses to prove Mr. Stone's loyalty.[2] Lord Kenyon summed up against him, as might be expected, but Lawrence, J., made an unusual addition to the charge to the jury. He put it to them whether the information sent through Jackson to France (*which was got through Stone*) had for its object a design of serving the French, or preventing an invasion. The jury took three hours to consider, and then pronounced the prisoner not guilty. Too hasty a decision on their part might have enraged the Government against them. An instantaneous and unanimous shout arose in the Court, and the crowd in the hall swelled the chorus. A gentleman was caught in the shout and fined £20, and his cheque being refused, he was taken into custody.[3]

In 1796 the Serjeant was a fellow labourer with Wilberforce in many of his benevolent and liberal

[1] By transposition, as Enos for Stone, &c.

[2] His very able speech will be found at length in the "State Trials," vol. xxv. p. 1320.

[3] "Annual Register," 1796, p. 109 *; "State Trials," vol. xxv. p. 1155. Serjeant Adair was also counsel for Mr. Sayre with Glyn and others.—"Annual Register," 1775, p 242.

undertakings. His sons record in their life of him a striking trait of feeling towards Adair. "Politics," said the great emancipator of slaves, "are said to harden the heart. In this instance it seems not. Serjeant Adair's speech [on the Slave Trade] I like the best of all; comprehensive, strong, clear."[1]

Wilberforce continues in his Diary:—

"1796, March.—Saw Adair about Quakers' business. He, at length to move, and I to second." The bill was to substitute the summary recovery of tithes for the vexatious proceedings then in force against the friends, and to empower them to make an affirmation in civil and criminal cases. The former portion of the bill was passed on May 10." "March 25.—Got Adair to put off his motion." But on March 26 the Serjeant brought his bill before the House,[2] which, as we have just said, was partially successful.

This eminent lawyer did not attain to the Bench in Westminster Hall, although he had the pleasure of seeing his son-in-law, Judge Wilson, in the Common Pleas. There were then, as in our day, party propensities in bestowing the higher appointments, but on the other hand, the rank of the highest Welsh Judge was esteemed for a very considerable time a safer appointment, because, even as lately as the days of George the Second, a burst of Court displeasure might end in the displacement of a Judge. Besides this, it was a very honourable promotion to become

[1] "Wilberforce's Life," by his sons, vol. ii. p. 141. [2] *Id.* p. 246.

Chief Justice of Chester. Bearcroft, the well-known King's Counsel, was his predecessor.[1] Adair had now become estranged from Fox, whose tendencies to the French Revolution were well known to his party. This dissociation showed itself upon Sheridan's motion to repeal the Habeas Corpus Suspension Act. Sheridan was powerfully supported by Erskine, but both were severely visited by the speech of Mr. Serjeant Adair, at once critical and argumentative. He said, that the suspension objected to had only been complained of as to a single clause of the Act, that the verdicts of juries ought never to be investigated, even by Parliament; that if this were so, there would be no security against packed juries, corrupt Judges, or oppressive ministers. The motion was lost by a majority of 144.[2]

His shrewdness on the Bench as Recorder was shewn in the famous case of an attempt to murder Miss Boydell by Dr. Eliot. Insanity was the defence. To support it, Dr. Symonds said, that he had received a letter from the prisoner: "the purport of which was a philosophical hypothesis, that the sun was not specifically a ball of fire, but that his heat proceeded from the quality of the atmosphere surrounding his body." The Recorder, upon this asked the Doctor, whether, "if he judged of his intellect merely from a

[1] Ormerod's "Cheshire," vol. i. p. 60.

[2] "Annual Register," 1795, p. 157. Some notes of the Serjeant's political life will be found in Lord Colchester's "Diary" [Index, *Adair*]. (Charles Abbot, Speaker of the House of Commons Lord Colchester). There is, however, little if any thing new there with respect to the Serjeant.

vague supposition as to the nature of the sun's heat; he might not equally declare Buffon, and many other philosophers, to be mad."[1]

The Serjeant was in a remarkable cause very shortly before his death. Silver opera tickets admitted to the theatre, and were transferable. The plaintiff had one, but was refused admission. No fault was found with the ticket, nor as to the right to transfer. The defence was, that the plaintiff was notoriously known as an exceptional character, unfit to enter with such a pass under any pretext. The lady underwent a most searching cross-examination from the Serjeant. She made various damaging admissions, and at length, pressed too closely, appealed to the Judge, who quietly told her she need not criminate herself. The action was brought against Mr. Taylor, the proprietor of the Opera house. After a masterly address from the Serjeant, the Chief Justice (Eyre), said: that he had heard the case with indignation, and with patience lest, (much against his feelings and opinions), there might appear the smallest claim to a verdict, but there was not a single ground to support so disgraceful a case. So the jury found for the defendant.[2]

It is well known that the volunteer service was extensively tendered to Government in 1798, when threats of invasion were believed to be at hand.

[1] Burke's "Romance of the Forum," p. 129. Dr. Eliot had a narrow escape, for it turned out that the pistols were not loaded with ball.—*Ibid.*

[2] "Annual Register," 1798, p. 16.*

London and its environs raised a force of 12,000 men, armed, equipped and trained at their own expense. The Serjeant, notwithstanding his age, joined the "patriot band," and it is surmised, that he fell a sacrifice to the fatigue attendant on the discipline. For on the day when his corps returned from shooting at a target, he received the fatal stroke.[1]

On the 21st of July, in this year (1798), he died at his house in Lincoln's Inn Fields, being then Member for Higham Ferrers. His decease, was, as might be supposed, quite unexpected. Whilst walking along Lincoln's Inn, he was seized with paralysis. Being assisted home, he died in a few hours.[2] He was buried in Bunhill Fields, on the 27th, near his father and mother.[3]

"This gentleman," says a contemporary writer, "was equally distinguished for great eminence in his profession, and in his political capacity for a warm attachment to the principles of the Constitution. Until the great schism of opposition in 1796, Mr. Adair was the most zealous and most intimate of Mr. Fox's political and personal friends; and although, when that gentleman declared his decided and enthusiastic admiration of the destructive principles and proceedings of the French Revolutionists,

[1] Chalmers's "Biog. Dict.," vol. i. p. 123.
[2] "Annual Register," 1798, p. 63.
[3] Pedigree of Sir Robert Shafto Adair, Bart.—Chalmers's "Biog. Dict.," vol. i. p. 123.

the steady good sense and sober patriotism of Mr. Adair, would no longer permit him to adhere to his party; he did not become the passive instrument of the ministry, but on every occasion in which he could not conscientiously approve of their measures, he warmly and eloquently opposed them. The talents of Mr. Adair were not of a dazzling and overpowering nature, but he possessed a solid judgment, was a cool and accurate reasoner, with the highest rectitude of principles, and a profound knowledge of the laws of his country. A frank and impressive speaker in the House, and a powerful and weighty advocate at the Bar."[1]

Chalmers relates that his "eloquence was vigorous and impressive, but his voice was harsh, and his manners uncourteous."[2]

The Author of some anecdotes published in 1797, after speaking of the Serjeant's regard for the Constitution, and praising his political speeches, observes: "But this is not the best part of his character. He is an able lawyer and an honest man."[3] Of his family we know but little.

Margaret, his daughter, married Thomas Bernard, Esq., of Lincoln's Inn, on the 11th of May, 1782.[4]

Another daughter married on the 7th of April, 1788,

[1] "Annual Register," 1798, p. 75 *. [2] "Biog. Dict.," vol. i. p. 123.
[3] "Anecdotes," Biographical, Literary, and Political, Longman and Seeley, 1797; vol. i. p. 91.
[4] "Gentleman's Magazine," 1782, p. 261.

Sir John Wilson, a Judge of the Common Pleas.[1] Sir John had known her from her early youth.[2] He had by her Captain Wilson of the How, Windermere, and two daughters.[3] Dame Wilson, afterwards became the wife of Admiral Sir John Colpoys, G.C.B.[4] Sir John was a Westmoreland man, and had the merit of being the first senior wrangler of his county. He belonged to the Northern Circuit, and, upon the dismissal of Lord Thurlow, was a Commissioner of the Great Seal. He died in 1793, of paralysis of long standing, and was buried at Kendal.[5] The arms of the Serjeant were: Azure, three saltiers, or.

Serjeant Adair, wrote amongst other things:—"Thoughts on the dismission of Officers, Civil and Military, for their conduct in Parliament." "Observations on the Power of Alienation in the Crown, before the first of Queen Anne, &c., together with some remarks on the conduct of administration respecting the case of the Duke of Portland."[6]

[1] "Gentleman's Magazine," 1788, p. 365.—"Annual Register," 1788, p. 227.
[2] "Gentleman's Magazine," 1793, p. 965.
[3] Atkinson's "Worthies of Westmoreland," vol. ii. p. 167.
[4] Burke's "Commoners," vol. iii. p. 659.
[5] Atkinson, as above, p. 168.—"Annual Register," 1793, p. 62.*
[6] "Annual Register," 1798, p. 71.*—Chalmers's "Biog. Dict.," vol. . p. 123.

GEORGE BOND.

Serjeant-at-Law, 1786—King's Serjeant, 1795.

GEORGE BOND was born in 1750; the second son of George Bond, Esq., of Farnham, Surrey, by a daughter of Sir Thomas Chitty, Knt. The marriage took place in March, 1749. His father, who was brother to Captain Bond, of the Royal Admiral East Indiaman, died in May, 1792,[1] consequently, only three days before his son.

He was of the Middle Temple.

He was made a Serjeant on the 27th of May, 1786.

In June, 1792, Serjeant Bond appeared for the defendant, in a case where damages were sought to be recovered for an assault upon the plaintiff. The wife of the defendant was likewise implicated. She was a celebrated operatrix on the teeth, and her husband lived at Enfield, and owned some fields in the neighbourhood. Through one of those fields there was a common foot-path, and Maden, the defendant, thought fit to stop it up with bushes. Upon this the plaintiff pulled them down, but not without being observed by the defendant and his wife. Maden then

[1] "Gentlemen's Magazine," 1796, vol. lxvi., pt. I., p. 262.

struck the plaintiff several severe blows with a large stick, which prostrated him. The wife came forward and pulled the plaintiff's hair, and tore his face while he was on the ground. Serjeant Bond, in his usual humorous style declared, that every drunken fellow in the parish, growing independent as he became drunk, went about pulling down gates, and filling up ditches, and all under pretence of reforming evils and mischiefs. Then, said the Serjeant, the reformers proceeded to rob the orchards and gardens.

The case was finished, and the jury were about to award compensation for these injuries, (£30 and costs) when one of the jury fell into a fit. Serjeant Marshall for the plaintiff, begged that the Court would wait to see whether the juryman would recover, or swear in another juror who had heard the cause tried, or discharge the jury, and call another. Bond was shrewd enough to understand his advantage. "There was too much humanity in his breast to permit the unfortunate gentleman to serve again that day." And he then dryly remarked, that as a juror had been already withdrawn, that was the best verdict they could have in this case. Lord Loughborough said, he must discharge the jury unless the parties could agree. The Chief Justice added, that he had done the same thing upon a trial for felony. A juryman was "dead drunk," and fell down in a fit. Upon this his Lordship fined the offender, and discharged the jury, and, upon con-

sideration, it was held, that his conduct was fully warranted.[1]

Serjeant Bond had great influence over a jury. A close comparison in this respect was made between him and Cockell, of the Northern Circuit. As we have said, he was on the Home Circuit, and many a foreman has been known to give the verdict,—"We finds for Serjeant Bond, *and costs*."[2]

It is well known that Parliamentary reform was very much canvassed and advocated in 1792. An association was formed, called "The Friends of the People." Their objects were to restore the freedom of election, and a more equal representation in Parliament, and to secure to the people a more frequent exercise of their right of electing their representatives. In this list, which contains, amongst others, the name of Lord John Russell, will be found that of "Mr. Serjeant Bond."[3]

In April, 1793, he married Miss Cooke, of Conduit Street, whose grandfather was, for many years, a prothonotary of the Court of Common Pleas. She is said to have been an affectionate wife, and to have tended him carefully in his sickness. "Her early

[1] "Annual Register," 1792, vol. 34, p. 21.

[2] "Law and Lawyers," vol. i. p. 207. Precisely the same incident is mentioned as having happened to "John Jones, of Ystrad," Carmarthenshire, an eminent Welsh lawyer, sometime Chairman of the Quarter Sessions there, and M.P. for that County. He was the ward and the pupil of Mr. Serjeant Williams.—MS.

[3] "Annual Register," 1792, p. 34.

widowhood," says a contemporary, with two young children, and the "melancholy prospect of a posthumous one, is an additional subject of regret to all who are acquainted with her."[1]

In the early part of 1798, Serjeant Bond was made a King's Serjeant.[2]

Mr. Serjeant Bond died at his house in Lincoln's Inn Fields, on the 19th of March, 1796, of rheumatic fever. He is said to have been learned in his profession, and honourable in his advocacy. His business was equal to that of most of his brethren of the coif, and superior to many. His mode of address to a jury was rather homely, but he had knowledge, a correct judgment, and great good humour. Had he lived to obtain a seat on the Bench, it is prophesied of him, that he would have been an able, upright, and independent Judge. In private life he was amiable, and long affectionately remembered, but he died early, "in the successful pursuit of wealth and honour."[3] His age was about forty-six.

[1] "Gentleman's Magazine," 1796, pt. i. p. 262.

[2] And Nathaniel Bond was made a King's Counsel at the same time.

[3] "Gentleman's Magazine," pt. i. p. 261.—"European Magazine," 1796, p. 215.

JOHN WILLIAMS.

Serjeant-at-Law, 1794—King's Serjeant, 1804.

[In writing this life, the Author has the pleasure to acknowledge the use of some valuable memoranda from The Right Honourable Sir Edward Vaughan Williams, Knt., late one of the Judges of the Court of Common Pleas.]

We are not writing a history of literary or book making Serjeants. Many who have been learned brethren of the coif, and hard compilers of legal lore, will not be found in this selection. Whilst, on the other hand, some not particularly distinguished by success in Court, nor by deep legal attainments, are offered by reason of the combination of a love of letters with an acknowledged rank in the profession. Still, had John Williams been merely the annotator of "Saunders's Reports," the great merit of his novel undertaking would have made it difficult to shut him out. If he had gained no higher distinction than the leadership of the Oxford Circuit, his claims would have been less, for there have been other clever chiefs of that, as of every other Circuit. But when you come to combine the leadership of the mess at that large gathering of lawyers, with the science which infused such a mass of modern learning into a book in

itself the perfection of ancient legal science, the recognition of John Williams as one of our eminent Serjeants, will, we hope, be met by a welcome.

He was descended from a respectable family of Carmarthenshire. The place of his birth was Job's Well, near Carmarthen, and the time, 12th September, 1757.[1]

It is curious to reflect upon the early memories of children. It would be an interesting, and, perhaps, not useless amusement to collect them. Dr. Johnson was supposed to have the scrofula, and came to London to be touched by Queen Anne. This was at a very early age. He was asked if he could remember her. "He had," he said, "a confused, but somehow a sort of solemn recollection of a lady in diamonds, and a long, black hood."[2]

The Countess Brownlow relates, that she remembers the year after the mutiny in the fleet (1798), when she saw a procession of boats rowing, and was told that they were flogging some mutineers round the ship in Plymouth Sound.[3]

Williams has told that the earliest thing he could recollect was the beating of the muffled drums on the occasion of the death of George the Second. Muffled drums give a sound likely to attract the notice of young and old. They are heard on several occur-

[1] MS. Not 1755, according to the "Law Magazine." New Series, vol. ii. p. 305.

[2] "Boswell," vol. i. p. 21; citing Piozzi's "Anecdotes," p. 10.

[3] "Reminiscences of a Septuagenarian," p. 1.

rences of solemn events. Of course, upon the demise of the sovereign. At the funeral of the soldier. And the author remembers instances of a peal of this kind in honour of the clerk of a parish, whilst the passing bell for the minister would toll without this unusual ceremony.

John Williams received his early education at the Grammar School of Carmarthen.

In 1774, or thereabouts, he went to Wadham College, Oxford, and obtained his degree of B.A. in 1777. His merits procured him a Fellowship, and he continued at the University till, in due time, he became a Master of Arts.

He was marked for the law, and began his work as a student of the Middle Temple.

Most lawyers, and many whose ancestors have been clients, remember the time-honoured name among special pleaders, of George Wood. No novice looked for success in the profession in those days, unless he first entered the chambers of one of these pleaders, as they were called, not *vivâ voce*, but persons who drew pleas upon paper which were afterwards transferred to parchment, and formed part of what is known by the name of a record.

Therefore, into the mystery of George Wood's workshop[1] Williams was initiated, and the Carmarthen boy and Wadham Master of Arts gave good testimony to

[1] Holroyd and Littledale belonged to the same school.

the education of Wales and Oxford. In the love of precedents both master and pupil luxuriated. What Wood might have done on this score we can only conjecture. It must have been on a large scale. But we know that Williams collected twelve folio volumes of these forms, which he wrote in an excellent and clear hand, and which are still in the possession of his descendants. To these he added conveyancing precedents. They were the more valuable, as there were no Chittys nor Bythewoods in those days. Every practitioner depended on his own MS. resources. It is not to be wondered at that these men of many pleadings amalgamated. Wood treated the promising student with much regard, and Williams's sagacity enabled him to reverence one who could deal easily with so many tangled webs. These, more than Eleusinian mysteries, have since been much unravelled, through the labours of such men as Brougham; but still forensic history is bound to the statement, that whilst there might not have been more than from four to six special pleaders when Wood flourished, a number quite equal to fifty now, annually avail themselves of the Government certificate, and several of them earn a lucrative income with an eye to future prosperity at the Bar. So strong was the intimacy between the "Doctor and Student" that it became a rule and habit for the latter to dine every Easter Monday with Baron Wood. How he came to leave his chambers at the Baron's, and exchange them for those of Bearcroft,

we are not informed. George Wood succeeded Baron Hotham many years after Williams was called to the Bar, and Bearcroft, although a leading man of his day, was never reckoned an accomplished lawyer. Indeed, people would say, either jocularly or maliciously, that his manners not a little corresponded with his name. However, he ultimately became Chief Justice of Chester, and, in 1796, was sitting for Saltash, in Cornwall.

After having practised as a special pleader for some years with success, in 1784, John Williams was called to the Bar by the Benchers of the Inner Temple.[1]

He chose the Oxford for his circuit, and the "Old Carmarthen," which consisted of the three counties of Carmarthen, Pembroke, and Cardigan, and was so fixed as to allow of the Oxford being finished before the Carmarthen began. The Welsh Chief Justice at that time was Judge Lloyd, a man of rough manners, but of very considerable learning and ability, and was several times mentioned by Lord Eldon in the course of his judgments as a very sound lawyer. Mr. Mitford, afterwards Lord Redesdale, was the puisne Judge, and both he and the Chief Justice had a high respect for Mr. Williams. Indeed, Mitford, when Lord Redesdale, presented the future King's Serjeant with an engraving, after his picture by Lawrence, which was much prized by the Serjeant, and is now in the possession of his family. Mr. Williams had, of course,

[1] The "Law Magazine" must be incorrect in stating the call to be Nov. 23, 1781.—"New Series," vol. ii. p. 305.

contemporaries on these circuits. William Elias Taunton, the son of Sir William, some time Mayor of Oxford, was one of them. This William Elias was one of many who travelled for a long time without any professional encouragement, or as it is technically called "a single brief." However, at last, Mr. Allen, of Cresselly, well known amongst the gentry of Pembrokeshire, his old Westminster school-fellow, happened to have an important cause to be argued. The Welsh Judges sat in *banco* (which means in full Court, as at Westminster,) to hear arguments, and Mr. Allen, who was well aware of Taunton's talents, desired his attorney to give the brief to his Westminster friend. It likewise occurred that Williams himself was on the other side. After the matter had been fully discussed, Lloyd, the Chief Justice, following a custom not uncommon in the Superior Courts, highly complimented the counsel, and said, "that the arguments were worthy of the brightest days of Westminster Hall."

The old Carmarthen had many pleasant reminiscences for Williams. His ward, John Jones, of Ystrad, was subsequently a very eminent member of it.

Mr. Williams, upon his introduction to the Oxford Circuit, which he probably joined when he went to the Bar, found as leaders Mr. Leycester[1] and Plumer, well known as the Master of the Rolls and the owner of Canon's Park, near Edgware, the ancient possession of

[1] Hugh Leycester, D.C.L., a King's Counsel, afterwards a Welsh Judge.

the Chandos family. Plumer had a soubriquet, "the roaring Bull of the Oxford Circuit," which arose from his loud voice and impulsive manner of speaking.[1] He became Solicitor-General and Vice-Chancellor before his promotion to the Rolls in the room of Sir William Grant, and, at that day, the Vice-Chancellor was sworn of the Privy Council.

However, amidst the labours and jollities of the circuit, there was the goal to which man in every walk of life fondly looks—promotion.

The Serjeant, in his turn, naturally expects the higher rank of one of the Serjeants of the sovereign—that of Queen's Serjeant, and others of the Bar covet the silk gown of the Queen's Counsel. Williams obtained his advancement at an early age, for when he was but thirty-seven, and had been ten years only at the Bar, he received, on the 21st of June, 1794, the dignity of the coif. Dauncey and Jervis now appeared upon the scene, for Plumer did not remain long after this.

A pleasant story is told about Plumer's leaving the circuit by a member of Williams's family, now alive. He remembers his father returning from a before-breakfast walk in great glee and good humour, exclaiming, "I have just left Plumer, and he tells me he is going to leave the circuit."

[1] His eldest son was a very amiable man. He became an Examiner in Chancery, a desirable office in point of emolument; but he was, unfortunately, run over fatally in Jermyn Street.

Philip Dauncey was a great favourite, and, in a horse cause, inimitable. He and Henry Martin and Jervis did much business in the Court of Exchequer at Westminster. Abbott, the Lord Chief Justice of after days, was also on this circuit, and Dauncey liked to have him for a junior. When they were united, the saying was, that they were invincible, for there was "Dauncey's jaw and Abbott's law." Abbott was opening a case at great length on the Exchequer upon one occasion, when, to his dismay, he found that he had got into the wrong Court. The author mentioned this to his friend, Mr. Shelton, the Coroner of London, who seemed quite serious for the moment, and said, that Mr. Abbott was a very correct man.

In 1804 promotions took place on the circuit, and in Easter term of that year the learned editor of Saunders was made a King's Serjeant, and Dauncey, with Jervis, became King's Counsel.

The Serjeant was now the leader of his circuit, and he maintained his position until his death, in 1810.

His appointment to a seat in the King's Bench was seriously contemplated, or, more properly speaking, was brought before the consideration of Lord Eldon. But when we reflect that that Chancellor appointed in his day far worse Judges than Williams with all his physical infirmity could have been, we must regard with a feeling approaching to disapproval a letter (the date of which is wanting) from the noble Lord, when a judicial seat had just been appropriated. It was,

probably, addressed to some friend of Lord Ellenborough in answer to an intimation, that the latter would gladly have Williams on the Bench with him. At all events it was sent to an ardent patron of the King's Serjeant, and it was known that Lord Ellenborough was disappointed in his wishes respecting this promotion. This is the letter:—

"DEAR SIR,

"You may be perfectly sure, that I could not receive your letter, but with every sentiment of respect towards you and the Serjeant you mention. No man in the profession stands higher in my regards than Williams. I certainly had a full conviction that the labour of the King's Bench was such as necessarily to lead me to think of others, and, under that conviction, whether I was right or wrong, the matter was, in fact, over, when I received your letter. I was sorry to observe, when I saw Williams on the first day of Term, that he was, as I thought, far from well.

"Yours very truly,

(Signed) "ELDON."[1]

Yet, notwithstanding this supposed "labour of the King's Bench," the Serjeant was firm at his post in the Common Pleas, where he was employed to argue most of the real property questions, so frequently brought before that Bench, as well as many other

[1] "Law Magazine," New Series, vol. ii. p. 306.

important matters before the full Court. It is easy to assign "physical infirmity," as an excuse for declining to promote a learned advocate. Some have said, that upon such a suggestion, Lens, the great leader of the Western Circuit, was passed over; and that, had Lens been a Tory, his political merits would have overpowered any insinuation as to his health. But in the life of Lens we have confuted these baseless suppositions, and have shewn that constant indifference to promotion was, probably, the cause which influenced the Government in not offering the ermine to Lens, when his friend Lord Ellenborough resigned.

However, after Williams's decease, Lord Eldon gave cheerfully his obiter meed of applause. In 1814, being then Chancellor, he was upholding one of the Serjeant's notes which had met with the approval of Lord Alvanley. "And though one," said the noble Judge, "who had held no judicial situation could not regularly be mentioned as an authority, yet he might say that to any one in a judicial situation, it would be sufficiently flattering to have it said of him that he was as good a common lawyer as Mr. Serjeant Williams, for no man ever lived to whom the character of a great common lawyer more properly applied."[1] "There was no man," the Chancellor again said, "whose mind was more richly stored with the principles of pleading."[2] It was fortunate for

[1] "Cases on Appeals and Writs of Error in the House of Lords; by P. Dow, vol. iii. p. 15.

[2] *Id.* p. 20.

Williams, that his ample means had placed him above the flattery of approbation, or the fear of dispraise.

During his practice in the Common Pleas, he formed his estimate of the Judges before whom he pleaded, and he rightly singled out as great lawyers, Heath, Chambre, and Lawrence. Heath was a very remarkable man. He was made a Judge in 1780, and died in harness in January, 1816. He was on the Bench for more than thirty-five years. It would not be easy to find a tenure of the judgment sent for so long a time. He was a bachelor and was not knighted. Knighthood was not in his days so incidental to high place as before and afterwards.[1] He had not considerable practice at the bar, but his legal merit was discerned, and he justified his position by combining the science of law, which he well understood, with considerable common sense. Mansfield, a rough Chief Justice, but a good host and companion,[2] was doubting once in full Court, whether he had done right in trying a cause respecting a wager of "a rump and dozen." The Chief even said there was uncertainty as to what

[1] Yet the absence of knighthood was, certainly, the exception. Edward Willes, however, was never knighted. Nor Buller, but he was made a baronet before his retirement. Baron Perrot was not a knight. The sons of Peers are not knighted after their accession to the Bench, as Noel, Bathurst, Erskine, &c. Nor do they accept knighthood upon other occasions, unless it be upon one of ceremony; as in the case of Admiral Sir Charles Paget, whose duty it was to convoy Royalty from the Continent. A title was indispensable, for, legally speaking, an Honourable is an Esquire.

[2] This Chief could never brook the custom, common in his day, of calling "raisins, reasons." "Cannot you call them raisins," he would say, He did not like the phrase "a great deal."

a "rump and dozen" meant. Heath, however, broke in with his strong sense. He did not approve the action, but quite upheld the verdict for the wager. "We know very well privately," said the Judge, "that *a rump and dozen*," is what the witnesses stated, "viz., a good dinner and wine, in which I can discover no illegality." Chambre to the same effect, but he could not forget his pleading, and, compared with Heath, his good sense was sadly diluted. . . . .

Heath was cross and severe. "Stay, stay," he used to say at the Old Bailey, trying a man, probably for his life, whilst he was carefully writing down the evidence of the witness. It was a hoarse ejaculation of command, but those who looked upon the man saw the intellect. Severe he was to a fault. His executions were remorseless, yet not devoid of principle, considering the dark days in which he flourished. When passing sentence upon one occasion at the Midland Circuit, he observed, that he would make such examples, as that if a man left a garment unprotected upon a hedge, he should find it there when the next Judge should come the same Assize.[1] Yet he was a

[1] Campbell tells some strange stories of him in the "Lives of the Chancellors." He is reminded of a speech he heard on his first Circuit. A man was charged with felonious violence to a female, but the consent of the prosecutrix intervened, upon which, said the Judge: "Gentlemen of the Jury, acquit the prisoner. If such a scandalous prosecution were to succeed, *which of us is safe*." At the same Assizes, a man convicted of murdering his wife, urged his wife's misconduct, and provocation. Heath, J., "Prisoner, you were *wrong in point of law*." And sentence of death was passed. But Campbell does not say, that *he heard that*. Vol. iv. p. 33. n.

good master, and he would take the part of an honest man when he could find one. He lived at Hayes, in Middlesex, and his gardener, who spoke very well of him, lived many years with him. In London, he had the large house on the east side of Russell Square, where he died. It was afterwards occupied by Chief Justice Gibbs, and subsequently by the renowned Talfourd, whose hospitality and conviviality were well remembered there in his time. Heath and Rooke sat in the Common Pleas for some time. The latter was called "*Judge Rooke*," from his pleasantries and curious ways. The other maintained with dignity the prescriptive title of "*Old Heath.*"

Chambre must have won the heart of Williams, for he was, in pleading, the cracksman of his Court. He also was a man who loved the "rump and dozen," and we think, at one time, belonged to a Club, or, at all events, to a regular muster of lawyers at the Gray's Inn Coffee House.

He was by no means without his pleasantries. A female, with a very harsh tone of speech, came into the box as a witness. When she had done, Chambre said aside:—

"Oh! had I Jubal's Lyre,
Or Miriam's tuneful voice."

Lawrence must have been known to Williams for many years, but after much service in the Court of King's Bench, he retired for ease to the Common Pleas. He was a very distinguished lawyer, and

now we must carry him and the Serjeant to an Assize at Hereford, in order to relate a very curious and agreeable tale. Preston, the great conveyancer, who sat for Ashburton, and was called to order for speaking of Vansittart in the house, as the "wretched, miscalculating Chancellor of the Exchequer;" had a high opinion of Williams's real property notes. He used to mention the Editor of Saunders, in his consultations with common lawyers, as the "renowned Serjeant." Amongst other notes, Williams was famous for one on "*Executory Devises.*" He and Feame, knew well how to distinguish them from "*contingent remainders.*"

But to return to Hereford. Serjeant Williams was opening a case there before Lawrence, and, after stating the limitations of a will, said, that they created an "executory devise."

LAWRENCE, J.—"Surely, brother, it is a contingent remainder." These hard words signify nothing more than the possible dissolution of an estate, on certain survivorships. But Williams went on with his address, and stood on with his "executory devise." LAWRENCE, J., "Brother, it really is a contingent remainder." The brother's Welsh blood was up, and his English notion of an "executory devise" warmed him. So he exclaimed with emphasis: "Upon my honour, my Lord, it is an executory devise." Lawrence was not on every occasion the mildest of

men, but he very calmly answered: Oh! if you say that, brother, I have no doubt that I am wrong."[1]

One more anecdote about the *note on executory devises*. Patteson, the Judge of the Queen's Bench, who married Sir John Coleridge's sister, used to relate, that he was staying, when a student, at the house of a friend in the country. Dallas, Chief Justice of the Common Pleas was there. One rainy day the Chief Justice proposed to Patteson that they should read a little law together. This being at once acceded to, the question was made what it should be. Dallas said: "I believe our friend has a *Saunders* in the house, and I should like to read Serjeant Williams's Note on Executory Devises."

Sir Robert Dallas's early career was at a Debating Society. He became King's Counsel, Solicitor-General, and a Judge of the Common Pleas, and Chief Justice. He resigned in the same year with Lord Ellenborough, and both died nearly at the same time. Gibbs, the Attorney-General, succeeded him. Gibbs was making

[1] The following is the text of this story in the "Law Magazine." "Mr. Justice Lawrence once interposed with the remark: 'You called that a contingent remainder, surely it is an executory devise.' Serjeant Williams stoutly maintained his position: 'Certainly not, Sir, I am satisfied that it is a contingent remainder.' The Judge was silenced for a time, but after revolving the subject in his mind again, broke in, 'Surely, brother Williams, it is an executory devise.' 'Upon my word of honour, Sir,' retorted the Serjeant warmly: 'it is a contingent remainder.' 'Since you pledge your honour, brother,' said the Judge, 'I am perfectly satisfied.' His doubts were set at rest for ever." —Vol. ii. p. 307.

a fabulous fortune at the Bar, carrying on his private practice with his public duties, but when he ascended the Bench of the Common Pleas, his health was broken. He had the promise of further and immediate promotion. He was Chief Baron, and then took the place of Dallas, but he died soon afterwards.

Some have affirmed that Sir Vicary was overrated as a lawyer, but if his judgments be carefully weighed, the conclusion must be that his reputation as an advocate and a Judge was amply merited. . . . . .

We have just mentioned that Serjeant Williams used the words: "Upon my honour, *My Lord.*" Laying a stress on "*My Lord,*" we can well understand his peculiar notion of a distinction between addressing a Judge, not being a Chief Justice, in banco (that is in full Court at Westminster Hall,) and at Nisi Prius, when the Judge sits alone. He could not bear to hear a Puisne[1] Judge called "My Lord." He claimed that title for the Chiefs only. One of the Puisnes would occasionally interrupt him in his argument. In these days it was not common for any one but the Chief to stop a counsel. Now the scene in that respect is often wild. However, Williams could not endure this kind of interference. "*Sir!*" he said, "I will answer your observations after I have replied to *My Lord.*"[2] Both were baiting him at once. One was orthodox, but the other

[1] Strictly speaking, the Puisne Judge is the Judge last made (*puisné*) puny, the lesser; but in a general sense, he is a Judge next in rank to the Chief Justices and the Chief Baron.

[2] "Law Magazine," New Series, vol. ii. p. 307.

nettled him, so he vindicated his opinion by putting in the unsavoury word "Sir."

However, amidst all his learning and his success, death was at hand, and took him away at the early age of fifty-three.[1] In the authorized Reports of the day,[2] a record of his merit will be found. It is as follows:— "On the 27th day of September, 1810, died John Williams, Esq., Serjeant-at-Law:[3] a gentleman whose deep and extensive learning, laborious research, acute reasoning, sound judgment, and active zeal for the interests of his clients, had deservedly obtained for him a very high reputation in his profession." He died in Queen Square.[4]

He was a very handsome man, and with such a fine complexion, that he was commonly called on Circuit, "Bloom Williams." His manners were most agreeable, though he was somewhat hot tempered. He delighted in recalling the days of his youth, and used to narrate with much humour stories of the college adventures of himself and his friends, and of the early days when he and his learned companions used to ride the old Carmarthen Circuit, the state of the roads making it impracticable to travel in a carriage. He was fond of music and of poetry, and used to walk up

[1] The "Law Magazine," says, that he died of premature old age at Carmarthen, in his 56th year.—New Series, vol. ii. p. 307.

[2] In the Common Pleas, by William Pyle Taunton, of the Western Circuit. —Vol. iv. p. 122.

[3] This should have been: "One of His Majesty's Serjeants-at-Law."

[4] "Gentleman's Magazine," 1810, pt. 2, p. 392.

and down in the evening, reciting Lycidas, and favourite passages from Pope. Occasionally he loved to read out to his family, papers of Addison's from the "Spectator."

His health was always delicate and difficult to manage. He used to say that he never got over the effect of over-fatigue, in having, when a young man, joined a party of College friends, who walked from Oxford to London in a single day.[1]

With regard to his works, it is enough to say that he published an edition of the "Reports" of Sir Edmund Saunders, Chief Justice of the King's Bench in the reign of Charles the Second, and the most eminent pleader of his day. Two editions of this work had already appeared, so that this was the third. But his annotations were the admiration of all lawyers of science and judgment. The book at once became famous, for these notes contained a lucid and accurate statement of the common law in almost every branch, more particularly as to the rules of pleading. The notes as to real property obtained a very great reputation amongst conveyancers, as well as common lawyers. This great undertaking was presented to the profession in 1799. In thinking over the notes, the Serjeant

[1] This must have been a severe walk. It was fifty-four miles by the way of Wycombe, but fifty-eight by Henley. The author recollects a man, still alive, who once walked upwards of sixty miles in the day, but he was thin and spare, and had but little to carry. He was a member of the Western Circuit. On the other hand, he remembers serious illness after such strong exertions, so much so, that, as in the case of Williams, the strength never fully returned.

seems to have taken a great delight. He was fond of riding, and he would say to Richardson (afterwards the Judge) as he mounted: "Now, I'm going to make a long note." There seems to have been a fourth edition, for in 1824 Mr. Justice Patteson, in conjunction with the Serjeant's son, Edward Vaughan Williams (afterwards a Judge of the Common Pleas, and, upon his retirement from that office, a member of Her Majesty's Most Honourable Privy Council) brought out the fifth edition. . . . . .

Mr. Justice Williams, then at the Bar, published the sixth in 1845.

It is curious that Jeffreys, amongst other Judges, gave the "*imprimatur*" to the first edition in Norman French. . . . . "The Terence of Reporters," says the panegyrist, "may be said to have met with a Bentley for his annotator in the person of Mr. Vaughan Williams.[1] The terse, concise, and simple elegance of the Latin Classic was not more richly illustrated—the '*curiosa felicitas*' of his sentences not more dexterously set off and embellished—sometimes even overlaid—by the copious learning of the slashing critic who selected these luminous pages for his text, than have the dramatic reports of our legal classic, with their clear simplicity and exquisite precision, been adapted to the use of the modern student."[2] . . . . .

[1] This is wrong. It should have been Mr. John Williams.

[2] The "Law Magazine," New Series, vol. ii. p. 284.

Having sent a copy of his work to Lord Kenyon, prefaced by an advertisement of singular modesty, the noble Lord Chief Justice thus complimented the Editor,—who was his countryman:—

"DEAR SIR,

"I am much obliged to you for your first volume. I only read it yesterday; but I have looked over many cases, and find the notes so very valuable and instructive, that I hope your health will enable you to go on with the remaining volume in the same excellent manner in which you have finished what you have published.

"I am,

"Dear Sir,

"Yours very sincerely,

(Signed) "KENYON."[1]

The family of Mr. Serjeant Williams attained a good position in the world. He married in 1789, Mary, the eldest daughter of Charles Clarke, Esq., of Foribridge, near Stafford, and by her had three sons and three daughters. The eldest, Charles, was a clergyman. The second was the learned editor and Judge; the author of a book of standard utility, the "Law of Executors," new editions of which have been frequently called for. The third son, John, was a colonel in the Royal Engineers, whose reputation in the science of

[1] The "Law Magazine," vol. ii. p. 306.

his profession stood very high. The daughters were: 1, Mary, married to the present Earl of Buckinghamshire; 2, Elizabeth, who married S. Prior, Esq.; 3, Lucy, married to Edward Willoughby, Esq. . . . .

The Serjeant had an eminent ward—"John Jones, Esq., of Ystrad, Carmarthenshire." He was a faithful guardian. Mr. Jones, of Ystrad, was on the Oxford Circuit, and a leader, and especially on the "*Old Carmarthen*" Circuit, as it was called. On the abolition of the Welsh judicature, he retired from the Bar, and was elected Chairman of the Carmarthenshire Quarter Sessions. He continued to act in this honourable place until his death.[1]

[1] MS. A full account of this lawyer is contained in a manuscript belonging to a principal member of the Serjeant's family.

SAMUEL HEYWOOD.

Serjeant-at-Law, 1794.

[The Author has, through the kindness of James Heywood, F.R.S., of 26, Palace Gardens, been enabled to avail himself of many valuable letters and papers in the possession of Baron d'Huart, of Bouxiéies and Dames, near Nancy, whose first wife, Isabella Eliot, was a granddaughter of Serjeant Heywood, and inherited his papers. The MSS. have been referred to in the Life.]

If Samuel Heywood were known for no other circumstance than his friendship with Fox[1]—if we had nothing in his history besides his vindication of the "Life of James the Second"—if his Election law had received far more of the public approbation than his well-known work deserved—if his long career as a Welsh Judge, had, apart from any other, made up the list of recommendations, we might have hesitated before enrolling him amongst the eminent Serjeants. But he was a persevering Judge. If not so deeply versed in old law as many of his contemporaries, he was a man of considerable humour; in public life, unimpeachable; in private, honourable, kind, and courteous. He was, moreover, a scholar, and conversant with Anglo-Saxon literature; with Fox he

[1] Although he was wont to correspond with Fox on historical subjects.

maintained a long and intimate acquaintance. His "Law of Elections" still preserves, even at this late date, its value, as we shall show by-and-by. With this combination of merits, we introduce him to our readers.

Samuel Heywood was a descendant of the Rev. Nathaniel Heywood, Vicar of Ormskirk, Lancashire, under the Protectorate.[1]

The following curious document as to the presentation of Ormskirk is subjoined.[2]

[1] MS.

[2] From the "Notices and Modifications of Ecclesiastical Policy," 1656—1689. Presentation of the Vicarage of Ormskirk to the Rev. Nathaniel Heywood, B.A., Trinity College, Cambridge, 1656.

"Charlotte, Countess of Derby, the true and undoubted patroness of the vicarage of Ormskirk, in the County Palatine of Lancaster, unto the Honourable the Commissioners for approbation and admission of public preachers,[3] sendeth greeting in our Lord God Everlasting: I do present unto you to be admitted unto the vicarage of Ormskirk, aforesaid, being now void, my well-beloved in Christ, Nathaniel Heywood, Minister of God's Word, humbly desiring that the said Nathaniel Heywood may be by you admitted unto the said vicarage, with its rights, members, and appurtenances. And that you will be pleased to do whatsoever shall be requisite in that behalf for the making him, the said Nathaniel Heywood, Vicar of the Church of Ormskirk, aforesaid, according to the late ordinance in that case made and provided.

"In witness whereof I have hereunto set my hand and seal, the seventh day of August, in the year of our Lord God one thousand eight hundred and fifty-six.

(Signed) "DERBY."[4]

Oliver Heywood, an elder brother of Nathaniel Heywood, had been invited to the Chapelry of Coley, near Halifax, in 1650; and in August, 1652, he had

[3] Commissioners for the approbation and admission of public preachers had been appointed March 30th, 1654, by the Lord Protector Oliver Cromwell, with the consent of his Council.

[4] "Notices and Modifications," pp. 41, 42.

The Serjeant was born at Liverpool in 1753. His father was Benjamin Heywood, of Liverpool. He

been ordained at Bury, in Lancashire, according to the Presbyterian mode of Church government. The unanimous call of the congregation of Coley Chapel had been in the first instance manifested, by their subscribing their names to his invitation. Oliver Heywood was examined at Bury as to his literary attainments, he disputed on the question, "Whether infant baptism be lawful:" he preached before his examiners on the text, Romans chap. x. verse 10: "How shall they preach except they be sent?" and was then fully inducted into the ministry.

After the restoration of the monarchy and of episcopacy in 1660, the leaders of the Anglican Church party exerted their power to force the clergy to conform to the Book of Common Prayer. August 25th, 1661, the advocates for uniformity at Halifax directed a person from another township to tender a Common Prayer Book to the Rev. Oliver Heywood, when going into the pulpit at Coley. Mr. Heywood inquired by what authority he presented it, to which the man made no reply, but laid the Prayer Book on the cushion. Mr. Heywood removed it, and went on with the service in the usual manner, with extempore prayer.

September the 13th, 1661, an apparitor, who was also a bailiff of Halifax, brought Oliver Heywood a citation to appear in the Ecclesiastical Court at St. Peter's, in York, and, on complying with the summons, he was asked if he had a proctor. Mr. Heywood replied, that he was there in person to answer any charge, and he was next cited to appear again in three weeks before the same Court. An engagement in Lancashire, prevented his attendance on the appointed day. Several other citations followed, and on one occasion, when he attended, he was dismissed with the promise of a fair hearing the next time. No legal authority was at that time possessed by the Ecclesiastical Court to punish Mr. Heywood for refusing to use the Book of Common Prayer, and he consequently declined to attend any more citations.

In May, 1662, the Act of Uniformity obtained the Royal assent, and on the 29th of June in the same year, a suspension of the Rev. Oliver Heywood was procured by his opponents from the Archbishop's Chancellor, and published in Halifax Church. Two or three farewell sermons were then preached by Mr. Heywood on successive Sundays to the Coley congregation, but he no longer opposed the suspension of his ministerial functions in the Church of England on account of his refusal to use the Book of Common Prayer.

An anecdote is related of Dr. Sheldon, Bishop of London, the leader of the dominant Clerical party in 1662, who, when the Lord Chamberlain Manchester observed to King Charles the Second, that "He was afraid the terms of the Act

was a banker at Manchester, in 1787, and he died in 1795. His mother was Phœbe, daughter of Samuel Ogden, of Mossby Hill, Esq.[1]

He was educated at Warrington Academy, a celebrated Dissenting place of worship,[2] and became an undergraduate of Trinity Hall, Cambridge, in 1772.

Samuel Heywood being a Dissenter, absented himself from the sacramental service in the chapel of that College. About the same time, on Whit Sunday, Dr.

of Uniformity were so rigid, that many of the ministers would not comply with it," replied: "I am afraid they will."

Oliver Heywood had been suspended from the exercise of his profession before the 24th of August, 1662, and on the 2nd of November in that year, he was excommunicated. "The enemies of our liberties," he remarks, "have gained the upper ground of secular power, and obtained statutes against us."

In 1672 Royal Licenses were granted to Nonconformists to preach in public meeting places. Many ministers availed themselves of this privilege, and the Rev. Nathaniel Heywood had two chapels licensed, one of which at Bickerstaff adjoined the house of Lady Stanley, who was a member of his congregation.

The minister of Bickerstaff was soon after removed from his pulpit, on account of his refusal to take the oath against ecclesiastical change, and summoned to the Quarter Sessions of Wigan in 1674-5.

Several Justices of the Peace appeared for him on the appointed day, and his friends came to see the issue, and to mediate for him. Old Lady Hanley came herself with her husband, Mr. Henry Houghton, a Justice of the Peace; Mr. Christopher Bannister, of Bank, and several others spoke much on his behalf. Another Justice, then on the Bench, said that if Mr. Heywood was sent to Lancaster gaol, he should be as comfortably maintained and as honourably released as ever prisoner was. Some of his adversaries, seeing which way the Court inclined, stole away in discontent, took horse, and rode home. Thus Mr. Heywood was dismissed, to the joy of his friends.

Other snares were laid to entrap him on the Five Mile Act, but so generally was he beloved, that no one could be brought to swear that he lived in the town of Ormskirk, though he was usually at home, and conversed openly among the inhabitants.[3]

[1] Baines's "Lancashire," vol. iii. p. 85.

[2] MS.

[3] "Notices and Modifications," pp. 42—45.

Hallifax, the Tutor of Trinity Hall, remarked to Mr. Heywood that a few days previously the question had been put to some of the heads of houses in the caput, as to whether Dissenters who would not attend the sacrament or prayers in their College should be expelled, and the answer given was, that they should. "I have consequently thought it my duty," said the Doctor, "to give you notice. No Dissenter shall come to this College, and you must go. Dissenters have no business at the University. In disputing about the non-agreement of the Articles and the Liturgy between themselves, as to the nature of the sacrament and the grace that falls upon the communicants, you are far too wise for your years. However, you may write to me your sentiments upon the subject, that I may take them into consideration, although I do not mean this as a punishment. Now go, but remember, you do not spread these principles in the College."

In the afternoon of Whit Sunday, another conversation occurred between Dr. Hallifax and Mr. S. Heywood, when the Doctor said :—

"It was expected that those who came to the University should conform to the Liturgy of the Church of England and receive the sacrament.

"This place was never designed by our benefactors for such as you; it is a charitable institution, but not founded for the instruction of Dissenters.

"When you came here," continued Dr. Hallifax,

"you entered into an implied contract to conform to the rules of the place."

"To conform to the rules or pay the penalty," replied his pupil. "I am ready to perform any punishment you may please to inflict."

"Penalty! Yes, yes," responded the tutor, "you are ready to do anything as a penalty; but I understand you, and as this is your first offence of the kind, nothing more shall be said about it."

Mr. S. Heywood has recorded in his private papers, which he preserved with great care, another instance of persecution to which he had been subjected at Trinity Hall on account of his conscientious convictions.

The College butler one day confronted Mr. Heywood as he was coming out of the Hall from dinner with the other Pensioners, and, in an accustomed and insolent manner, demanded of him the payment of a pecuniary fine[1] for non-attendance at Sacrament, and desired the instant payment of the penalty.

On the following morning Mr. Heywood stopped Dr. Hallifax on leaving the Chapel, to request to know why he had been thus treated, and what the footing was upon which he was permitted to remain in the College; whether, in fact, he was supposed to be excused from the attendance upon the Administration of the Sacrament on account of his religious principles, or whether by keeping away he was still liable to penalty and punishment.

[1] Probably amounting to sixpence.

The tutor told his pupil that "he never saw such a man," that he ought to attend, "that he had been treated with great lenity, and ought to submit." During his conversation Dr. Hallifax seemed exceedingly uneasy, and kept creeping all the time towards his own room, for he had been speaking with Mr. Heywood at the bottom of the staircase.

On the same evening Dr. Hallifax referred in College Chapel to the 23rd Canon of the Church of England, relative to the receiving of the Sacrament in the Colleges, and which is thus worded:—

Canon 23.—Students in College to receive the Communion four times a year.

"In all Colleges and Halls within both the Universities the Masters and Fellows, such especially as have any pupils, shall be careful that all their said pupils, and the rest that remain amongst them, be well brought up, and thoroughly instructed in points of religion, and that they do diligently frequent public service and sermons, and receive the Holy Communion, which we ordain to be administered in all such Colleges and Halls the first or second Sunday of every month, requiring all the said Masters, Fellows, and Scholars, and all the rest of the Students, Officers, and all other the servants here so to be ordered, that every one of them shall communicate four times in the year at the least, kneeling reverently and decently upon their knees, according to the order of the Communion Book prescribed in that behalf."

So serious was the annoyance of College bigotry to Mr. Heywood that he visited London, and consulted Sir William Meredith, Bart., M.P., a leading friend of religious liberty, who expressed his willingness to bring the subject before Parliament, but the father of the young student deemed it more prudent for his son not to have his name thus brought before the public in early life.

Samuel Heywood was called to the Bar by the Society of the Inner Temple,[1] and he chose the Northern Circuit, where he was extensively employed for many years.

No doubt he frequently rode the circuit, for he had a famous horse, called "Pleader," upon whose death Jekyll wrote some elegiacs. We have not room for all of these, but as they are Jekyll's, we cannot forbear from giving some of them.[2]

ON PLEADER'S TOMB.

"Here lies a Pleader who ne'er urged a plea,
A Circuiteer who never took a fee.
From Court to Court to serve his friends he'd go,
And though a mute, a firm support bestow;
Through thick and thin he'd surely keep his way,
Carry his client safe, and win the day.

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[1] Called and approved, July 2, 1778. Confirmed in Parliament [*i.e.* the Benchers' Parliament], July 3. Sworn in before the Benchers, July 4; and at Westminster, July 6. MS. Card. Expenses £68. 9s. 8d.—*Id.*

[2] MS.

Press'd ever so by law, his course was straight,
He never sank or fell beneath its weight;
Called to the *Bar*, he rose as tho' design'd,
To leave all other Barristers behind;
And such assistance fav'ring fortune gave,
He'd every *motion* he could wish to have."

"Our care it is here to support his fame,
Report his merits and *record* his name.
To tell the world a Pleader lies below,
Who, by false steps or tricks, ne'er made a foe."

"No petulant disputer he would say
No contradictory word, but simply 'nay.'[1]

"Once on his legs, a sure and safe support,
He'd carry jury, witnesses, and Court."

In 1794 Mr. Heywood was made a Serjeant-at-Law, with John Williams, the editor of "Saunders," and of course continued his labours on the Northern Circuit with his "Pleader."

The time must arrive when every man who has the least pretension to rank or promotion will make his vigorous struggle for it. Fixed in the idea that his claims are just, he uses his interest (and few there are who have none), to obtain an honourable recompense for his labours.

Counsellor Heywood was a man of some note, and no inconsiderable business on the Northern Circuit. Fox was in power; Fox, his ancient friend and correspondent. He thought, and not without reason, that he might aspire to the Bench. But, whilst the vessel is sailing prosperously, shoals and rocks lie

[1] In some MSS. "neigh."

hidden. A little breaker will shatter the bark as it glides gently towards the harbour.

Fox left the legal appointments to Adam.

The Chancellor, likewise, must be consulted. That Chancellor was Erskine. Adam, a wary Scotchman, would be careful not to commit himself. Heywood had not commanding claims for the Bench. He had never been Solicitor-General. He was a lawyer of acknowledged ability, and in respectable business, and Fox's Serjeant must in some way be provided for. Indeed, so attached was he to the minister, that he was one of the first members of the "Fox Club."[1]

On the 2nd of May, 1805, he called on Mr. Fox, in Arlington Street. Fox seemed much agitated at the attempts of his friends in opposition to hinder him from bringing on the Catholic question. He said to his friend, with great earnestness, "I desire you to remember that I now declare, if I am not allowed to move upon it, that I will withdraw myself from this Sessions, and will never come into Parliament again. For if I retire now, I am too old not to retire for ever."

Serjeant Heywood said something, upon which Fox added, "I have no objection to postpone my question, but if I am not permitted to make it at all, I am determined."[2]

In January, 1806, the Whigs came into office, Fox being the leader. Before the end of February, Mr.

[1] MS., his daughter. [2] MS.

Adam sent for the Serjeant, and told him that Mr. Fox wished to know whether there was any situation which it was in his power to give. Rank was offered, but Heywood's answer was, that he should, in a great measure, lose his privilege of defending accused persons, which was often his lot, in opposition to the King's Serjeants and Counsel. Nothing definitive was settled; but the seat in the Common Pleas was evidently the place he most coveted, although a Mastership in Chancery was suggested, with a seat in Parliament, which was declined. On the 20th of February, Fox and the Serjeant had a long talk. It was with difficulty that Fox allowed his friend to leave. The latter was going out of the room, when he turned back, and said, "Fox, you have not yet been able to find a niche in which to place me?" on which he called him back, and said he had not. And then he said, he had left the minor arrangements to Adam, but he offered the rank of King's Serjeant at once. Heywood, however, would not have profited by this advancement. His aim was the Bench. However, he hesitated, and then remarked, that if Best, Lens, and Vaughan, were promoted above him, it might injure him in his profession. And he mentioned the Common Pleas plainly. Fox said he would speak to the Chancellor; but "the Chancellor was not easily to be managed. He was very civil till an application was made, but then he was not so practicable

as might be expected, and he (Fox) had had *great trouble with him already.*"

Early in March there was a long conference with Adam, when Serjeant Heywood repeated, that he should not like to be passed over if new King's Serjeants were made. He was not treated with much candour by Adam, who mentioned an inferior place, which the Serjeant at once told him *was given away.*

However, on the 15th of April, Runnington called on him to say, that Lens and Best were to take their seats as King's Serjeants on the next day. Vaughan had withdrawn for the time.

Heywood on this called on Adam, and on the next day Adam came to his house, when the conversation assumed an unpleasant tone. Complaints of ill-usage were freely made. In fact, the Serjeant said, that the mischief done to him was "irreparable." Then Adam said, "You have nothing to do but to apply to the Chancellor for the Mastership." More retaliation ensued, and Heywood detailed the sacrifices he had made for his party; thereupon Adam replied, that he and everybody else had done the same.

The Serjeant in vain attempted to see Fox, but he spoke to William Smith, saying, he was the only man who had been injured, instead of benefited, by the coming in of his friends. William Smith spoke to Lord Howick, and Lord Howick related the matter to Fox, who seemed hurt, and that nobleman advised

the Serjeant to go to Fox. He went. Fox seemed chagrined, and said he knew nothing of the promotions till they occurred. Heywood mentioned a patent of precedence, and complained of Adam; but Fox exculpated Adam entirely, and admitted having had a letter, describing all the conversations on the subject. He then said he would see the Chancellor, and although he had asked for the first Mastership for Hargrave, "that might be postponed," and he saw no one "between the Bench and Mr. H."

Serjeant Heywood said, that the situation of a Judge was such that he should be sorry to obtain it by a canvass, or by what might be called interest. To this Fox replied, that he would not canvass, but thought Mr. H. could not object to be selected out of a number of others esteemed as fit men for that important station. To this Mr. H. acceded.[1]

Notwithstanding all these discouragements, the Serjeant was placed on the judicial Bench in Wales in the next year. Lord Lauderdale thus wrote to him in the first instance:—

"Sunday.

"DEAR HEYWOOD,—

"I have delayed writing to you till I could say something conclusive. I have now to inform you that on Wednesday next you will be made a Welsh

[1] MS.

Judge. Lord Howick told me this morning that I might write to you. Ever yours,

(Signed) "LAUDERDALE."

"Holland bids me say how happy he is that it is so disposed of."[1]

In 1807, the 8th of March, Mr. Serjeant Heywood was made Chief Justice of the Carmarthen Circuit.

His patron and friend, Fox, had died in August, 1806.

"When Papa," his daughter writes, "went to kiss hands on the occasion, the Prince of Wales expressed great pleasure, but added some expression of surprise because the new administration was hostile to Papa's politics. He then asked Papa how it had happened? 'Sir!' answered Papa, fixing his eyes full on the Prince, 'It was the *last* act of the *last* administration.' The Prince tried to laugh, but seemed much hurt, and only said, 'It ought to have been sooner.'"[2]

His friends warmly congratulated him upon this honourable advancement.

It now became necessary that he should leave the Northern Circuit, although the Welsh Judges were not debarred from practice,[3] if it did not interfere with their duties.

[1] MS. letter.

[2] MS.

[3] "Papa," writes his daughter, "was engaged at St. Ives as counsel for two of the candidates, Birch and Stephens. He went down 25th Sept., 1812. The election came on the 5th of October. Birch lost it, and refused to pay him."—MS.

We give an extract from a short letter, in which he announced his intention to the leader of his circuit:—

"DEAR COCKELL,—

"I will be much obliged to you when my name is called over at the Grand Court to make my excuse, and express my sincere regret at leaving a Society in which I have spent some of the most happy, and some of the most *merry*, hours of my life. I cannot take my leave without forming an ardent wish for the long continuance of the Grand Court. I have ever strenuously contended for, and supported its privileges, from a firm conviction that there never was a more wise and salutary institution.

"My best wishes attend you all.

"Yours ever ——."

Signed, &c.

This resignation was duly acknowledged by Mr. Foljambe, the junior, at York, under date of 16th March, 1807.[1]

The Judge was very much attached to the recollections of his circuit. Records like these give pleasing testimonies of a fresh youth, when school and college have passed away.

Amongst his papers there is "The Circuit Song," no doubt, in his own handwriting:—

[1] MS.

"Leave, lawyers, your wrangling; let us sport, let us play;
Let the countess be sung, and the counsel be gay;
No night in the year shall so jovial be known,
The briefs are delivered, the fees are our own.
We love gold, and gold is our fee,
And while the law rules,
And thus there are fools;
Then who'll be so rich and so happy as we?"

"In hopes of receiving the ancient orgies of the Northern Circuit, and thereby improving its discipline, and increasing the pleasure of its members, the first stanza of the original circuit song is presented to his brother Hullock by an ancient member, who cannot commit to paper without recalling to memory some of the happy hours he has passed when it was allowed always to precede the business and amusements of the Grand Courts.

"November 6, 1821."

A fragment of the junior's song in the same hand-writing:—

"We are a set of jolly dogs
That figure at Assizes,
But none for lawyers us does take,
At least, no one that wise is."

But we would fain not omit a curious memorandum with a super-scription equally curious, "A Symptom of Vanity." We place it here, although it was written nearly twenty years after the Serjeant had attained his seat on the Bench, because it confirms the good opinion

which the Prince, now George IV., entertained towards him:—

"Mrs. Eliot (she was his daughter) and I," he writes, "were engaged to dine with Lord Robert Seymour on Tuesday, the 23rd of May, 1826; and, on the Saturday preceding, he[1] paid his respects to the King, who hinted that he was going to invite him to dinner on the Tuesday following; but Lord Robert stopped him, saying, 'Pray do not invite me to dinner on that day, for I have a Welsh Judge and a Grand Juryman to dine with me; but your Majesty's invitation is a command, and I must put them off, if you invite me.' The King asked, 'Who was the Judge that was to dine with him?' and when Lord Robert mentioned my name, the King said, 'Aye, I am glad of it, he is a very good man;' and, upon Lord Robert saying he believed me to be so, for I was a very old friend, the King added: 'There is not a better man on the face of the earth than Serjeant Heywood.' Lord Robert Seymour's party, of course, took place. The Grand Juryman alluded to was Sir George Williams, of Carmarthenshire.[2] And on Sunday, the 28th, Lord Robert kindly called to tell my daughter of the compliment paid me, and afterwards related the circumstance to me personally."[3]

[1] Lord Robert.

[2] A very amiable man, an intimate friend of the author's father. The Rev. Sir Erasmus Williams, Bart., Chancellor and Canon of St. David's, is his second son.

[3] MS.

The author has seen the solemn ceremony of a Welsh funeral, and the stirring incidents of a Welsh wedding; but he never met with an adventure like that which happened to a Judge on the occasion of a wedding.

The Judges were returning from their spring circuit. At a place called Cunwell, in Carmarthenshire, they met, at short intervals, within a short distance from the village, four or five parties on horseback, each consisting of about forty or fifty. They were riding hard, and scarcely sober. At an ale-house in the village were the bride and bridegroom, just married. Several of their friends were waiting in the street, with their horses ready saddled, as the Judges rested for a few minutes in their carriage.

"Papa," his daughter writes, "being very desirous to have a view of the bride, called to the post-boy, and told him he would give the bride a pound note if she would come to their carriage-window."

After a short interval, the Judges got out of their carriage, and were standing in the road, whilst the horses were being watered, when a crowd of people came down the street and approached them. In front were the bride and bridegroom, their hands linked together. The bridegroom's man attended on the husband, and the bridesmaid on the bride. The Judges stood laughing at the scene, and, notwithstanding the promised bribe, hardly believed that the visit could be intended for them. Indeed, the couple

seemed abashed, and passed by. But an elderly man of particularly decent appearance turned round, and respectfully told the Serjeant, that these were the bride and bridegroom. Being now sure that their visit was owing to what had been said to the post-boy, "I went up to them," the Judge relates, "shook each by the hand, wished them joy, and put a guinea note into the bride's hand. They then went into their ale-house, but the elderly man instantly returned and asked me to take a glass. I declined, but he and others pressed me so heartily, and yet so civilly, that I could not resist, and I went into the house, when they presented me with a glass of gin. I said it was too strong, and they mixed some water with it in a small tumbler, and I drank the health of the bride and bridegroom, and repeated my good wishes, and just tasted the liquor." The carriage was now ready, and the Judges departed. The bridegroom was a farmer, and the parties "well up in the world," for there were not less than 350 or 400 people, all on horseback, some hastening to the farmer's abode on the road to Cardigan, some remaining behind to escort the couple to their home.[1]

In 1815, Mr. Serjeant Heywood was elected a member of the Alfred, now the Oriental. When the Alfred changed its name, many of the members joined and established the "Athenæum." The Serjeant's election took place under very high auspices; several persons

[1] MS.

of high consideration giving him not only their good will but their votes.[1]

Yet, notwithstanding his advancement to a position in Wales, only second to the Chief Justiceship of Chester, the Serjeant was a man of affliction. The more affectionate, the more kindly disposed, the more he must have felt his bereavement. A good son, a good husband, a good father, a good friend, he must have borne his losses with a calmness which religion alone can sanctify. He had an excellent wife, to whom he was devoted. He had five children, one son and four daughters. His son, a youth of promise, who loved his father, died young. His daughter Sophia, died in May, 1804. Susannah Maria, died in 1805. Isabella, who nursed her declining mother, died in November, 1822, some very few months after the decease of her parent.

Ann, the wife of Colonel Granville Eliot, alone survived. His wife, always designated in his letters as "My dearest Sue," died in 1822, his indefatigable private secretary. She had lingered for many years in a distressing state of health.

In May, 1807, he seems to have been assessor to the Sheriff with Serjeant Bayley, (who was made a Judge in the next year) at the great contested election for Yorkshire. He wrote fourteen letters to his wife from York, giving her a full account of the struggle, and each day's poll. The candidates were Wilberforce,

[1] MS. Letters.

Lascelles, and Lord Milton. He complains of the dulness, and wishes he had been counsel instead of assessor.

"I shall be tired of this dull work," he writes, "but our labours remain the same. We sit eight hours hearing votes discussed. We have had above 600 votes before us; and as the booths drop off, the objections on both sides drop in."[1]

They sat much longer than eight hours on several days, especially when the contest waxed very fierce.

Wilberforce and Lord Milton were returned.

In 1825, the Judge retired from the Bar, an Irish mode of expression, unexplained, but we have said above, that a Welsh Judge was allowed his practice if he did not fail in his duties on the Bench.

Being a Serjeant, he used to go to Serjeant's Inn, and Vaughan was the Treasurer. All business there is transacted at the "Board of Green Cloth," a tribunal presided over by the Chief Judge present, for the Judges and Serjeants dine there on the first and last days of term. After dinner, though not exactly in the Virgilian phrase:—

"Post quam exempta fames epulis, mensæque remotæ,"

The tables are cleared, and the Green Cloth remains.

On the 4th November, 1825, the Judge requested to be struck out of Commons, with permission to give up his chambers.

[1] MS. Parcel of letters indorsed "York contested Election, 1807, in fourteen letters to Mrs. H."

"On the 29th of August, 1828, Mr. Serjeant Heywood, was seized with paralysis at Haverfordwest, on the Circuit, and died at Tenby, on the 11th of September, at the age of seventy-eight.[1] He was on the point of leaving Haverfordwest at an early hour in the morning. The catastrophe was said to have been hastened by the absence of Mr. Justice Balguay, the Puisne Judge, who had resigned. For his successful anxiety to terminate all the business at Cardigan and Haverfordwest was, no doubt, fatal to a man of such advanced years. If it be true that his strength, both bodily and mental, had been decaying for two or three years, or, to repeat a remark of the "Carmarthen Journal,"[2] that "the Judge was superannuated," it must be borne in mind that there was no retiring pension.

He had presided in his Court for twenty-three[3] years, and, consequently, had travelled forty-six Circuits. "On no occasion, whatever, did an expression capable of wounding the feelings of any individual escape him, unless when peremptorily called on in the strict execution of his duty." "With jurisdiction over three counties, containing about 150,000 inhabitants, six culprits only (we believe), underwent the highest sentence of the law." One for "a most desperate burglary in Cardiganshire," one for forgery, four for murder. It must be remembered,

[1] "Law Magazine," vol. i. p. 449.
[2] Of 12th September, 1828.
[3] It should be 21.

however, that the Welsh are by no means, a people addicted to violent acts; and we have no means of knowing whether all these convicts were Welsh."[1]

Judge Heywood was buried at Bristol, on the 19th of September, 1828. To shew the high respect and esteem entertained for him, the funeral *cortége* having rested at the "Ivy Bush Inn," Carmarthen, the hearse and attendants proceeded on the next morning for Swansea, escorted by the Mayor and Corporation in their robes, the sword of State, maces, and other regalia enveloped in black crape, the county and borough gaolers preceding with black wands. A numerous body of respectable inhabitants in mourning also accompanied the corpse as far as the limits of the borough jurisdiction, the bells of St. Peter's Church tolling the funereal peal.[2] His funeral sermon was preached at the ceremony, on the 19th of September, by the Rev. Mr. Rowe.

The Serjeant's sister, was "Sarah Bright." On the stone of Mr. Bright's family in Lewin's Mead Chapel Burial Ground, Bristol, is the following inscription immediately after that of Sarah Bright :—

"Samuel Heywood,
Serjeant-at-Law,
brother of the foregoing
Sarah Bright, died
Sept. 11, 1828, aged 75
years."[3]

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[1] From the "Carmarthen Journal," September 19th, 1828, said to have been written by John Jones, of Ystrad, M.P. for Carmarthen.

[2] *Id.* as above.

[3] MS.

Numerous letters of condolence from persons of the highest rank, as well as from his near and dear friends, are in the possession of his family. Amongst many others is one from Lord Holland, commemorating in strong terms the Judge's public services, especially with reference to the Test and Corporation Acts. Another from his fellow-assessor at York, Mr. Justice Bayley, is highly commendatory:—"I thoroughly sympathize with you, and the loss is too fresh to admit of a due attention to topics of consolation. And yet in this case there are many. He was full of years, and yet had a vigorous old age, free from many of the infirmities to which his time of life is subject, and in full possession of his mental powers, but the consolation above all other is this, that the tenor of his life was such as to give one a full assurance of his being now in a state of perfect happiness."[1]

He married Susannah Cornwall, of London, by whom he had one son and five daughters. The son died young. All excepting one died unmarried.[2] Their names were Phœbe, Susan, Sophia, Isabella, and Ann.

Sophia died May 24, 1804, in Harpur Street.[3]

Susannah Maria died February 18, 1805, at her father's house in Bedford Street, Russell Square.[4]

[1] Extract from a letter of Judge Bayley, 15th September, 1828, to Mrs. Eliot, the Judge's daughter. "The Welsh noblemen and gentlemen seem to have highly appreciated him. Amongst these we find the names of Lord Cawdor, Lord Dynevor, Sir John Owen, Sir William Owen, John Jones, of Ystrad, M.P., &c."

[2] One of them was born 6th January, 1795.—"Gentleman's Magazine," 1795, p. 81.

[3] *Id.* 1804, p. 483.

[4] *Id.* 1805, p. 190.

Isabella died in November, 1822.

Ann, married Colonel Granville Eliot, of the Rocket Corps. She had by him two children, Captain Granville Eliot and Isabella. The Captain was accidentally drowned in 1861, whilst sailing on the Shannon.

Isabella, married 1, Mr. Welby, from whom she was divorced. 2, The Baron Victor d'Huart, who survives her. She died in 1861, without children, and, therefore, the family of Serjeant Heywood, in the direct line, became extinct.[1]

Mrs. Eliot wrote many of the MSS. quoted in the life. She, at one time, intended to edit a memoir of her father.[2]

The Judge was an affectionate father, a good husband, and a faithful friend. We must not enter into domestic privacy, but an extract from one letter which he wrote to his daughter Ann, the last before her marriage, shews fatherly love and kindness, in a happy vein of pleasantry:—

"My Dear Ann,

"You are a very saucy girl, but as you are determined to leave my service, and are provided with another place, I feel it a duty to assure your new master that you are sober, honest, industrious, good humoured, and cleanly, and that, for more than twenty years you have lived with me, you performed

[1] MS. [2] MS.

your duty so well, that I have seldom had occasion to scold you. If this character will not do, he must be very unreasonable, and I would advise you to seek another situation. But as I hear him always well spoken of, you may as well be contented, and endeavour to make yourself agreable.

"The best advice a fond parent can give to a beloved daughter who is about to change her name, is to make her husband act the part of a lover all the days of his life. I never could understand why the happy days of courtship should not be continued through the more sober state of marriage. That it is not always so, may be the fault of the husband, but generally may be attributed to the carelessness of the wife. If you wish to know how to secure the blessing, you may easily acquire the knowledge by any application to your mother, for she is mistress of the secret."[1]

We may be pardoned for adding some extracts from a letter from the Serjeant to his father, which reflects lustre not only on the affectionate son, but also on the father who was able to inspire such feelings of confidence towards him :—

[1] Dated from Cardigan, 4th September, 1814.

[2] His letters which we, of course, refrain from publishing, breathe the tenderest affection for his wife. The author was entrusted, amongst many other MSS. concerning the Serjeant, by Mr. Heywood, of Palace Gardens, with fourteen curious letters from the Serjeant to Mrs. Heywood, on the occasion of the famous Yorkshire Election of 1807. Wilberforce, Lascelles, and Lord Milton, being the candidates. These letters are the property of Baron D'Huart, who married Isabella, the Serjeant's grand-daughter; and were lent to the author through Mr. Heywood's kind attention. The MSS. respecting Serjeant Heywood are very valuable, and deserve to be edited.

"London, *Dec*r. 1773.
"Saturday.

"Hon^d^ Sir,

["It gave me great pleasure to find by my mother's letter that you got well home, and I hope you find no sort of inconvenience from your journey.

"I was at Guildhall to-day with Mr. Bailey, from one till past two o'clock,—saw J. Wilkes, who is the ugliest man I ever saw,—Sir Watkin Lewes who is as handsome as any I ever saw. Crosby, Plomer, Hopkins and Wilkes, were going in and out every half-hour to bring in votes."] ["What astonished and delighted me was, that in this tumultuous assembly, as much order and regularity was kept as in a play-house. . . . When any of the chiefs of the popular party entered at the head of voters, there were prodigious claps of applause, and, now and then a chance shout of 'a Bull,' as the livery went up to vote for Bull. They were all punning on his name. One old fellow passed us not less than ten times, crying, 'Come along my boys, us not less than ten calves.' Another cried out: 'We are good bulls. One droll dog paraded at the head of a party with a large bull's head with monstrous horns, carried on a stick which he brandished."] ["But what added to my pleasure was, that instead of the sweaty caps and greasy aprons which we expected to have seen, nine-tenths seemed to be respectable shopkeepers. Wilkes's

mob has always been described as consisting of the scum of the earth, but to-day they consisted of the middle class of people."] ["Direct to me in future at N°. 2, Inner Temple Lane. There is another Heywood, at the Grecian Coffee-house, which may cause mistakes."] ["One part of a plan I intend to pursue is to get up at half-past seven—then walk in the park till past nine, then breakfast—go into Wood's office—after dinner my time is irregular—if nothing to do perhaps go into Wood's office from five till nine. I dine generally at St. Clement's Coffee-house—sup at the Grecian, and make a point of visiting Wood *once* every day. This is only theoretical, when put in practice you will hear more. Pray give my love to all at home and William.

And believe me, ever your dutiful son,
(Signed) "SAM^L HEYWOOD."[1]

"Mr. Justice Heywood," his nephew writes, "I remember in his old age, in Bedford Place, in 1827, a very courteous, kind, and fine-looking old gentleman."[2] This description entirely agrees with the miniature of him, which his nephew has placed in the author's hands. It is a pleasant, honest, jovial countenance. Other relatives of the family have contributed their abundant testimony to the various merits of the Judge.[3]

[1] The young gentleman had been accustomed to good ways, for his letter was written on gilt paper. [2] MS. [3] MS.

The Serjeant was an author of celebrity. . . . . .

In 1779, there appeared, under his auspices, "The Right of Protestant Dissenters to a complete toleration, with the history of the Test Laws, and shewing the injustice, &c., of the Sacramental Test."[1] "This work attracted much attention, and it is said to have had the singular merit of converting Dr. Parr, who, up to that time, had strenuously opposed the claims of the Dissenters. In a letter addressed to Lord Holland, Dr. Parr terms this the only good book produced by the Dissenters."[2] In the Autumn of 1828, previous to his leaving town for his last Circuit, he finished a complete catalogue of all his pamphlets. It was a heavy task. "When, says his daughter," I congratulated him upon it, he said, "It will be of great use to *you*, I hope, but I shall not live to reap the pleasure or benefit of it myself."[3] In 1828, the Test Act was repealed; and it was resolved by the Committee who conducted the Bill through Parliament, to invite the Judge to be one of the Stewards at a public dinner in honour of the triumph. The Secretary in his letter, wrote: "The Duke of Sussex is expected to take the chair. Lord Holland and Lord John Russell have also promised to be present."

The Serjeant's publication of a defence of Mr. Fox's

[1] By a Layman (Samuel Heywood).

[2] The letter to Lord Holland is in "Parr's Works," vol. vii. p. 124. The paragraph, amongst others, was written by William Roscoe, Esq., and published in several newspapers.

[3] MS.

historical fragment, against Mr. Rose's attack, is well known. This book was published in 1811, and it was entitled: "A Vindication of Mr. Fox's History of the early part of the reign of James the Second, against Mr. Rose's observations."[1] This publication was reviewed in the "Edinburgh,"[2] by the Rev. Sidney Smith; in the "British Review," by Mr. Roberts; and in the "Monthly Review," for December, 1812.[3] But the crowning approbation of the book was that of Sir James Mackintosh. We are able to avail ourselves of the letter which he wrote upon this subject:—

"Weedon Lodge, near Aylesbury,
"*7th January*, 1817.

"My Dear Sir,

"Feeling at this moment the use said to be derived by a writer on English History, from your valuable vindication of Mr. Fox, I may, at the only time when it would not be presumption, express my grateful sense of the merit of your work. I wish your lamp were to light me farther." The letter then went on to request of Lord Lonsdale to give the writer a copy of Sir J. Lowther's memoir, mentioned in the "Vindication." With this wish Lord Lonsdale most gracefully complied.[4] At the end of his vin-

[1] By Samuel Heywood, Serjeant-at-Law. "For the British Museum, from the Author," will be found in his copy there.
[2] No. xxx. [3] MS. [4] MS.

dication, the Serjeant inserted: "A very valuable historical account of the tenure by which the Judges held their offices under the house of Stuart, and a list of those who were removed for political causes."[1] He also wrote "A dissertation upon the distinctions in Society, and ranks of the people under the Anglo-Saxon Government."

His book on Elections was of considerable repute.[2] It is said that he was employed for twelve years upon it.[3] It's value was acknowledged by the Judges in the Court of Queen's Bench, as lately as the 7th of November, 1868, during the argument concerning female suffrage. It was referred to as authority, and as giving a remarkable return from Aylesbury.[4] The Judge was a great admirer of the year books.[5] So writes a relative who follows that opinion, and, certainly, if any one could be found to imitate Serjeant Maynard's example, and take a volume for *light* reading in his carriage, he would be amply repaid for the wit, humour, and learning which are there hid in old black letter.

He loved authorship and literature, even unto death. For when the stroke fell on him, his intention was to publish shortly the life of the Duke of Monmouth, and the Life of William Lord Russel. The latter,

[1] "State Trials," vol. xii. p. 257, n.
[2] See the "Law Magazine," as above.
[3] Lowndes's "Bibliogr. Manual," title "Heywood."
[4] The "Times," November 7. [5] MS.

written by one of his daughters, was found amongst his papers.[1]

It was an episode in his life to be the subject of a literary prosecution. A letter from Ed. Christian,

[1] MS. In a very early part of this memoir, we mentioned the Serjeant as being conversant with the Anglo-Saxon. A letter which we subjoin, shews his proficiency in that language:—

"Berkeley Castle, Gloucestersr.
29 Decr., 1806.

"Sir,

"As you did me the favour to shew me your valuable collections relative to the Anglo-Saxon laws and customs, and as you was so obliging as to note for explanation the word 'Hernes,' I have taken the liberty of intruding on your leisure, to ask if you have yet met with any document which could develope the meaning of that word. I am, at this time most interested in the enquiry. Henry the Second, while Duke of Normandy (as by the original deed before me), grants manerium de Berkeley, et totam Berkelai *hernesse* cum omnibus appendiciis suis; and in several grants to the monastery of St. Augustine, in Bristoe, the churches of Berkeley are named."

Chaucer says, (Chanons yemans, prologue)—

"In the subarbes of a towne (yd be),
Lurking in *hernes* and in lanes blind."

And in another place which I do not recollect, he says:—

"Seeking in every walke and every *Hern*."

"I beg your pardon for this liberty, but I am assured that you will honor me with an answer if the explanation of that word should occur to you, at your leisure.

"I beg my compliments to Mrs. Heywood and the Ladies.

"I have the honor to be, Sir,
"Your obliged and most obedient
"humble Servant,
(Signed) "W. F. SHRAPNELL."

"Not knowing exactly where to address you, I have requested of my Lord Berkeley to *frank this under cover* to his agent in town."

Note to this letter by the Serjeant.—"12 Janry. 1807. Referred the writer to 'Lye Saxon. Dict.' 'Subjecta terra ditio, and applied to Berkley in 'Sax. Chron.,' 1088."

Chief Justice of the Isle of Ely, announces this. We give an extract:—

"Cambridge, *November 3rd*, 1811.

"DEAR HEYWOOD,

"By a letter I rec^{d}. to-day, from our solicitors, Messrs. Dyneley, of Gray's Inn, I find that they have commenced an action against your printer. They say it is an action in which all the other printers and booksellers will acquiesce. He, therefore, I presume is indemnified by them. I assure you it was not by my *knowledge* or advice that your printer was selected. Our solicitors from the University have a general order to demand all respectable books, and, upon refusal, to commence an action according to the statute. If this action will be attended with inconvenience to yourself, I should advise you to send a copy to our solicitors, and, probably they will give out process against some other printer." "If your printer is indemnified from all expense, I should think it was a compliment paid to your book."

"I remain,

"Dear Sir,

"Yours very sincerely,

(Signed) "ED. CHRISTIAN."[1]

We are not acquainted with the result, but it is believed that the proceeding bore no fruit.

[1] MS. Letter.

JOHN LENS.

Serjeant-at-Law, 1799—King's Serjeant, 1806.

JOHN LENS, the independent advocate, the prudent and careful counsellor, the man whom proffered place and power could not rend from retirement, is the subject of this narrative. It is difficult to decide whether diffidence, or humility, or both, were the causes which kept him back from honour. . . . . He left the Western Circuit, beloved and respected by all. His character was drawn by Persius:—

> "Compositum jus, fasque animo, sanctosque recessus,
> Mentis et incoctum generoso pectus honesto."

"A mind in which duty to God and man are harmoniously blended, a clear conscience in the secret places of the heart, a breast engrained with noble honesty."

John Lens was born on the 2nd of January, 1756. He was a native of Norwich, the son of Mr. John Lens, an eminent Land Steward. He received his early education at the school in that City, after which he came under the tuition of the Rev. John Peele. In 1775 he was entered at St. John's College, Cambridge; and in 1779 gained the honours of Fourth

Wrangler[1] and Chancellor's Medallist, taking his degree of B.A. He became afterwards, in 1781, M.A. However, but for the intrepidity of a school-fellow, he had lost his life before he came thither. This was whilst bathing, at a place called Heigham.[2]

Upon leaving the University, he was admitted at Lincoln's Inn, and was called to the Bar in 1781.

He chose the Norfolk Circuit in the first instance, but he soon exchanged it for the Western,[3] where he practised with great success, and became for many years the leader. It is a remarkable event in his life, that he should absolutely decline all invitations to enter Parliament. He might have been the representative of his University, but the self-denying principle prevailed, and yet, although he could not assist the Ministry in the House, he was offered the place of Solicitor-General. He was not a brilliant speaker, but he was a "lawyer of cultivated manners and mind: his language had frequently the merit of force and elegance, and always that of propriety."[4] In the words of his panegyrist: "He was considered the standard of all that was honourable and dignified in man."[5]

When he had been eighteen years at the Bar, he received, June 12, 1799,[6] the dignity of the coif.

[1] Jones, late tutor of Trinity, Senior Wrangler; Marsh, Bishop of Peterborough, 2nd; Christian, Chief Justice of the Isle of Ely and Senior Medallist, 3rd.

[2] "Ann. Biogr.," 1826, p. 442.—"The Georgian Era," vol. ii. p. 546.

[3] "Ann. Biogr.," 1826, p. 443.

[4] *Ibid.*

[5] *Ibid.*

[6] Trinity Term.

Upon this occasion, he was joined with Mr. Bayley, afterwards the Judge. They gave rings, with the motto: "*Libertas sub rege pio.*"

However, although he had waited for some years before he obtained rank, he was made a King's Serjeant in 1806 with Mr. Serjeant Best.[1]

He was also at some period a Lay Fellow of Downing College, and counsel to the University.[2]

Amongst the numerous causes in which his services were sought, and his talents tried, was that in which General Gore, Governor of Upper Canada, had, in common with other great officers of those days, been guilty of indiscretion. The complaint of Mr. Charles Perkin Wyatt, Surveyor-General of the Crown lands, was that the defendant, in the first instance, suspended him from his office without reason, and, which was a more dangerous step, that he made such representations to the Secretary of State for the Colonies, as prevented Mr. Wyatt from being restored to his situation, and that he had published a libel of a strong character against the surveyor. The Government would not give up the Governor's letters, therefore the chief reliance of Mr. Wyatt was upon the libel. This was a pamphlet purporting to be a letter from General Gore to Lord Castlereagh. It alleged that the plaintiff had turned an old man out of his office, merely because he voted for the Government; that he had coveted 200 acres of land near Ningarn, and,

[1] Easter Term.

[2] "The Georgian Era," vol. ii. p. 546.

under pretence of a defective title, had robbed an aged veteran, who occupied these acres, of his hard earnings, by ejecting him, and thus reducing him to beggary. The veteran was, moreover, said to have died soon afterwards, leaving a family in great distress. Lastly, there was the usual imputation made by Governors, when they take umbrage at an officer within their jurisdiction. The plaintiff was a seditious and disaffected person. Mr. Serjeant Lens was unable to struggle against the evidence which supported all these charges, so that, after the summing up of Sir Vicary Gibbs, the jury awarded £300 as their measure of damages.[1]

Another great case of this year was the famous trial to ascertain the boundaries of Cranborne Chase. This Chase was, perhaps, the most extensive royalty ever claimed by any subject, possibly, by any sovereign prince. Lord Rivers was the nobleman who asserted these extensive rights. On the other side, were the owners of the soil, who insisted upon the independent enjoyment of their property through the domain. Lens appeared at the Assizes for Wiltshire (where the cause was tried,) held in July, 1816, to claim these extensive privileges in no less than three counties:—Wiltshire, Dorsetshire, and Hampshire. He declared that the question at issue related simply to the *boundaries*. He repelled all objections to the oppressive nature of the right—he repudiated the clamour raised against its origin, and would not even entertain

[1] "Annual Register," vol. lviii. 1816, p. 294.

the question of any evils which might arise from its exercise. Lord Rivers, amongst other things, insisted that his deer should run without molestation over the whole chase, thus, to some extent, endangering the labours of husbandry. The Serjeant, however, enlarged upon the moderation of the nobleman. He denied the practical injury,—he said that Lord Rivers incurred great expenses in supporting the deer in their wanderings; and that the noble owner regarded the use of these privileges as a "high honour, a feather of high estimation," and "weightier in the scale of justice, than all the eloquence and clamour with which it might be questioned." In support of the claim, a decree of the Exchequer Court, assigning these boundaries to Lord Salisbury in 15 James the First, from whom Lord Rivers derived his title to the Chase, was produced, and it was proved that in very ancient times certain privileges had been granted by the proprietors of the Chase. What could be done for a client, Serjeant Lens could and would do. But he had a formidable opponent. Serjeant Best was often in the field for the cause of popular liberty. To him was entrusted the rights of the numerous occupiers interested in a reasonable enjoyment of the chase. "See," exclaimed the advocate: "Lord Rivers claims to feed his beasts over 500,000 acres in three counties, an extent of country more than 100 miles in circumference. He insists that in that wide range, no man shall plough to the detriment of the deer; no man shall raise a fence to the exclusion of the deer; the

growth of wood shall be protected only for the benefit of the deer; no man shall turn his sheep into his own woods; if he do, the keeper shall impound them; no man's timber shall be allowed to grow, for the deer must browse on it. The King of England, with all his forests, could not maintain a grasp so mighty. Cranborne Chase, in truth, was six times as large as the New Forest, and, if ever a grant so absurd could have been made, it was contrary to the charter of the Forest. The defendant's counsel then showed that this famous decree, so relied on as all-powerful, had been fraudulently obtained. The verdict of a jury had negatived even at that early day the rights in question, but the Barons of the Exchequer, under the influence of the Crown, and assuming that they were sustaining the regal power, set the verdict at nought, and pronounced for the predecessors of the present Lord. Of course Lens, in his reply, took care to keep close to the original point, the boundary; and with true advocacy, denounced Best's harangue about liberty, as calculated to excite feeling, and thus mislead the jury. There was no adjournment, and at two in the morning the jury of Wiltshire gave their verdict for the defendants.[1]

The Rev. Mr. Chafin, of Chettle,[2] took great interest in this remarkable contention.[3] He wrote

[1] "Annual Register," vol. lviii. 1816, p. 301.

[2] Dorsetshire.

[3] See his Autobiography, Nicholl's "Literary Illustrations," vol. vi. p. 195.

several letters to Mr. Nichols on the subject, which will be found in the "Literary Illustrations." One of these, dated January 5, 1817, is sufficiently interesting to warrant us in borrowing some extracts. He had so far espoused the cause of Lord Rivers, as to write a pamphlet upon the subject. "I have taken," he says, "the earliest opportunity of transmitting to you, all the letters which passed between Lord Rivers and his agent." "You will find that Messrs. Farrer and Mr. Serjeant Lens approve of my performance, but they have made different use of it from what was intended by me. On the strength of my evidence, you will find that they have obtained a rule for a new trial, which is directly contrary to my wishes and design; my aim was to set forth Lord Rivers' claims in a clearer light, and prevent future law suits instead of encouraging them. Between ourselves, I cannot help saying that I feel myself as having been made a tool of by the lawyers; they seem to have taken the advantage of my communication to Lord Rivers, only to draw his Lordship into great expense, and to empower the learned Serjeant to make another fine florid ovation in the Court, with no better success than before." "The delay of six weeks in not returning my papers which they acknowledge, has been very injurious to Lord Rivers." In the night of the 7th of December, some deluded persons, led astray by notions instilled into their minds, particularly by the little pamphlet which I shall send you, that Lord

Rivers had no right to the deer in Wiltshire, and that any person may kill them with impunity: four men, not of the lowest class, but mechanics, came with fire-arms into the chase to destroy the deer, but they were met by two resolute young keepers belonging to Burstey-Stool Lodge, when a very severe conflict ensued; many serious wounds were given on both sides; but in the end the keepers gained the victory. They took one prisoner, and the others ran away." Mr. Chafin, after alluding to the commitment of this man and his companions, continued:—"This unlucky affair has thrown an odium on his Lordship's rights, and made them very unpopular; and I know that Mr. Serjeant Best, who has considerable influence in Dorset, and is a member of a county borough, will make himself well acquainted with all these unhappy circumstances, and will be an overmatch for Mr. Serjeant Lens being retained on the other side." He then concluded by adverting again to the new trial and his evidence.[1]

On the 15th of October, 1817, another letter from Mr. Chafin appears, in which he says:—"I find that all the Judges are unanimously adverse to granting a fresh trial on the former plea of claim of the great boundaries of the chase in former days, and that his Lordship must be content with the smaller inbounds." "But it is doubtful whether or no his Lordship will, after so long a delay, be able to obtain even these.[2]"

[1] Nicholls's "Literary Illustrations," vol. vi. p. 223. [2] *Id.* p. 229.

The pamphlet was published, and under date of June 6, 1818, Mr. Chafin writes: "The gentlemen of Wilts, found, on investigation, that my evidence was incontrovertible, and therefore gave up the cause, and proposed an amicable compromise with Lord Rivers for his rights of chase. My point was gained a full year before my anecdotes were published, and all law process hath ceased."[1]

We have celebrated in another of our lives, the joyous entry of a water course cause at the Assizes. A cause, for the lawyers fruitful; for the litigant, often barren; to the public, valueless; to the millers, or the combatants, "war to the knife." Lens had a well-known quarrel on this subject to manage. The plaintiff's name was Vooght, the defendant's Winch. There is a decided difference between a navigable stream and a common passage for hay carts. Yet the battle was fought on this issue. The swearing on both sides was no doubt honest, but not impartial. Mr. Serjeant Lens took charge of the plaintiff's interests, and it was his business to negative the navigable stream. He had thirty witnesses. One of them was so strong in his opinion, that he spoke of the small quantity of water in the ditch as not capable of "*floating a butcher's tray.*" However, fifty wit-

[1] Nicholls's "Literary Illustrations," p. 243. Mr. Chafin, who had been struck by a flash of lightning the year before, in his eighty-fifth year, died at Chettle, about seven weeks after his last letter, on August 14, 1818. *Id.* p. 245, n.

nesses were on the other side, and they affirmed that, at spring tides, *barges* commonly navigated the ditch. This might seem absolutely inconsistent with the presence of brick bats and rubbish for the hay-cart road, had it not been admitted that the marshes were occasionally over-flowed. Doctors differ, and the scientific men called in to discuss the question of damage to the mill, were of course at variance. Some said that the mischief done was material, but other learned men were equally certain that any evil results were impossible; and this opinion they supported by reasons of natural philosophy, and of the powers and property of water. The Serjeant was successful here, and gained a verdict for his client for £50.[1]

We must now go for a moment into the Criminal Court, where the learned Serjeant presided at Guildford, at the trial of Chennel and Chalcroft, for the murder of Mr. Chennel and his housekeeper. A principal witness was a woman set to watch while the deed was being done, and so was a party to the crime. Serjeant Lens showed himself to be a calm, dispassionate, and able Judge. His address to the jury occupied two hours and three-quarters, during which he put forward every point which could be imagined in favour of the prisoners, and evidently summed up for an acquittal. He wisely distinguished between words of hatred used in the infatuation of

[1] "Annual Register," vol. lxiv., 1818, p. 296.

criminality, and loose idle words with no definite meaning, and never intended to avow any purpose. But the jury almost immediately returned a verdict of "guilty."[1]

It was the lot of Serjeant Lens to try another remarkable murderer at the Summer Assizes for Maidstone, in 1818. A man named Charles Hussey, was indicted for the murder of Mr. Bird and his woman servant. Here, again, the learned Judge spoke for two hours, summing up an extraordinary tide of evidence. The man was convicted, and hanged at Penenden Heath.[2] Old men should be careful not to sit at a window settling accounts with money and notes on the desk which another person may observe. Hence this crime and its consequence.

Nevertheless, Serjeant Lens was, by no means, a mere advocate, bound by the trammels of law and forensic practice. Sir James Mackintosh was acquainted with him, and bears good testimony to his general relish for society and amusement. "I found Lens one evening," he records in his memoirs, "seeing Kean in 'Sir Giles Overreach.'"[3] Again, "went with Lord Holland to the Fox Club, where I sat between the Duke" (Devonshire) "and Lens."[4]

In December, 1813, Lens had an opportunity of

[1] "Annual Register," vol. lx., 1818, p. 305.

[2] All the evidence will be found in Burke's "Romance of the Forum," p. 258.

[3] February 9, 1816.—"Memoirs," vol. ii. p. 337.

[4] *Id.* p. 342.

succeeding to the first forensic honours. Chief Baron Macdonald resigned, and Sir Robert Dallas vacated his office of Solicitor-General for a seat in the Common Pleas, upon which the appointment was tendered to Mr. Leach, afterwards Master of the Rolls, and, upon his refusal, to Serjeant Lens. The latter, however, was not willing to accept it, and Shepherd then became the new law officer.[1] But the honour which accompanied the tender of the high office is deserving of record. The Prime Minister, in person, pressed the rank upon the Serjeant, agreeably to the express command of the Prince Regent, who held him in the highest esteem. He was assured, at the same time, that he "should be bound to no political line of conduct, and that the appointment should open to him the first situations in the law. This offer he firmly, but respectfully, declined to accept."[2] This we are inclined to think was proving too much. As Solicitor-General, he was expected to procure a seat in Parliament, and, of course, to support the ministry. The efforts necessary to ensure his entrance into the House, clashed, of course, with his determination not to seek a seat in Parliament.

In politics, however, he was an early friend of Fox, and, although others deserted him, no excitement of interest or ambition could detach Lens from his principles of a "Constitutional Whig."[3]

[1] Romilly's "Memoirs," vol. iii. p. 124.
[2] "Annual Biography," 1826, p. 442.
[3] *Id.* p. 443.

Hence it became a common toast at public dinners, "Serjeant Lens and the independence of the Bar."

The attention lavished upon this great lawyer was, in some respects, extraordinary, but the excellency of his character, beaming from all quarters, and under all circumstances, disarms all feeling of surprise. His kindness towards his brethren in the Common Pleas is thus recorded in a forensic story. There was a cause—"Thurtell against Beames." Taddy was examining a witness, and asked a question respecting the *disappearance* of the plaintiff, which was thus rebuked by Mr. Justice Parke: "That's a very improper question, and ought not to have been asked." TADDY: "That is an imputation to which I will not submit. I am incapable of putting an improper question to a witness."

PARKE: "What imputation, Sir? I say the question was not properly put, for the expression, disappears, means to leave clandestinely." TADDY: "I say that it means no such thing."

After some more very hot words, the Judge rose, and said, with great warmth, "I protest, Sir, you will compel me to do what is disagreeable to me."

TADDY: "Do what you like, my Lord."

"Well," said Mr. Justice Parke, resuming his seat, "I hope I shall manifest the indulgence of a Christian Judge."

Nevertheless, the fire still burned within, and the passage of arms continued.

Mr. Serjeant Lens rose to interfere. "No, brother Lens," exclaimed Mr. Serjeant Taddy, "I must protest against any interference."

This did not deter the earnest Lens, for he thus addressed the Bench: "My brother Taddy, my Lord, has been betrayed into some warmth;" here he stopped, for Taddy seized him, and pulled him back into his place. "I again," he exclaimed, "protest against any interference on my account. I am quite prepared to answer for my own conduct." "My brother Lens, Sir!" said Judge Parke, "has a right to be heard." "Not on my account," said Taddy; "I am fully capable of answering for myself." PARKE: "Has he not a right to possess the Court on any subject he pleases?" TADDY: "Not while I am in possession of it, and am examining a witness."

The Judge threw himself back into his chair, and was silent.[1]

It must be related to the honour of Lens, (and all affairs connected with Lens were in the highest degree honourable) that in 1817, whilst in the full vigour of his intellect, he retired from the circuit, "for the sole reason that he ought to make an opening for younger

[1] Appendix to "Law and Lawyers," vol. ii. p. 357. This movement, very uncomfortable for an advocate, is peculiarly and prescriptively judicial. It signifies that the Bench is totally indifferent to anything which he may say. However, the storm passes, the sky brightens, and good humour is soon restored.

men."[1] The Barristers of the West presented him with a splendid inkstand, with an inscription, expressive of their great attachment to him, and their sincere regret at his loss.[2]

In the next year he married Mrs. Nares, widow of John Nares, Esq., the Magistrate, who was the son of Sir George Nares, a Judge of the Common Pleas; but he had the misfortune to lose her in 1820.[3] He, however, continued his practice in London, and, during the last illness of Lord Ellenborough, he undertook the labours of the Home Circuit for the Lord Chief Justice, and discharged his duty with the unqualified approbation of all.[4] He alone feared that he had not borne his part well. Indeed, had not Lord Ellenborough been his *friend*,[5] it is doubtful whether he would have been persuaded to assume the judicial function.

But we must give Lord Campbell's account of this circuit undertaking. When the day came round for the Judges to choose their summer circuit, Lord Ellenborough naturally chose the Home, but, as the time approached, the Chief Justice felt himself unequal to the labour. He, therefore, accepted the offer of Lens, whom he wished to have as his successor, to go in his

[1] "Annual Biography," 1826, p. 443. The date is 1817, which can hardly be correct.

[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*

[5] *Ibid.*

stead.[1] This offer was made in friendship, not as offers have sometimes been made, with a view of uniting the public service with private interest.

The following letter has been preserved to us:—

"St. James's Square,
"*July* 1, 1818.

"DEAR SMITH,[2]—

"Mr. Serjeant Lens seems to prefer taking his own carriage and a pair of horses, with a pair to be put before them by his job-man, to having the use of my chariot, drivers, and horses, which I offered him. John will attend him as circuit-butler on a horse, with which I will provide him. You will attend to all things material to the Serjeant's convenient accommodation, and see that they be fully supplied in all respects. The Serjeant, as going in my place, will, I presume, sit at each place on the circuit, on the civil side or the crown side, as I would have done myself; viz., on the civil side at Hertford, and on the crown side at Chelmsford. You can apply to me if any matter of doubt should occur, which, however, I do not expect. I am going out of town to Roehampton.

"Yours, &c.,
(Signed) "ELLENBOROUGH."[3]

[1] "Chief Justices," vol. iii. p. 225.
[2] The Judge's Marshal probably.
[3] Campbell's "Chief Justices," vol. iii. p. 226.

That Serjeant Lens was not elevated to the Bench was a matter of surprise. Some have said, that he was disappointed; but another, and probably the better opinion, seems to have been, that this dignity was more than once offered for his acceptance, but that from "a most extraordinary diffidence in himself and his own powers,"[1] the country was deprived of his services. The latter version appears to deserve credence, because a lawyer who was, for the moment, preferred to Serjeant Shepherd as a law officer of the Crown must have earned his seat on the Bench. The author remembers that a legal friend of old standing accounted to him for Lens's want of promotion, by saying that some physical affliction had hindered it. But this, probably, alluded to the severe malady which, for nearly two years before his death, destroyed his professional career. Incapacity was added to reluctance. But we must not forget to add, before we leave the subject, that the Chief Justiceship of Chester was subsequently proposed to him. This was a post of considerable rank, and unconnected with political bias; but even this retirement, at once easy and honourable, did not allure him.[2]

Lord Ellenborough died in October, 1818, and, a fortnight afterwards, the promotion was by no means settled. Sir Samuel Shepherd, from deafness, was incapable. Sir Robert Gifford was too young. Sir

[1] "Annual Biography," 1826, p. 443.

[2] *Ibid.*

Vicary Gibbs was the Judge who had the highest claims; but "the hand of death was upon him."

"Lord Ellenborough had strongly recommended Mr. Serjeant Lens, a most honourable man, an accomplished scholar, and a very pretty lawyer; and he was for some time the favourite."[1]

Even if Lens would have yielded, and accepted, it may be observed, that as Lord Mansfield failed to secure his own high place for Buller, Lord Ellenborough might have failed to obtain the promotion of Lens, after so many refusals of high office on the part of the latter. It was little supposed that Abbott, the Puisne Judge, was to assume the collar of S. S. "His manner was tranquil and listless. He was observed several times to yawn, seemingly against his will." Some said that he was only acting a part; and others, who knew "him better, explained what they beheld; by his habitual want of animal spirits, and the collapse after long and painful anxiety."[2]

"On the 4th of November, fourteen years to a day, before his own death, he actually appeared in Court, at Westminster, wearing the Chief Justice's gold chain."[3]

Speaking of Serjeant Lens, says a contemporary, "of his learning, I believe, no person competent to form an opinion entertains a doubt. His talents, his acquirements, his character, and his temper, all unite

[1] Campbell's "Chief Justices," vol. iii. p. 289.
[2] *Id.* p. 290. [3] *Ibid.*

to recommend him to one of the highest stations in the law."[1]

In the illness which befel him in 1823, and which eventually proved too powerful for his constitution, he was attended by the most eminent surgeons. An operation was required, which he bore calmly, firmly, and resolutely; and he is said to have rewarded the skilful and successful hand which relieved him, with princely liberality. But the shock which remained put an end to all further employment. He died at Ryde on the 6th of August, 1825, in his sixty-ninth year.[2]

[1] "Criticisms on the Bar," p. 134.
[2] "Annual Biography," 1826, pp. 442, 443.

SIR ALBERT PELL, KNT.

Serjeant-at-Law, 1808—King's Serjeant, 1820—D.C.L.—A Judge of the Court of Review.

[Albert Pell, M.P. for South Leicestershire, the eldest son of the Judge, has kindly given to the Author some MS. notes respecting his father, whom the Author well remembers on the Western Circuit, and he also desires to express his acknowledgments to Oliver Claude Pell, Sir Albert's second son.]

ALBERT PELL was the youngest of three sons of Robert Pell, the father of twenty-one children, most of whom died before the age of twenty—an eminent medical practitioner in Wellclose Square—an active Magistrate for Middlesex, and a Major in the Militia.[1] He was born in 1768, and baptized October 19. Albert was a pupil at Merchant Taylors', and in 1786 was elected a Fellow of St. John's, Oxford. In 1793 he became Bachelor, and 1798 Doctor of Laws.[2] He was entered at the Inner Temple on the 27th of June, 1783, and chose for his Circuit the Western, and, for his Sessions, Winchester. He had for his legal

[1] MS. William Pell, the Serjeant's grandfather, once built and repaired boats at Wapping, and died in the King's service on board ship.—MS.

[2] "Annual Biography," 1833, p. 288.

master Mr. Henry Blackstone, the Special Pleader, but he does not appear to have entered into much of what is called "Chamber Practice."[1]

The bewitching imageries of the stage enlivened the youth of Pell,—and the friendship of the first Charles Matthews, which he made at Merchant Taylors', was not calculated to lessen the fancy. Pell, in early life, was not in comfortable circumstances. It was hardly probable that a medical practitioner, however able (and no doubt Mr. Pell's talents were considerable) should be in a condition to rear his sons in opulence. So that Matthews and Albert Pell plotted together to take the buskin in America. "*Sed Diis aliter visum.*" However, there is reason to believe that Sir Albert was often at the theatre, and certain it is that his knowledge of Shakspere was extraordinary.[2] . . . . .

Speaking of Matthews, a curious story is related of him and Pell, his schoolfellow. "I remember as a boy," his son Albert[4] tells: "his saying that the meat was so horribly fat at Merchant Taylors' and the rule so strict about consuming all on the plate, that he and Matthews between them trained a dog to clear up what they could not bring their stomach to admit."[3] It is much to the credit of the Serjeant that, although "as a young man he was fond of gaming, and at times utterly penniless from luck going against him, he shook off the habit entirely before middle age."[5] It

[1] "Ann. Biog.," 1833, p. 288. [2] MS.
[3] MS. [4] The present Albert Pell. [5] MS.

is related of him in the "Law Magazine," that upon a hint by one of his early friends, that his rather gay life at the University would hardly consist with the studies for the Bar, his reply was, that he had no doubt of being leader of the Western Circuit within twelve years from his call.[1] "This was said," says the writer of the life, "to the Rev. E. Taylor, late of Shapwick House, in Somersetshire, from whom I had the anecdote."[2] Nevertheless, his progress did not promise the realization of his bold speech.[3] Indeed, the author of "Criticisms on the Bar,"[4] opens his account of Pell with this observation: "This gentleman was omitted in the original series of these articles, because at the time they were written, he did not seem to occupy so ostensible a situation at the Bar, either in point of business or of talent, as to render it necessary to make him an object of criticism."[5] Other descriptions, by no means complimentary, follow. The writer proves too much. "I cannot persuade myself," he adds: "That he ever contemplated the good fortune he has experienced."[6] This is inconsistent with the Serjeant's confident anticipation of his coming fortune. It is true that Gibbs, Lens, and Gifford were on the same Circuit. But the two former were his seniors, and it is by no means to be assumed that, as a Nisi Prius advocate, Pell would not have defeated Gifford. As

[1] Vol. viii. p. 535. [2] *Ibid.* [3] *Ibid.*
[4] By Amicus Curiæ, London, 1819. [5] P. 287.
[6] P. 288.

it happened, he became the absolute leader of his Circuit, and was to be found either on the one side or the other. Nor was he, by any means, without business in London; and he seems, at one time, to have had a fair business in election cases. He was frequently opposed to Lens. But he had to bear up against narrow means. He is said to have "walked his Circuits" in the first instance, and his eldest son has his travelling knife and fork in his possession.[1]

Having practised as a junior counsel according to the usual routine, he was, May 30, 1808, made a Serjeant. But twelve years elapsed before he became a King's Serjeant. At that time, however, he led extensively, both on the Western Circuit and in London. It is affirmed that he frequently left London for the Assizes with upwards of 200 retainers; and that his practice produced not less than £6,000 a year.[2] . . . . . Of his skill as an examiner of a witness, an instance is given. It happened at Bristol. A hostile witness was put into the box, to prove a fact which it was known he could establish. He baffled the Serjeant, however, for nearly an hour, till, at length, the Judge interposed, intimating that it

[1] MS. It is truly grateful to find the son many years afterwards treading in his father's footsteps. "As a lad," he writes, "I walked over, in 1841 or 1842, all the Devonshire and Cornwall portion of his Circuit, sleeping at wayside inns. The country people used to be full of his jokes. Several times, I know, the innkeepers would take no payment from me as his son."—MS.

[2] "Ann. Biog.," 1833, p. 289. But the late Lady Pell estimated it at £8,000. MS. A forensic income, however, is liable to change.

was useless to attempt to carry the matter any farther. But the counsel was resolute; he said he had already obtained sufficient to enforce the rest, and begged permission to proceed. At last, overpowered by the admissions extracted, the witness gave way, and proved the facts desired, amidst the admiration, and even cheers, of the auditory.[1] He distinguished himself in one of his earliest causes by this skilfulness of examination. It was the case of Colonel Poulett against Lord Sackville. He did not lead, but the burden of managing the witnesses was entrusted to him. The jury gave £2,000 damages.[2] He was, however, the leading counsel in Lord Portsmouth's case.[3]

In 1813 he conducted a cause which excited great interest at Bath and Bristol, and even at Cork; it was tried at the Bristol Assizes. The plaintiff was Mary Doland, the defendant Timothy Deasy, Esquire. Bristol was the scene of action, and Cork the vicinity of an estate of the value of between £2,000 and £3,000 a year. In the question at issue, the inheritance of this property was collaterally involved. About twenty-three years before, the defendant married Anne Maria Barry. Upon this, the father of the defendant settled this estate upon the bridegroom, giving him a life interest, with remainder to any son or sons, but, in default, to his younger brother, Richard Deasy.

[1] "Ann. Biog.," 1833, p. 289.
[2] *Ibid.*, p. 290.
[3] *Ibid.*

Nineteen years passed, but there was no heir. About the year 1809, an altercation took place between the brothers, and the defendant left Ireland with his wife, and came to live at Bristol. In September, 1809, there appeared in a London journal, called the "Star," the following announcement:—"Births: At Bristol, the lady of Timothy Deasy, Esq., of a son." It was, certainly, not merely not improbable, but highly to the contrary, that this unexpected appearance of an heir after such a lapse of time, should create astonishment, and especially amongst the friends of Richard Deasy, who now stood in jeopardy of losing this valuable estate. Although the brothers had quarrelled, the younger, nevertheless, for a long time resisted the importunities of his friends, and could not be taught to suspect otherwise than that this fresh birth in the family was a legitimate progeny. But it was represented to him that his seven infant children would be in danger of losing their rightful inheritance if a suppositious child should be acknowledged, and no steps taken to invalidate any claim which might hereafter be made. Accordingly, a considerable enquiry was set on foot, but without success, and the matter was about to be given up, when Mr. Richard Deasy was induced to take a step which it may be wondered at that he did not venture upon before. He called on the medical attendant of his brother's family about June, 1812, three years after the alleged birth, and he asked the doctor to answer the question, as a man of

honour, whether he had ever assisted Mrs. Timothy Deasy in the delivery of a child. To this question the surgeon refused to return any answer, and was most anxious that the inquirer should leave the house. Suspicions were now thoroughly aroused, and Mr. Serjeant Pell denounced the transaction as a conspiracy, which he proved by very strong evidence. The plaintiff, Doland, was an annuitant of the defendant. Arrears had accrued, and, for these, an action was brought. The history of the Serjeant's client was eloquently told by himself. Her sad adventure in life was seduction by a fellow-servant. She was obliged to procure a lodging, being pregnant, and await her delivery. Here she was discovered by the medical person alluded to. He introduced her to the wife of the defendant. A condition was made that if her child should be a male, she should part with it to that lady. A boy appeared, and she was reminded of her agreement with Mrs. Deasy. The infant was surrendered on the following morning, and, after an infinity of changes, in order to destroy any clue, Mrs. Deasy received the charge from the hands of a third or fourth nurse. Within a few days the child was baptized, by the name of Edward Garret Deasy, and a certificate was exhibited in Court, showing the birth to have been on a day and hour several days before the real date. Mary Doland, not being satisfied with the fate of her child, spent two months in her endeavours to discover him. Mrs.

Deasy then allowed her to remain as an inmate of the family for about two months, until the defendant and his wife pretended an urgent visit to the country, and the plaintiff returned to her lodgings. After having travelled with their boy to numerous places, with such a change of servants as they hoped might defy detection, they adventured a return to Bristol. In the following December, the plaintiff had another child, and the opportunity was made available for the defendant and his agent to call upon her, and for an annuity of £50 a year, to yield entirely the disposal of her first child, and abandon the sight or knowledge of him. There was some hesitation on the part of Doland, but, at length, the agreement was signed, and a bond was delivered to her as the security. At Midsummer, 1812, the payment of the annuity ceased, and as we have above seen, in 1813 a lawsuit was commenced. Mr. Deasy insisted at the trial, that the woman had broken the agreement, on her part, not to divulge any of the circumstances, nor to approach the defendant's residence. . . . . .

This was the incident for Serjeant Pell's peculiar style of eloquence. Lens was against him, but the matter was too transparent, and, although his superior in very many respects, Lens had no chance, after such revelations as these, of success. The declamation of Pell and his reply, must have been all-powerful with the jury. The defendant's counsel were compelled to call witnesses to establish the breach of the agreement,

and thus the second speech for the plaintiff was let loose upon the unpopular defence. Baron Graham summed up, but the jury did not leave the box, and returned a verdict for all the arrears,[1] and, probably the penalty.[2]

On the 20th of April, 1813, Serjeant Pell married the Honourable Margaret Letitia Matilda St. John, second daughter and one of the co-heiresses of Lord St. John. The eldest was the wife of Baron Vaughan. By this lady he had six children. Three sons and two daughters survived him.[3]

In 1818 he bought an estate at Pinner Hill, of Mr. Serjeant Sellon, and there he resided for many years, rising early both in winter and summer, and enioying his country place.[4]

In January, 1819, he took his seat within the Bar, as a King's Serjeant. It fell to his lot in this year, to prosecute Sir Manasseh Lopez, for bribery. The indictment was tried before Mr. Justice Holroyd, and a special jury, at Exeter. The Serjeant conducted the prosecution, and the case was that of Grampound. The mode of corruption was bold, but ingenious and amusing. Sir Manasseh was to lend £2,000 to the electors. This loan was a gift, and, in fact, the price of the votes, the price of forty-five voters. Mr. Teed

[1] "Annual Register," 1813, vol. lv. pp. 261—264.

[2] The question as to the consideration, whether selling a child was legal, does not seem to have been raised.

[3] "Ann. Biogr.," 1833, p. 291.

[4] *Ibid.*

was the candidate who presented the petition, and Sir Manasseh calmly observed, that if Mr. Teed would place him in the same situation as before the commencement of the negotiation, he would resign his interest to him. Nay more: "If they can find any gentleman who will pay them better, they may transfer their services to him." An Alderman of Grampound, then proved the case fatally against the Baronet, and quoted his remark: "I have secured Symons; I have done something for him here;" touching the palm of his hand. Mr. Adam, afterwards Accountant-General, and son of the Right Honourable William Adam who defended Lord Melville, was for the defendant. Mr. Moore (Abraham Moore), also spoke for the Baronet, and insisted, that the money in question had been given from charitable motives to assist the borough, which was, at that time, in great distress. "If a landlord," said the counsel, "lowered his rents to assist his tenants, and was afterwards returned by their votes to Parliament, would that be bribery?" This reasoning was too flimsy. The jury did not leave the box,[1] and a severe sentence ensued upon their verdict.

The author well remembers this clever Serjeant. "I was in a case," he said, "in which I had great doubts of success. But I took particular notice of one juryman. He was very attentive to my speech. I watched him. He listened. It was evident that he

[1] "Annual Register," 1819, vol. lxi. p. 210.

was a man with but one idea. *I was resolved that that idea should be mine.*"[1]

One day he told us at dinner on Circuit, a very characteristic tale. He was once applied to by a servant of his brother, to know how she could recover a sum of £60, which she had lent to her brother-in-law, but who positively denied the loan.

The Serjeant said, he scarcely knew how to advise her, but, at last, he recommended her to go to a professional man, and to urge her debtor through him to go before a Magistrate, and swear to the fact of his owing her nothing. Voluntary oaths had not then been abolished. This was done. The man was requested to go before the Justice, and in default of his being unwilling to do so, was told that proceedings would be taken against him. The parties went before the Magistrate, the woman, her brother, and her brother-in-law. Now the Justice was a man of some sagacity, and, finding that he was to administer a voluntary oath, determined to sift the matter. The debtor said, that he would instantly swear to the effect proposed, and asked for the book. "No, no, my friend," said the Magistrate: "You shall not swear in that light manner. You must now repeat after me the words which I shall dictate to you." The Justice then began in a very solemn tone. "I, ——— do solemnly swear." This the man gulped down very well. "In the presence of Almighty God." Then,

[1] MS.

without repeating a syllable more, the knave fell upon the floor. "Thee art a villain, and hast stolen my sister's money," said her own brother on the instant."

The Magistrate took the matter up, and the man gave his promissory note for the money before he quitted the office.[1]

In 1825, Serjeant Pell unaccountably retired from the Circuit. If Lens made way for *him*, he in his turn, left the leadership to Serjeant Wilde. It was rumoured, that the success of Wilde was the cause of this change, but the author of the brief memoir in the "Law Magazine," by no means countenances this notion.[2] And justly, since, although the old attorney might have been pressing onward very fast, a far better reason is suggested by Mr. Pell, his son. In 1824, the previous year, there were two vacancies on the bench. Mr. Littledale was called to fill the seat in the King's Bench, and Mr. Gaselee, through the favour of Lord Eldon, was the new Judge in the Common Pleas. Sir Stephen Gaselee was Pell's junior on the Western Circuit, and, therefore, the King's Serjeant probably was displeased. Moreover, his health was scarcely equal to the exertions required of him. His son speaks strongly on the subject. "My father," he says: "was a reformer when reform was unpopular, and his indignation at being overlooked led him to

[1] MS. [2] "Law Magazine," vol. viii. p. 535.

retire from his profession."[1] So he gave up his house in Montague Place, and went to live at a house he had bought of his friend Serjeant Sellon, at Pinner Hill.[2]

Not the least curious portion of this change, in the lives of Pell and Wilde, was that the latter, then an attorney, consulted Serjeant Pell as to the expediency of his adopting the higher profession. And it was owing to the advice he received, that Serjeant Wilde went to the Bar and achieved his high success.[3]

Serjeant Copley quite appreciated the rising fortunes of the late Lord Truro, for having come specially to Exeter, and looking round the Court, he observed of Pell:—

"Nec viget quicquam, simile, aut secundum,"

and then with a graceful recognition of Wilde:—

"Proximos illi tamen occupavit
"Pallas honores."

Contemporary writers give a very qualified opinion of the powers of Pell as a speaker.[4] He was full of volubility, and that was mistaken for eloquence. The "Groundlings," were imposed upon by the affluence of his sentences. He was tautologous and voluminous, even ungrammatical. He was vindicated by those who "commonly measure the merit of a speech by

[1] MS. [2] MS. [3] MS.
[4] "Law Magazine," vol. viii. p. 535.

the time it has occupied in the delivery."[1] The writer of an article in the "Law Magazine,"[2] "chanced to be in a room with him the day after he had been engaged in a cause of considerable interest in the neighbourhood. He had been more than ordinarily tautologous, and a hint to that effect was given him. He instantly pleaded guilty to the charge. 'I certainly was confoundedly long,' said he, 'but did you observe the foreman, a heavy looking fellow, in a yellow waistcoat. No more than one idea could stay in his thick head at a time, and I resolved that mine should be that one, so that I hammered on till I saw by his eye that he had got it.'"[3] This is the same story with that above, but it is differently told, and instead of an ordinary juryman, the foreman appears.

Johnson said of Churchill: "He was a tree that only bore crabs, *but bore a great many.*" And Brougham, overpowered by the style of the Serjeant, "his eager and zealous though disjointed elocution, his thick coming though inconsequential sentences," exclaimed, that "if not *eloquence*, it was Pelloquence, and deserved a chapter in books of rhetoric to itself."[4]

Nevertheless, his retirement from the hard requirements of a popular advocate restored his health, and

[1] "Criticisms on the Bar," p. 288.
[2] "Trial of Burke and M'Dougal," vol. ii. p. 557.
[3] "Law Magazine," vol. ii. p. 579.—*Id.* vol. viii. p. 536.
[4] "Law Magazine," vol. viii. p. 536.

he became an active Middlesex magistrate. It is said, that he attended to both the civil and criminal business of the Sessions, and that he carefully watched the expenditure of the county revenue.[1] With all his display of intemperance in that capacity, he must be allowed to have done good.[2]

"He devoted all his time to the great social reforms of the day, especially in connection with prison management, and the treatment of lunatics. He was the leading promoter of the new asylum at Hanwell, and I remember," his son writes, "how constantly I travelled with him as a boy to it, to watch the building, and the early management of that institution. Every Sunday, or nearly every Sunday, he would take me, as a child, to view a poor parish idiot at the workhouse, who, with a chain and rug round his ankle, was confined to a horizontal bar, on the sunny side of the workhouse wall, getting such exercise as the length of the bar would allow. 'These, my boy,' my father used to say, 'if I die before this is altered, and it exists when you are a man, mind you never rest till you see it *reformed*.' "[3]

We have said, that the Serjeant was a reformer. We must not, therefore, be surprised to find him intimately acquainted with Brougham and Wilberforce,

[1] "Annual Biography," 1833, p. 290.
[2] "Law Magazine," 1832, vol. viii. p. 536.
[3] MS.

and it may be added, that he was equally the friend of Dr. Adam Clarke.[1]

The hostility of Lord Eldon to reform was sufficient to account for any neglect of Pell on the part of the Chancellor.

The friendship of Brougham will, in a still stronger degree, explain his sudden advancement to the judicial seat.

Lord Brougham induced the old Serjeant to abandon his Middlesex labours, at all events for the moment. But he would not accept the office of a Commissioner, however honourable, and, therefore, he was made one of the Judges of the Court of Review in Bankruptcy, and knighted.

His appearance on the Bench was quite unlooked for after his long cession from forensic employment, and his scanty knowledge of bankruptcy was unfavourably contrasted with that of Sir George Rose, another Judge of the Court, a man of much wit and facetiousness.[2] Mr. Erskine, afterwards promoted to the Common Pleas, was the Chief Judge, with a seat at the Privy Council. It is believed that the late humourous Sir Charles Frederick Williams aspired to a seat on this Bench, but however this might have been, he contented himself with the place of Commissioner, one sufficiently lucrative and honourable. It is well known

[1] MS.

[2] "Annual Biography," 1833, p. 291. And, we believe, still alive.

that this tribunal shared the fate of many others. Judge Erskine was provided for in the Common Pleas. There are different opinions as to Sir Albert's judicial abilities, but none which assign him a superior rank in discharging these functions. The most favourable testimony is, that his talents, stimulated by a sense of public duty, would ultimately have secured him a reputation as a Judge, second only to his excellence as an advocate.[1]

"What led Lord Brougham to select him for a bench of justice," according to another authority, "it is difficult to explain; probably some private, or party predilection, for we defy any man to name an individual of competent station, who would have been pronounced by acclamation so utterly unfit for a Judge. Luckily the nature of the Court did not allow him many opportunities of exposing his want of judgment, temper, and law, for he availed himself of the few that he had."[2]

On the 22nd of August, 1832, symptoms of approaching fever came on. They rapidly assumed a more serious form, and, at the age of sixty-four,[3] Sir Albert died before the month's end, in Harley Street. He was rather under the common height. "He had a peculiarly lively eye, a sharp, penetrating nose, and

[1] "Annual Biography," 1833, p. 291.

[2] "Law Magazine," 1832, vol. viii. p. 536. Who knows whether he might not have been put in to keep another out? But Brougham's friendship may be relied on as sufficient.

[3] "Annual Biography," 1833, p. 291.

a mouth indicating more taste, and possessing more expression, than I have reason to think he enjoys.[1]

He was buried in the family vault at St. George's-in-the-East, his friend, Henry Venn, officiating.

Let us pause at the name of Venn, that we may enjoy a pleasurable recollection of that good name.

Brougham would pause in silence, at the feast, upon the mention of Romilly.

As Sir Albert knew Venn well, his son's testimony confirms the fruit of that acquaintance. "He was possessed of the strongest religious feeling and principles. As he died," his son records, "when I was only twelve years old, it was this feature of his character I most remember, from the frequent religious lessons I received at his hands, and the ever bright and noble example he was to me of what a Christian gentleman ought to be."[2]

After the death of Lady Pell, in 1868, her three sons built a transept in Wilburton Church, in remembrance of their parents.

Sir Albert was Lord of Wilburton Manor, Ely, and of considerable property in the neighbourhood.[3]

A large brass is let into the north wall with this inscription:—

[1] "Criticisms on the Bar," p. 291. [2] MS. [3] MS.

† This transept was built in the year of our Lord 1868,
To the Glory of God, and in memory of

Sir Albert Pell, Knight, of Pinner Hill, Middlesex, King's Serjeant-at-law, and afterwards a judge of the Court of Review, who, born in 1768, died in Harley St., London, Sep. 6th, 1832, and is buried in the Family vault in St. George's-in-the-East.

And of Dame Margaret Letitia Matilda, his widow, Daughter of Henry Beauchamp, 12th Lord, St. John, of Bletsoe, Born Oct. 28, 1787, Died at Wilburton Manor, March 5, 1868, and Buried in the centre of this transept.

Nos eo ordine quo Deus permiserit te sequemur.
Vale Mater Dulcissima.

The Judge never pretended to legal authorship, but his poetical effusions appeared in a series of prize compositions at Oxford.[1]

[1] "Annual Biography," 1833, p. 288.

ARTHUR ONSLOW.

Serjeant-at-Law, 1800—King's Serjeant, 1816.

[For several particulars of this Serjeant's life the author has to acknowledge the kind attentions of Richard Onslow, Esq., Barrister-at-Law, and of the Rev. T. G. Onslow, Catmore Rectory, Wantage.]

ARTHUR ONSLOW is said to have belonged to an ancient family in Shropshire.[1]

Andeslawe, or Hundreslawe, or Ondeslawe, whence Onslow, was the name of the old race. They had property in the hundreds of Ruesset and Baschurch.[2]

In February, 1543, the Dean and Chapter of St. Chad demised all the revenues of their College, except certain tithes, for sixty-one years, to Humphrey Onslow, Esq., of Onslow.[3]

At an assize, held in 1203, there was a quarrel about a right of common between John de Ondeslawe and William de Bikedon (Bicton). A compromise was effected. John was to plough and till twelve acres of the pasture for three years, after which these

[1] Brayley's "Surrey," vol. ii. p. 128. A full account of the Surrey Onslows, including Earl Onslow and his family, may be found in Brayley.

Aubrey's "Surrey" may be consulted as to the family in general.

[2] Eytoun's "Antiquities of Shropshire," vol. x. p. 169.

[3] *Id.* p. 170. See also as to the original name.—*Id.* vol. vii. p. 171.

twelve acres were to be in common to both, and neither of them were to exercise any tillage there.[1] Another like settlement was effected between Roger de Ondeslawe and the Abbot of Builwas. Roger was to yield the right on condition that he and his heirs should be allowed to feed 120 sheep on the waste.[2]

We have found great difficulty in gaining any information concerning the early or even the private life of this eminent lawyer. As a public character he is far better known to us. A clergyman, bearing the same name,[3] has kindly communicated the little he knew. Every portion of news, however scanty, must be prized. The tradition recorded respecting Dryden is pleasing.

He used to frequent Serle's Coffee House in Lincoln's Inn, and all that could be elicited was, to point out a chair which was kept by the fire in winter, and was then called his winter chair, and, being wheeled to the window in the summer, was called the summer chair.

Mr. Onslow's butler recollects the Serjeant, but only as quite blind, and infirm.[4]

Richard Onslow, Esq., of Wandsworth, a Barrister-at-Law, has been able to relate some valuable particulars, of which we are glad to avail ourselves.

Serjeant Arthur Onslow was the son of Arthur

[1] Eytoun's "Antiquities of Shropshire," vol. vii. p. 172.
[2] *Ibid.*
[3] The Rev. T. G. Onslow, Catmore Rectory, Wantage.
[4] MS.

Onslow,[1] Collector of Customs at Liverpool, and of Alice, his wife, (née Summersett) and was born at Liverpool on the 3rd of August, 1759. His first wife was Miss Mary Eyre, of the Newburgh family,[2] a Roman Catholic.[3] She was the daughter of Francis Eyre, Hassip, but she died without issue.[4]

On June 13, 1801, he married Pooley, Lady Drake, the daughter of Colonel Onslow, M.P., and widow of Sir Francis Drake, Bart. By this union he became possessed of Send Grove, a handsome mansion in Send parish, in the hundred of Woking.[5]

He was of the Middle Temple.

On June 16, 1800, he was created a Serjeant-at-Law with Baron Graham.

In common with other lawyers, who look upon a seat in Parliament as a step to preferment or to fame, the Serjeant was a candidate for Guilford in 1812, and was returned.

It is not unusual for Members of the House to attach themselves to some subjects in particular, and to make themselves familiar with them, so as to originate measures for the improvement in the law, by

[1] And, therefore, not necessarily called Arthur, after the celebrated Speaker, although Arthur might have been a favourite name in the family.

The "Georgian Era," vol. ii. p. 330, says that the Serjeant inherited more than £100,000 fortune from the "Collector;" but this is a mistake.

[2] Aunt to the Earl of Newburgh. She died, May 14, 1800.—"Annual Biography," 1835, p. 443.

[3] "Georgian Era," vol. ii. p. 330.

[4] MS.

[5] Brayley's "Surrey," vol. ii. pp. 127, 128. See an account of Send, or Sand, in Aubrey's "Surrey," vol. iii. p. 230.

which their services in the Legislature may be appreciated. Some fail in their well-meant attempts, either through indiscretion or want of good fortune. Others, by prudence and rational perseverance, having matured the changes they are desirous of accomplishing, have been enabled to succeed in the not very easy task of carrying through the House measures of importance.

Such was the case with Serjeant Onslow.

But just to sum up his Parliamentary adventures since 1812.

In 1818 the election for Guilford was contested, but he stood at the head of the poll. He again represented this town upon the demise of George the Third; and, for the last time, he sat for it in the Parliament summoned in 1826,[1] retiring in 1830, owing to a total loss of sight.[2] Two subjects, to say the least, of considerable importance to commercial men and masters of servants occupied the Serjeant's indefatigable attention. One was the law of the seven years' apprenticeship; the other the statutes of usury. It may be said, that he did not at once succeed in establishing these legal changes, but, like many other members, whose efforts are, for a time, discouraged, he at length destroyed the old system of apprenticeships, and laid the foundation of freedom in loans. With regard to the bills, of which he took charge, he shewed himself in earnest. He strove against delay.

[1] See Brayley's "Surrey," vol. i. p. 378.
[2] "Annual Biography," 1835, p. 443.

A strong opposition being offered to his Apprenticeship Bill, he held up to ridicule the petitions against the measure. Amongst others, the wool-combers of Devonshire were in arms. They were petitioning against repeal, when, four years before, a repeal *had taken place* with respect to all the woollen manufacturers of England and Wales.[1] The Member for Guilford had supporters, however, in the *first* instance. Butterworth, the eminent law-bookseller, related a striking incident. "In an office," said he, "of which I have the command, there was a young man of great skill, and, consequently, of great value to his employers; he, however, had not served the regular apprenticeship, and his fellow-workmen, therefore, combined against him, demanding his discharge. I interfered on behalf of the young man, but in vain, for the conspiracy among the workmen attained that height that their request was obliged to be complied with. The young man was discharged, and, though skilful in that particular trade, he was compelled to sell his furniture, the produce of his industry, for the maintenance of his family."[2]

In April, 1814, the Serjeant came forward again stoutly to assault the Apprenticeship Statute. He exposed the inconsistencies of the decisions on this law. A gardener was not within it, because his was not an occupation requiring skill, but a fruiterer was.

[1] "Hansard," vol. xxviii. p. 14.

[2] *Ibid.* vol. xxv. p. 1129.

A pippin monger came within its clauses: and a cook. The Act had been "looked on as a poisonous insect destroyed; it was not so, the reptile, though crushed, was not dead; it had still power to sting." The reign of Elizabeth was glorious, but sound principles of commerce were not then known. The Serjeant got his leave, and the Bill was read the first time.[1] On the motion for the second reading, in May, a powerful opposition was raised. Coke and Blackstone were set in array against Onslow. But Lord Mansfield was cited as a counter authority. "The act of Elizabeth was against the natural rights of man, and contrary to the common law rights of the land." The coach-makers once got into trouble upon this subject, being attacked as wheel-makers. But Lord Ellenborough at once got them out of the scrape. Coaches, said the noble Lord, could not have been known in Queen Elizabeth's days, the days of the act. The Queen went to Parliament on horseback.[2] Romilly now appeared, and threw his weight into the scale. No doubt there were trades in which a number of years was required to obtain a just proficiency. But that would necessarily be without the assistance of the law as it then stood. These, said that great man, were the present moral consequences of that Statute: to take from the poor man his genius and industry, his only property: to drive him into a workhouse: to abandon his country, and forsake his wife and family. Sir

[1] "Hansard," vol. xxv. p. 1129.

[2] *Id.* vol. xxvii. pp. 879, 881.

Frederic Flood withdrew his amendment, and Canning spoke for the Committee. The debate was summed up by a general and sensible remark from W. Smith. "He never heard of any proposition which was not likely to be inconvenient to some persons." So the Bill passed its second reading, and was ordered for Committee.[1] The House accordingly, resolved itself into Committee in June, but it was counted out.[2] A few days later the Committee took place, and the report was ordered to be received on the following Tuesday.[3]

This valuable Act took effect in this year 1814.

A full account of its success in the last day of its trial will be found in the "Memoirs of Romilly."[4]

"There was some opposition," Sir Samuel remarks, "in the subsequent stages of the Bill, but the House was never divided upon it, and it passed the Commons. It afterwards passed the Lords with scarcely any opposition."[5]

Testimonials are not unfrequently withheld from the deserving. But, upon this occasion, Arthur Onslow had his meed and reward: the thanks of a reflecting community together with a silver tureen and salver, in commemoration of his good deed.

The inscription on the salver runs thus:—

"Presented to Arthur Onslow, Esq., M.P., Serjeant-at-Law, by the Principal Master Manufacturers of London and its vicinity, as a testimony of their

[1] "Hansard," vol. xxvii. p. 879. [2] *Id.* vol xxviii. p. 13.
[3] *Id.* p. 38. [4] Vol. iii. p. 134. [5] *Ibid.* note.*

gratitude for his distinguished and patriotic exertions in obtaining in the year 1814, an Act of Parliament, that repealed so much of the Statute of the 5th Eliz. as subjected to penalties those who carried on or followed certain trades without having served an apprenticeship of seven years; which has emancipated the British Artisan and given to him the full and free exercise of his genius and industry, and laid the foundation of a new and prosperous era in the political economy of England."

The names of the Sub-Committee are then added. [1] The following inscription appears on the tureen:—

"Presented by the Master Manufacturers and Tradesmen of the City of Bristol, to Arthur Onslow, Esq^re., Serjeant-at-Law, M.P., in gratitude for his disinterested exertions for the relief of the Tradesmen and Manufacturers of Great Britain in obtaining the Act of 54 Geo. 3 c. 96, whereby the penal provisions imposed by the Statute of the 5th Eliz. c. 4. in respect of apprenticeship were repealed." [2]

Onslow was a liberal in his day. Sir Thomas Thompson, a very distinguished officer, was made Treasurer of Greenwich Hospital. Bankes, the well-known Member for Corfe Castle, could not look upon this lucrative office as a military or naval appointment, and hence he insisted that the seat in Parliament was not vacated. Onslow was immediately in opposition, and ingeniously warned the House against exercising a dispensing power. Lord Castlereagh was resolved to shield Sir Thomas, and shrewdly suggested that the severity of the law should be relaxed in favour of professional advancement. Mr. Wynn was excited, and exclaimed, with a respectful appeal to the Deity, "Were they to hear it gravely stated in the House of Commons, that they were, when they pleased, to be guilty of infractions of the law, however trifling?"

[1] MS. [2] MS.

Nevertheless, the Treasurer of the Hospital was sustained in his seat, by 65 votes against 47.[1]

We should not do full justice to the parliamentary career of this Serjeant, unless we were to give proofs of his friendliness to a public registry, even at this day but imperfectly adopted. He had leave to bring in a bill for this purpose in April, 1816. Of course, the great conveyancer, Preston, who opposed everything, was in direct hostility. Onslow was rather personal, for he intimated that the learned lawyer's professional gains would be lessened by the improvement. Yet he took off the sting of this with some humour, for he complimented the Member for Ashburton upon the greater leisure he would have to devote himself to agriculture, and to the commutation of tithes, subjects upon which he had often given full details to an admiring and attentive House.[2] The House was amused at this sally.

In 1818, we find the Serjeant again on the alert. Holme Sumner moved for an enquiry into the expenditure of the City Revenues. This brought up Sir William Curtis, who was unusually facetious. "I will endeavour," said the Alderman, "to have the name of the Orphan's Fund changed, if I live another year." Then as to the cost of building the prisons. "Why, Sir," exclaimed Sir William: "You cannot get an inch of ground without putting three or four guineas over it." "And besides, there is already a

[1] "Hansard," vol. xxxiv. p. 133.

[2] *Id.* vol. xxxiii. p. 1079.

Committee to inspect the City Prisons." "I do not know what the honourable gentleman [Mr. Bennet] wants. Does he mean that men who have forfeited their liberty, should have coffee and chocolate of a morning, and luxuries of that sort? Does he wish to have the floors covered with Turkey carpets? It has been said, that these men are fed with sour bread. It is no such thing. There is no bad bread in the prisons, it is as good as any family in the kingdom can wish to eat. Let the Committee ask that good woman, Mrs. Fry, whom they all love so much. I say, let them ask her. She is a good woman, and she deserves to be loved." The Baronet was very convivial, and by no means ill natured, but although not a highly educated man, he had no love for the community of plebeians, whom he esteemed as rabble, or, according to present speech, "roughs."

Mr. Serjeant Onslow, nevertheless, was not captivated by these agreeable facetiæ. He put his hand, at once, upon the strong point, the duty on coals, which all who lived in those days remember as a sad grievance. "The duty on coals was a tax on the very poorest of the people." He then borrowed a little from Sir William's vein. "It was an abuse of terms to call the squandering of their money upon dinners, bribery, and presents,[1] generosity, while for useful objects, they were obliged to demand the imposition of heavy taxes upon others."

[1] Swords, and Snuff Boxes.

The City did not succeed, for the motion was carried by 24 against 11.[1]

In this year, 1816, Serjeant Onslow was appointed a King's Serjeant.

It may be noticed as we pass on, that, about this time, he was an influential member of the Alfred Club; a membership much coveted, and attainable only by a strong canvass. It is now the Oriental.[2] When the Alfred Club was formed, one of its main principles was, that there was to be *no play*. George III. was told of this, and he exclaimed: "What! what! no play? Then it won't last a year." It did last, however, and was to that age what the Athenæum is to this. Its popularity at length fell off. The Oriental was founded upon its wreck. But several, and chiefly the old members, seceded, and established the Athenæum, to which Onslow transferred his allegiance. His example was followed by his son, Richard Onslow.[3] A curious anecdote is told during the gala days of the Alfred. There were, what were called "house dinners," at 10s. 6d. each, without wine. Ten or twelve members being present on one evening, a most agreeable and intelligent member attended, who fascinated every one with his conversation, but he happened to be unknown to those present. When he retired, some one called the waiter, and asked: "Who is that most agreeable gentleman who has just left the room?" "That, Sir,"

[1] "Hansard," vol. xxxvii. pp. 594, 599.
[2] MS.
[3] MS.

said the man with astonishment: "Why, Sir, that gentleman is Mr. Canning." It needs scarcely be added, that Serjeant Onslow was not of the party who did not know Canning.[1]

The Serjeant had another most weighty subject in view. He determined to impugn and annihilate the usury laws. Ignorance was the mother of a limited system of lending. There was a Dr. Wilson (well known to Johnson), who did not scruple to declare, that "it was not the amount of the rate of interest taken that constituted the crime, but that all lending for any gain, be it ever so little, was wickedness before God and man, and a damnable deed in itself, and that there was no mean in this vice, any more than in murder or theft." The Doctor wound up with a story of an ass in Italy, on whom the dead body of a man who had taken interest was laid, in order to carry it to the church. The animal had such an instinctive horror of its burden, that it immediately ran away with the body to the gallows. After quoting Locke and Adam Smith in favour of his Bill, and applauding John Locke as the first who had assailed the policy of restriction, and, after receiving encouragement from Mr. Baring, amongst other men of sense, the member for Guilford withdrew his motion.[2] But the seeds were sown.

In 1817 he had leave to bring in his measure,[3] but, with his assent, the consideration was postponed.[4] In

[1] MS.
[2] Hansard, vol. xxxiv. p. 723.
[3] *Id.* vol. xxxvi. p. 100.
[4] *Id.* p. 1266.

the next year, still persevering, instead of moving for his Bill, he asked for a Select Committee to consider the subject, which was granted.[1] In May, the Report, highly favourable to the repeal, was presented, and the Committee had not failed to notice the mode of evading the law, by granting annuities upon lives, by which an exorbitant interest was, at all events for a time, paid by the borrower, but which often involved both parties in distress.[2] . . . . .

Encouraged by this Report, the Serjeant brought in another Bill in the early part of the next Session, leave having been at once given.[3] Very shortly afterwards, it was read the second time, with threats of future serious opposition.[4] But, upon a suggestion from Lord Althorp as to a difficulty in calculating the currency at that moment, although he was friendly to the measure, Serjeant Onslow agreed that the order of the day for the second reading should be discharged.[5]

In April, 1821, he again brought this subject before the House, and, once more, amidst various expressions of opinion, obtained permission to introduce his Bill.[6] The measure, however, became again in abeyance, but in 1823 it was attempted by a similar measure to overthrow these laws.[7] But advantage was now taken in a very thin House, quite at the end of June, to defeat the Serjeant in his struggles. The Bill had at length

[1] Hansard, vol. xxxviii. p. 236.
[2] *Id.* p. 995.
[3] *Id.* vol. xxxix. p. 420.
[4] *Id.* p. 436.
[5] *Id.* vol. xl. p. 998.
[6] *Id.* N. S. vol. v. p. 175.
[7] *Id.* vol. viii. p. 1144.

got as far as the Report of the Committee, but the fatal period of three months being interposed as an amendment, it was carried by 5 in a meagre assembly of 47 members.[1]

It might have been supposed that these constant defeats would have disheartened its advocates and ruined a cause, however excellent. But in the next year the war waged as hotly as ever, the most strenuous hostility being evinced by some, whilst the Serjeant contented himself with a brief recapitulation of the past. A cheering division was now declared; 120 to 23. So the principle was gloriously affirmed.[2]

It must be allowed that the persevering senator did not meet with the assistance he deserved. At last, at the close of February, it was determined by his opponents that this Bill should be destroyed. The battle was fought upon the usual motion, that the Bill should go into Committee. It was remarked, that five of His Majesty's Ministers who had voted upon a previous occasion, were absent. And, although the Session was so young, the question was submitted to the judgment of only 77 members. A specimen of the arguments used to defeat the Bill, may be found, according to Hansard, in the speech of Mr. Calcraft.[3] "When this measure was passed, he should compliment his honourable and learned friend on the glory he had acquired. His name would be handed down to pos-

[1] Hansard, N. S. vol. ix. p. 1319.
[2] *Id.* vol. x. p. 163.
[3] *Id.* p. 565.

terity and immortalised, for having let loose all those salutary restrictions which had been so wisely imposed upon the avaricious propensities of man. To him would belong the honour of having given free scope to the exercise of low, base, grovelling, despicable avarice. That low simplicity, which lends out money at five per cent., would then be despised, and the man who could endeavour to 'reduce the rate of usance' in London, would be scouted from good society. If a man were to lend his money at five per cent., he would be accosted by his wealthy neighbour. 'Why, you fool, don't you know Serjeant Onslow's Bill has passed. Pooh! five per cent. indeed! you should get six or seven per cent. at the very least. You may now take all the interest you can get, and mind—don't give the borrower time. 'The law allows it, and the State awards it.'" Mr. Baring continued, however, to support the Serjeant with reasoning and facts which might be opposed, but not gainsayed. Nevertheless, the ayes were only 43; noes 34.[1]

The Bill was now fairly in Committee. In April another conflict took place, and the order of the day was carried by 74 to 58.[2] But the measure was by no means safe. Several divisions took place in Committee; one very important—as to the commencement of the Act. Onslow wished the date to be 1825. Here, however, he succeeded, by one only, 60 against

[1] Hansard, N. S. vol. x. p. 551.

[2] *Ibid.* vol. xi. p. 283.

59. And, after other struggles, the opponents contrived by a vote that the Speaker should leave the chair. And now a majority of hostile members being in the ascendant, it did not escape Mr. Littleton, that the hour had arrived when all the past labours might be overthrown. The fresh committal of the Bill was ordered for the following Tuesday; but the wary Senator said that the House should have another opportunity of "expressing its opinion on the impolitic Bill." So, having propounded six months instead of Tuesday, there was a division, 67 to 63. *The Bill was lost.*[1]

The persistence of the Serjeant reminds us of present interminable discussions on vote by ballot, and till lately, on the Church Rates. On February 8, 1825, Mr Serjeant Onslow rose, and reminded the House that, in the last Session, the enemies of the second reading of his Usury Bill amounted only to 23. He now came forward, *redivivus*, as it were; but there was somewhere a dogged obstinacy, not to be resisted by the truly well-informed members of those days. The Serjeant was encouraged by a majority of only seven in his fresh adventure. Upon the motion for a second reading, Mr. Calcraft was again in his place, with his former facetiousness. "For instance," said he, "a man in building a house was compelled to build his wall of a particular thickness to guard against fire. A man was

[1] Hansard, N. S. vol. xi. p. 319.

not allowed to keep a gambling-table. Only a few days ago the Court of King's Bench had imposed a fine of £5,000 on an individual for this very offence. According to the principle of the learned Serjeant, that man ought to have turned round on the Chief Justice, and said, 'You have no right to punish me for this conduct; it is an unjust interference with my disposal of my own money.' "[1]

The Serjeant was once more unfortunate. The Solicitor-General[2] interposed the fatal six months for the next reading. The House was thin. Out of 85 members 45 were adverse. So the Bill dropped once more.[3]

Now, when money may be borrowed as freely as the waves roll in the Atlantic, posterity will admire Serjeant Onslow. On the 15th of February, 1826, "Mr. Serjeant Onslow rose to move for leave to bring in a Bill to repeal the Usury Laws."

He was by no means a man of brilliancy, though he clung to his purpose with a conviction that he must be right, and so merely reiterated the "old saws." Secretary Peel, however, came to the rescue, and, referring to the late panic in December (the ruinous commercial earthquake of 1825), thought it worth serious consideration, whether the Usury Laws had not contributed, in a most unfortunate degree, to in-

[1] Hansard, N. S. vol. xii. p. 531.
[2] Sir Charles Wetherell.
[3] Hansard, N. S. vol. xii. pp. 531, 540.

crease their distress. Mr. Calcraft was struck, by this, and withdrew his opposition.[1]

But it was not expedient to pursue the question. Mr. Peel drily observed, in April, that "as the learned Serjeant had been patient for ten years, perhaps he would consent to defer the subject a little longer." But he softened the disappointment with compliments of a highly flattering character, and the Recorder at once acceded.[2]

We need scarcely add, that although the Serjeant was baffled, the principle became triumphant, and the old laws against usury exist no longer.

In 1819, upon the promotion of Serjeant Best, Serjeant Onslow was elected Recorder of Guilford.[3] And he stood up boldly for his corporation in the House. In 1820 it was insinuated that Guilford was a proprietary borough. He absolutely repelled the charge. Any assertion to the contrary was false and unfounded. He denied the influence of peers.[4]

In February, 1821, he presented a petition from the inhabitants of Guilford against the erasure of the Queen's name from the Liturgy, which he held to be an illegal act, and "one of the most important circumstances which had occurred for years.[5]

He was also for many years Chairman of the Surrey

[1] Hansard, N. S. vol. xiv. p. 409.
[2] *Id.* vol. xv. p. 280.
[3] Brayley's "Surrey," vol. i. p. 377.
[4] Hansard, N. S. vol. ii. p. 481.
[5] *Id.* vol. iv. p. 580.

Sessions, where he presided greatly to the satisfaction of the Justices.

However, the Recorder not only performed his duties as a Senator in the midst of a fair practice, justifying the choice of the electors of Guilford, and their adherence to their member: he likewise assisted in improving and ornamenting their town. Thus, in 1818, with a subscription of £200, he held a position on the list equal to those of the High Steward (Lord Grantley) and Serjeant Best, then Recorder; when the new Corn Market and Assize Court were erected. It was opposite to the Town Hall.[1] The Serjeant also took an interest in the bridge over the Wey, originally built of stone, and consisting of five arches. In 1825 this bridge was widened, with an addition of iron arches, with balustrades, and each of the borough members were donors of £100.[2] And, before this, Lord Grantley, having granted a lease of the castle-house and garden in Quarry Street to the Corporation, the castle-house was altered, and new rooms built for the accommodation of the Judges at the Assizes. Towards this restoration the members subscribed £50.[3]

At the risk of being dull, we have kept to the continuity of the Serjeant's Parliamentary biography. It is, however, not to be supposed that we have related the half of these matters; some, too, of importance, in which he took an interest.

But if he had aimed only at the improvement of

[1] Brayley's "Surrey," vol. i. p. 383. [2] *Id.* p. 384.
[3] *Id.* p. 400.

what is usually celebrated as the Palladium of British liberty, the Habeas Corpus, he would be entitled to the most honourable notice.

That he was supposed to have achieved a striking change in that law was a fact acknowledged by Mr. Brougham, when he called the member for Guilford to a serious account for supporting the suspension of the Act. The Recorder, in advocating the temporary suspension, spoke of his "sort of superstitious reverence for that sacred Act." Brougham could not let that pass. Instead of a superstitious, he could only wish that the last speaker (Onslow) had merely a "reasonable" reverence for it. He had brought a Bill into that House, which, after much opposition in another place, had passed into a law. But now, *having made the Habeas Corpus Act more valuable to the nation than it ever was before*, he showed his superstitious reverence by voting for its suspension.[1]

We naturally must not omit an account of the high service thus borne witness to by the great orator of the time.

The measure which Serjeant Onslow introduced in 1814 was one "for more effectually securing the liberty of the subject."[2] His history of the Act was brief, but intelligible. At first, the power of issuing the writ was limited to the Courts of Chancery and the King's Bench.

Then in the time of Charles the First a similar

[1] Hansard, vol. xxxv. p. 766. [2] *Ibid.* vol. xxix. p. 426.

jurisdiction was given to the Court of Common Pleas. And the famous provision of the second Charles extended the power of issuing this writ to all the Superior Courts in criminal matters, both in term time, and vacation.

A still further attempt at extension being defeated in 1758 by the House of Lords, Lord Hardwicke moved that House that instructions should be sent to the Judges to prepare a Bill to regulate the issuing of these writs. It was, accordingly, prepared, but never proceeded farther.

Setting aside the Statute of Charles the Second, the Serjeant declared his object to be to give to all the Courts of Westminster Hall in term-time, and to all the Judges of them, in vacation, the power to issue and enforce obedience[1] to writs of Habeas Corpus in all cases of illegal imprisonment, except in criminal matters, and debt, and, moreover, *to inquire into the truth of the return to the writ in all cases.* The latter was the grand point to be gained, and at first it was imagined that success had crowned the endeavour. But, as we shall see, the inartificial structure of the Act, and the hostility of the judicial Bench, defeated an issue so highly coveted, so well worthy of the applause of Brougham, so much desired, but, in vain, *even at this present hour.* A return may be valid in law but unfounded in fact, yet it is conclusive against

[1] By process for contempt, a power not then possessed *in vacation.*—Hansard, vol. xxix. p. 426.

the prisoner. Of what practical value can an action for a false return be held? The Judges declared positively, that although they would not deem themselves precluded from discharging a person in the presence of such proofs as the verdict of a jury, or a judgment on demurrer, &c., yet they would not try the facts upon affidavits. There was one, however, amongst them who well earned his epithet of "*Foster just.*"

It is true that the impressment of seamen was not the fullest illustration of the subject; but, upon such an occasion, the Judge declared "that the return to the writ *was not, in all cases, conclusive as to the Court, or to the parties*, but that men wrongfully impressed into the public service by sea or land, were, by law, entitled to, and ought to have, an easier and speedier remedy *than an action for a false return.*"[1] There are several passages, and a remarkable letter of the Judge in the life quoted, which would be out of place here;[2] but there are two original letters to Sir Michael from Chief Baron Parker and Mr. Justice Wilmot, which are worth attention, and which we here venture to give.

"GOOD BROTHER,

"I am favoured with your letter, and am very sorry for your late great loss. As you agree to the general principle, that the return of a Habeas

[1] "Life of Sir Michael Foster," by his nephew, Michael Dodson, Barrister-at-Law.—p. 50.

[2] *Id.* pp. 50—73.

Corpus cannot be contradicted in that proceeding, so I must confess that your reasons are very strong to shew the present to be an inadequate remedy, but I am afraid that the Parliament only can apply a quicker and more effectual remedy. As to the case of the King and White, and several subsequent cases, I entirely approve them, but consider them as collateral proceedings, founded on the general power of the Court of King's Bench to correct the acts or misdemeanours of all inferior jurisdictions to the oppression of the subject. We have gone as far in delivering our opinions as my brother Smythe, and are to proceed on Tuesday, so that it must be left to your own discretion whether you will give your opinion or not, but if you should not choose to appear, I have taken care that my Lord Keeper shall excuse your absence to the Lords.

"I am, with true respect, Sir,
"Your most obliged brother,
"And obedient servant,
"T. PARKER.

"Bedford Row, May 27, 1758."[1]

While this business was depending in the House of Commons, Mr. Justice Wilmot wrote to Mr. Justice Foster the following letter:—

"Ormond Street, April 9th, 1758.

"DEAR BROTHER,

"I herewith send you a statement and some reasons which Lord Mansfield and I have put together,

[1] Dodson's "Life of Foster," p. 63.

to explain and support the Court's proceedings upon the present Act.

"We desire that you will be so good, as soon as possible, to look them over, and to correct them as you think proper, and to add such other reasons as occur to you in support of what we were all of opinion to do, and I own that I am still strongly of the same opinion. If you should think that, supposing the construction of the Act wrong, yet what we did was right, that may properly be added, and it is an argument *á fortiori*.

"You recollect that this happened but just before Hilary Term. The Parliament was sitting, and in the new Bill might have laid down what rule they pleased before the vacation.

"I am, dear Brother,
"Your most faithful friend
"and most obliged,
"humble servant,
"EARDLEY WILMOT."[1]

His answer to Sir Eardley Wilmot's letter, will be found in Mr. Dodson's life. But it is evident that, although of a liberal spirit, he could not, in the face of decided though civil antagonism on the part of his brethren, fulfil his own wishes. And, although the act was partially successful, the law as to the return being conclusive remains, we believe, in the same unsatisfactory condition in this, our own day.

[1] Dodson's "Life of Foster," p. 64.

Some years since, a paper of unusual research and ability was read by Mr. Chisholm Anstey at a meeting of the Society for Promoting the Amendment of the Law. He vindicates Mr. Serjeant Onslow's view of traversing the returns to writs of Habeas Corpus, but admits the absolute infirmity of his Act. The attempt likewise to bring "contempt of Court" within the provisions of the law, signally failed. "Martin and Babington," says Mr. Anstey: "Justices of the Common Bench in the reign of Henry VI., had the honour of inventing the dogma, that if upon writ of Habeas Corpus, *cum causâ*, the cause returned appear unto us sufficient of itself, *albeit false*, that is enough for us." "*Quod tota curia concessit*," says the "Year Book." "We are not wiser than our forefathers," continues Mr. Anstey: "And such is still the dogma of Westminster Hall." Suppose a person complaining of an illegal imprisonment in Jersey, and sueing out his Habeas Corpus. To that writ the return might be that he was detained by process of the Cour Royale, and that the commitment was agreeable to the laws of Jersey. No evidence could be allowed to impeach the validity of that return. This is the famous "Comity of Courts." Judges never err. Suppose, in times of political trouble, that a man were committed to a place in the farthest part of the kingdom, we will say, westward. He obtains his Habeas Corpus. "Before the gaoler receives the Habeas Corpus, or before he returns it, the prisoner is removed by warrant from that prison

to another, it may be the farthest northern part of the realm." Each return is conclusive, and the consequence might be perpetual imprisonment. . . . . .

We must not pursue this subject. The judicial mind rendered the new Act inoperative, but the credit remains with Serjeant Onslow.

However, to return to the Bill of the Serjeant, it passed the Commons by an unanimous vote, but suffered a defeat in the House of Lords.[1] And now, in June, 1815, the Serjeant moved for a Committee to inquire into the State of the Law respecting the famous writ. After some observations, of a nature not very encouraging, from the Attorney-General, the motion was agreed to. On the 20th of June, the mover of the measure brought up the Report of the Committee, who were entirely in favour of awarding power to enforce obedience to the writ, in vacation, as well as in term. They brought forward two striking cases of grievance. A man was imprisoned on board a ship, which, it was asserted, belonged to a foreign State. He was treated with great severity, and only escaped a forced voyage by the interposition of the Board of Customs. Again, a girl of sixteen was detained from her mother, under circumstances of great aggravation. The Judge found himself unable to compel the production of the girl in vacation, and so a suit was commenced in Chancery, to make her a ward of Court. By that expensive remedy, which could not have been

[1] Hansard, vol. xxxi. p. 566.

resorted to had the girl been without property, the delivery of her person was obtained.[1] And the Committee thought that the facts in the return to the writ should, if necessary, be examined into by the Bench.[2] The Minutes of Evidence will be found in the debates of the period. The case of the man imprisoned on shipboard, was of a character so remarkable, as to induce the Judges, Bayley and Dampier, who were powerless in vacation, to write to Lord Ellenborough. This, and other interference, awoke the Commissioners of Customs to a sense of the man's condition, and thus Hoffman, the person under duresse, was delivered from the clutches of the Spaniards.[3]

The Report being presented, the matter dropped for that Session.

But it was revived in February, 1816, when, in addition to the cases already mentioned, those of Earl Ferrers and Lady Strathmore were insisted upon by the Serjeant as unfortunate examples of the vacation writs. "The care of Providence, not the perfection of the law," saved "Lady Ferrers." And through the same shortcomings, a long time elapsed before Mr. Bowes was under the necessity of yielding Lady Strathmore.[4]

The Attorney-General (Sir William Garrow) was again disposed to be troublesome, and wanted further information, upon which the learned mover asked and

[1] Hansard, vol. xxxi. p. 899.
[2] *Id.* p. 891.
[3] *Id.* p. 895.
[4] *Id.* vol. xxxii. p. 543.

obtained leave to bring on a Bill [1] He was victorious, and, whether from a prescience in the Lords that there were irretrievably weak points in the Act, as we have above suggested, *especially as to the return being conclusive*, or from a feeling that any further obstruction would not be popular, no opposition of moment was ventured.

Serjeant Onslow, although not gratified with the highest amount of business in the Common Pleas, was yet an advocate by no means without employment. His name frequently occurs in the legal chronicles of his day, and his business at the Home Circuit, whilst he remained there, was by no means either contemptible or unimportant.

He was engaged in a trial concerning the expected delivery (as her followers imagined) of Johanna Southcott. Some inhabitants of Gravesend agreed to wager in the negative of the fact that this woman would be delivered of a male child before a certain date. The plaintiff was a preacher of her doctrines, and he staked £200 against £100 that she would be so favoured. Serjeant Best was for the preacher, but Onslow objected on the ground of indecency to the trial of such a question, and he added that Johanna was a single woman. The Chief Justice (Gibbs) was perplexed, and asked for precedents against wagers, which were furnished, upon which, "with a view of making an end of such cases, out of mercy to the par-

[1] Hansard, vol. xxxii. pp. 542, 545.

ties," he allowed the case to proceed. Evidence being given that Southcott never had a husband, and passed for a single woman, the Lord Chief Justice said: "Now that the wager involves the question of a single woman having a child, I won't proceed with the case." Campbell suggested, that the woman herself gave out that she was with child, and prophesied that child would be a male. Were she alive, therefore, she would have no right to complain of her feelings being hurt. . . . . .

Lord C. J. GIBBS: "So I am to try the extent of a woman's chastity and delicacy in an action for a wager. Call the next cause."[1]

The Serjeant was not so successful upon another occasion. A Magistrate of Surrey, with others, cut down a parcel of willow trees in an orchard at Brixton. The plaintiff had a house there, and very much desired to have this orchard. The Magistrate knowing how anxious the plaintiff was, made a "Jew's bargain," making him pay a considerable sum per acre for the land, reserving to himself all the fruit, and liberty for his own fowls to wander about, so that the plaintiff had little more than the pleasure of looking at it. Nevertheless, he made a gravel-walk, and put up a tent, and enjoyed himself with his family in the summer afternoons. It happened, however, that there was a stream near, over-hung by some shady willow trees, and here the pleasant walk was laid out. Great

[1] "Annual Register," vol. lvii. 1815, p. 289.

complaints having being raised against the defendant as to the mode of using his reserved rights, altercations ensued, and the Magistrate came with his workmen and cut down all the willow trees. He went a step too far, and got into the clutches of the law. He had secured nearly every thing for himself, *but not the trees.* Onslow, with ingenuity, wished to shew that these trees were not within the limits of the orchard, but in this he failed, and his client had £50 damages awarded against him, by the jury.[1]

In October, 1833, the Serjeant died at an advanced age in London. He was nearly, if not quite, seventy-four. His remains were interred on the 12th of that month, according to his will, with those of his first wife in the vault of the Derwentwater and Newburgh families, at St. Giles's-in-the-Fields.[2]

His sight, which had been failing for five years before his decease, almost wholly left him during the last two years of his life. . . . . .

He had been a man of considerable reading, and retained his learning with a memory very extraordinary. "I heard him," says my informant, "give some account of every poet who was mentioned to him, out of, I think, Bell's 'Lives of the Poets,' though some years must have elapsed since he could have read any of them."[3]

The following account of him is taken from the

[1] "Annual Register," vol. lviii. 1816, p. 279.
[2] MS.—"Annual Biogr." 1835, p. 443. [3] MS.

publication of "The Bench and the Bar,"[1] which is given at length, as there are some particulars mentioned which we do not remember to have met with; some of which, however, we have good authority for saying are incorrect:—

"Mr. Serjeant Onslow was for many years a well-known counsel in the Court of Common Pleas. He had a very considerable practice for a long time previous to his retirement, and must, when that event occurred a good many years ago, have possessed a large property. He held the situation of King's Prime Serjeant,[2] for a considerable period, which gave him a priority over all the other counsel in the same Court. He was a highly respectable lawyer, though by no means one of the first class. As a lawyer, however, he possessed a much greater reputation than as a speaker. His manner was awkward and uninteresting. He had a rather shrill, unpleasant voice, which was made more disagreeable by his unnatural way of speaking. He was always remarkable for the regularity of his attendance in Court. He was almost invariably the first to enter it in the morning, and the last to quit it on its closing in the afternoon. He never seemed happy except when in Court; even

[1] Vol. ii. p. 25.

[2] This office has since been abolished. Note by the Author.—This is a mistake. It has not been filled up for a considerable time, but it was offered to Mr. Serjeant Manning, who has not long deceased. The Serjeant declined it. The proper name is "*The King's or Queen's first Serjeant*," without more. Serjeant Onslow was only an *Ancient* Serjeant.

when he had no business, he was equally regular in his attendance. The very locality appeared to possess attractions to him of the highest order. Of course the place must have possessed a special interest to him, when tenanted by the Judges, the counsel, and strangers; but I doubt not that, so great was his attachment to it, he would willingly have remained for hours in it after all others had left, if he had been allowed. For many years after he retired from the Bar, or, at all events, during which he never held a brief, he was as punctual in his attendance in Court as ever. Latterly he became blind, or so nearly so, that he was obliged to be led about; and yet he never missed a day in his attendance in the Common Pleas. He was regularly led into it in the morning, and again out of it in the afternoon, by his clerk. The observation usually made by the other counsel on his making his appearance in the morning, was: "Here comes the poor old blind Serjeant." This strong attachment to the Court of Common Pleas, which continued in all its vigour so long as he was able to quit his own house, had something romantic in it. It afforded a fine illustration of the vigorous existence of the ruling passion under the most adverse conceivable circumstances. Every one has read of affectionate survivors continuing, at short intervals, regularly to re-visit the grave of a departed friend, so long as they were able to quit their houses; but I know of no instance of any person continuing so long as he was

physically able, to re-visit every day, and even after suffering under the calamity of blindness, the place in which he had, in other days, simply attended, in common with many of his acquaintances, in his professional capacity. Mr. Serjeant Onslow died a few years since, after attaining to an advanced age. He was a tall and slender man, and of very gentlemanly if not majestic appearance. His manners and dress were those of the old school."

Now his voice was not shrill, but deep and sonorous; his manner of speaking was awkward, and he would sometimes misplace his emphasis. Justice, the well-known barrister, well expressed the intonation:—

"The heavy tongue'd blow
Of Serjeant Ons—low."

There seems to be a mistake respecting the persistency of his attendance in Court. He, certainly, was very constant in his morning attendance in Court, and often has a near relation led him in, but latterly, he never stayed long. In fact, long before he became blind, he used, according to the usage of men of practice, to go home in the middle of the day (he lived in New Street Spring Gardens), on his way to Chambers at the Temple. But he certainly would "go Circuit," after he became blind, and that circumstance might have been confounded with his remaining to the last in Court in London.[1]

Serjeant Onslow was not an author of many works.

[1] MS.

He published, however, in 1789, "The Institutes of the Laws relating to Trials at Nisi Prius." He had, no doubt, at one time, an excellent library, but all his books were burnt at the fire in Mr. Maule's Chambers.[1]

[1] MS.

BAKER JOHN SELLON.

Serjeant-at-Law, 1798.

SERJEANT SELLON was well-known in his day, and is still remembered. Although his legal works, in common with those of other considerable authors,[1] of Mr. Justice Buller, for example, have perished, we must not omit a man who enjoyed a highly respectable practice, who was a lawyer of repute, and of sufficient merit to receive an offer to be a Judge of the Common Pleas.

Baker John Sellon was born in March, 1762. He was the second son of the Rev. William Sellon, for thirty-three years Curate and Minister of St. James's Clerkenwell. This is one of the ministrations which depends upon suffrage. The name of Foster is connected with a later incumbency of this parish, and the long and vexatious litigation with Mr. Lendon, was for some time a subject of much interest.

Mr. Sellon died, with the character of virtue and piety, and of an eloquent and orthodox divine.[2]

[1] Yet those who refer to this work of the Judge must perceive its great merits, suavity enlivened with knowledge.

[2] He died of epilepsy. He was likewise joint Evening Preacher at the Magdalen, and Lecturer of St. Andrew, Holborn, and St. Giles-in-the-Fields.

His son, upon whose memoir we are engaged, was born on the 14th of March, 1762. On November 2nd, 1773, he was admitted into Merchant Taylors'. After continuing for four years in the head form, he was elected to St. John's Oxford, being then second monitor.[1] Here he took the degree of B.C.L. on the 24th of October, 1785.[2] When a very young man he served the office of Steward of the school feast, and, for many years was a constant attendant at that meeting.[3]

After leaving College, he decided upon making the law his profession, in obedience to the wishes of his father. He would have preferred his father's calling.[4] Why the Minister of Clerkenwell should have dissuaded his son from belonging to the clerical order, we are not able to explain. The character and conduct of the son, fully justified his predilection for the church. However, on the 10th of February, 1792, he was called to the Bar by the Society of the

He held church preferment to the amount of £1300 per annum, without any patron but popular adoption.—"Gentleman's Magazine," 1790, p. 673. "Ann. Biogr.," 1836, p. 323. He was also both the proprietor of Portman Chapel, and preacher there. "Gentleman's Magazine," 1790, p. 673. A writer in the "Gentleman's Magazine," of this same year 1790, will have it that this Clergyman was not M.A., and that he left College without a degree. The writer goes on, amongst other things, to say that Mr. Sellon's preferment did not produce a moiety of £1300 a year. See the letter in full, "Gentleman's Magazine," 1790, p. 994. For more particulars of the Serjeant's father, see Nichols. "Literary Anecdotes," vol. viii. p. 492, vol. ix. p. 710.

[1] "Ann. Biogr.," 1836, p. 323.

[2] *Ibid.*—"Annual Register," 1835.

[3] "Ann. Biogr." as above.

[4] *Ibid.*

Inner Temple.[1] He adopted the Norfolk Circuit, where he obtained considerable success.[2]

Previously to his call, he had married on the 24th January, 1788, Miss Charlotte Dickinson, daughter of Rivers Dickinson, Esq., of St. John Street, Clerkenwell. By her he had, independently of several children who died in infancy, one son, and three daughters.[3]

On the 14th May, 1798, he was created a Serjeant-at-Law, and very soon became the leader of his Circuit.[4]

Remarkable, indeed, is the fate of some advocates. Serjeant Sellon was rapidly advancing to eminence, when his career was arrested by a malady at once severe and unlooked for. He was employed in a cause of some importance in the Circuit, when his right ear was suddenly deprived of hearing, and the deafness was permanent. His left ear was subsequently afflicted; but it was only towards the close of life that he became afflicted with comparative deafness.[5] Yet he struggled for some years against his misfortune, and it was not until he was driven to the necessity of having an interpreter to report to him the proceedings in Court, that he quitted the Bar.[6] He then felt that his infirmity prevented him from doing justice to his client. The "hum and

[1] "Ann. Biogr.," 1836, p. 324. [2] *Ibid.*
[3] *Id.* 1836, p. 325.—"Gentleman's Magazine," 1788, p. 82.
[4] "Ann. Biogr.," 1836, p. 324. [5] *Ibid.* [6] *Ibid.*

bustle of a crowded Court, prevented him from hearing either the answers of the witnesses or the arguments of Counsel."[1]

His mother died, July 21, 1801, aged seventy-five, at Pinner Hill Farm, which her late husband, the Clergyman, had purchased for her.[2]

It is believed, that about the period of his first attack he was offered a seat in the Common Pleas.[3] It is recorded, to his honour, that he declined the dignity by reason of his increasing disorder. He could, nevertheless, hear in a small circle, and was not shut out from colloquial pleasures. . . . .

He had now lost the chief source of his income. His father, probably, had not died in affluent circumstances. His family had nearly grown up, so that an addition to his funds had become most desirable. Without consulting any one, he wrote to Lord Sidmouth, explaining the nature of his case, and offering his services as a Police Magistrate. His proposal was most kindly received, and he was appointed by that nobleman to a Magistracy at Union Hall, from whence in January, 1819, he was transferred to Hatton Garden. In this capacity he was by no means deficient in courage. In 1816, an attack was made upon a windmill in Lambeth, *for the mob, finding that the lease had expired*, considered the

[1] "Ann. Biogr.," 1836, p. 324.
[2] "Gentleman's Magazine," 1861, p. 767.
[3] "Ann. Biogr.," 1836, p. 325.

materials public property. A regular demolition was taking place, and a brisk combat for the plunder ensued amongst the actors to their own imminent danger. Mr. Sellon, however, arrived with officers, secured the most active, and dispersed the remainder.[1] In 1834 he retired, having held his office for twenty years.[2]

But he did not long enjoy retirement. Only four months had passed when he was seized with paralysis. He had been subject to giddiness and fulness in the head, and although they yielded to depletion, they increased in frequency and violence. The use of the side was now lost, and his intellects were impaired. The blow of death was for the time averted by the power of science, and the Serjeant went to Brighton. But not gaining material benefit, he returned to his house at Hampstead. Here, through the rupture of a blood vessel in the stomach, he was seriously reduced in strength, but he rallied, and raised the hopes of his family. They were vain. On the 19th of August, 1835, after having amused himself during the day with his grand children, and being much clearer in intellect than usual, he was seized in the evening with fainting and sickness, and was, with difficulty, conveyed to his bed-room. The blood vessel again ruptured, and about two hours afterwards, the sickness returned with increased violence,

[1] "Gentleman's Magazine," 1816, vol. i. 368.
[2] "Ann. Biogr.," 1836, p. 325.

and he died in the presence of his three daughters and Sir Benjamin Brodie, at the age of seventy-three.[1] His family, however, had previously assembled round him, and under the impression of danger, he addressed some of the elder branches, upon religious topics, with eloquence and pathos. "His grandchildren were then led to his bedside, when he took a final and affectionate leave of them, exhorted them to perseverance in the paths of virtue and piety, and as they successively bowed their heads upon his pillow, pronounced his blessing upon each."[2] His children were, one son, the Rev. John Sellon, who died at Albany, New York, March 2, 1830; and three daughters: Charlotte; Maria Ann, who married, December 2, 1819, John James Halls, Esq., of Great Marlborough Street; and Ann, who on May 21, 1816, became the wife of Sir Benjamin Collins Brodie, Bart., Serjeant Surgeon to the King.[3]

Before the days of Tidd and Archbold, and other great lights on the subject of legal "Practice" in our Courts, the Serjeant produced what was for long considered a standard book on those abstruse matters. He published one edition in 1789, and another in 1792.[4]

His character has been much eulogized. He was, beyond doubt, benevolent and religious, but his biographer admits that but for the habits of industry

[1] "Annual Biogr." 1836, p. 328. [2] *Id.* p. 328, 329.
[3] *Id.* 325.—"Gentleman's Magazine," 1816, vol. i. 562.
[4] "Ann. Biogr.," p. 1836, p. 324.

he had formed, he was by nature prone to retirement and indolence.[1] "Clouds of melancholy," would gather round him upon occasion, but, when they dispersed, he was wont to exhibit "great cheerfulness and a very rich vein of original humour."[2] Indeed, at one time he was in the habit of associating with the wits of the day.[3] He was insensible to ambition, and, as the religious tendencies of his youth returned in middle age, he spent the residue of his days, when not summoned to business, in the study of scriptural history, and the works of the most celebrated divines. And he is represented as displaying great mildness when he conversed with those whose sentiments were materially contrary to his own.[4]

[1] "Ann. Biogr.," 1836, p. 326.
[2] *Id.* p. 327.
[3] *Ibid.*
[4] *Id.* p. 326.

THE RIGHT HONOURABLE SIR SAMUEL SHEPHERD, KNT.

Serjeant-at-Law and King's Serjeant, 1796.—Lord Chief Baron of the Exchequer in Scotland.

SERJEANT SHEPHERD, a name gliding easily on the tongue, and, in his day, as familiar as a household word, was an eminent advocate, and a lawyer of the old school. He was the forensic antagonist of Best, afterwards Lord Wynford, and in the palmy days of the Court of Common Pleas each had a lion's share of the business there. But for the calamity of deafness,[1] Shepherd would have been the Lord Chief Justice. His constant opponent, Serjeant Best, was a man of great quickness, and by no means wanting in legal knowledge, but as a jurisconsult he had not the profound erudition of Sir Samuel, whose legal science placed the offices of Solicitor and Attorney-General within easy reach. But the Chief Justiceship of England and the Peerage were lost to Shepherd through infirmity, and he was content to retreat to the lucrative sinecure of Lord Chief Baron of the Scottish Exchequer, a dignity now no longer in existence.

[1] Hansard, N. S., vol. xiii. p. 819. Mr. Secretary Peel.

Samuel Shepherd was the son of a jeweller in London.[1] He was born in April, 1760.[2] The father was so hopeful of his son's prospects, that his gratification was great in seeing him in active business. He was wont to describe the pleasure he felt, "in seeing him go alone a second time." Between father and son we are able to record a reciprocal attachment.[3] Moreover, Shepherd's master at Chiswick foretold his future eminence, and ventured to assure his father that, whatever selection was made, "he would be an honour to his profession."[4]

In July, 1776, he was entered at the Inner Temple, and became a pupil of Mr. Serjeant Runnington, who had married one of his sisters.[5]

It has always been considered a merit in a young law student, not, as it were, to imbed himself in the studies necessary for his profession. Many great lawyers have shown themselves quite equal to rank with Coke and Hale, those martyrs to legal lore, yet yielding for the hour to the natural desire of youth for pleasure, and mindful of the poetic hint :—

"Neque semper arcum tendit Apollo."

He is called by his biographer "a great frequenter of the theatre," and therefore, when young, had of course seen Garrick.[6] And he indulged in the amusing interludes of the Debating Societies.[7] Many who

[1] "Ann. Reg.," 1841, p. 174.
[2] "Law Magazine," vol. xxv. p. 289.
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Id.* p. 290.

remembered the Serjeant in his early days, held him to have been an eloquent speaker, but a writer of later date, speaking of him, remarked: "I might consider him shrewd and sensible; I never once imagined that he was eloquent."[1]

He was called to the Bar on the 23rd of November, 1781.[2]

In 1783 he married Miss White, "the sister of an intimate friend and fellow-student, a lady of small fortune, of great sense, of taste, spirit, and accomplishments."[3]

We are indebted to the Author of a "Memoir of Shepherd," for the valuable account of his early progress, and rather early success.[4] He had two arguments on hand, and he was wont to take copious notes. Unfortunately as it appeared, but happily as it turned out, both the cases were called on the same day. In the first argument he showed much embarrassment, but, as he was beginning the second, he dropped the notes belonging to it, so that his papers became displaced and useless. He was thus "thrown upon his own resources," and received a great compliment from Lord Mansfield at the conclusion. A further distinction was conceded. The Court were about to give judgment against his client, but took time to advise.

[1] "Criticisms on the Bar," by Amicus Curiæ, 1819, p. 35.
[2] "Annual Register," 1841, p. 174.
[3] "Law Magazine," vol. xxv. p. 290.
[4] "Law Magazine," vol. xxv.

And this event is recorded as the origin of his good fortune.[1]

He had previously been favoured by the notice of that discriminating Judge, Buller, who sought his acquaintance, and tendered his advice.[2] Amongst other counsels, was one to warn him against the Middlesex Sessions, and to recommend his constant attendance in the King's Bench—the surest road to eminence, said the Judge.[3]

And thus he proceeded, securing for himself a considerable share of business in the Home Circuit and in London. His infirmities, we may remark, had not then overtaken him. His voice, though neither round nor musical, was clear; but the snuff he was in the habit of taking, and the approach of deafness, materially injured it.[4]

The Serjeant (as we shall see presently) was no Liberal. He clung to the old institutions of his country, with all their defects and demerits, but he was not the less a good companion, an honest politician, and, certainly, an honourable man. To the credit of the English Bar, the Serjeants, the King's Counsel, and the barristers, have ever been zealous for the dignity of that Bar, by defending, when called on, accused persons of all shades of politics. Shepherd was one of them. Yet he was *confrère* with Erskine,

[1] The "Law Magazine," vol. xxv. p. 290. [2] *Ibid.*
[3] *Ibid.*
[4] "Criticisms on the Bar," p. 73.

and in the days of the French Revolution, Erskine tampered with the "Friends of the People." Shepherd shrank from them. Erskine saw that his friend, though a Whig of the old school, would never go "thorough stitch" with the "Friends of the People." Erskine was senior to Shepherd, but they passed many long vacations together in travelling, in England or abroad.[1]

Mr. Shepherd had been twelve years at the Bar, and there was to be an appointment of King's Counsel. Lord Kenyon, upon this, sent for him, and declared, that, unless he wished it, no one in the Court of King's Bench should go over his head. The Chief Justice would even delay the appointments within a reasonable time for deliberation. But the counsel was in good junior business, and declined the offer. As a leader, he would have had fearful competitors, had he deserted a certainty for a forensic chance. Lord Kenyon had a high opinion of him. "I like Shepherd," said that nobleman: "He has no rubbish in his head."[2]

Some few years after these early successes, Mr. Shepherd had the forewarnings of that infirmity which so gradually undermined his talents for advocacy and the Bench.

On the 18th of April, 1796, he was induced to enter the Common Pleas as a Serjeant. Sir James Eyre, then Lord Chief Justice, had intimated that such a step would be very agreeable to himself.[3] So soon as

[1] "Law Magazine," vol. xxv. p. 292.
[2] *Ibid.*
[3] *Id.* p. 296.

the following Trinity Term, he was raised to the dignity of a King's Serjeant, a promotion at once rapid and unusual. But his business in the Court, which placed him at once in the first rank, and the well-known fact of his having declined the silk gown of a King's Counsel, necessitated and justified this advancement.[1] His biographer in the Magazine, after observing upon the different judicial characters of Eyre, Lord Alvanley, and Mansfield, concludes by saying: "Every cause being tried with excitement, and every point mortal with energy, he was forced into occasions for the display of powers which threw his infirmity into the shade."[2] His opponents in London and on the Circuit were chiefly Best and Garrow. It is recorded that Garrow and Shepherd were on the most friendly terms. The feeling of jealousy did not trouble Sir William, although he was inferior to Sir Samuel on "subjects of passion, gravity of thought, and in elevation of sentiment." In fact each respected the entirely opposite gifts of the other. "It was a mutual satisfaction when they were on the same side." Perhaps Garrow, as Attorney-General, threw a little too much of the public business on his friend, but if this were so, their unity was not disturbed.[3]

Shepherd was for Sir Francis Burdett in the serious political struggle which led to the imprisonment of the popular Baronet. Shepherd, however, had a bad cause,

[1] "Law Magazine," vol. xxv. p. 296. *Id.* pp. 294, 296, 297.

[2] *Id.* p. 294.

and a hostile Judge, but he manifested his accurate knowledge of the law. Sir Francis was taken forcibly from his house under the Speaker's warrant. Shepherd would not deny the principle, the right on the part of that officer to issue such a document, but he put the contention on the nature of the force used. And herein we cannot help noticing that the much-decried art, "special pleading," may be occasionally clear to the plainest understanding. As in this case. Sir Francis's complaint was, that the Serjeant-at-Arms broke open his door and entered his house. This was the legal part of the record, called the "declaration." The Serjeant said, he demanded admittance, but could not get in, and, therefore, he had a right to resort to violence, if the warrant was valid. This is called the "Plea." The plaintiff, Sir Francis, would not gainsay the right to break in; but he answered, not with a military force, "which was improper, unnecessary, and excessive." The term "Replication" satisfies this fresh attack. And then the defendant negatived all this, and affirmed, that the force was not improper, &c. Upon these assertions, the latter being called the rejoinder, the jury had to decide.

Witnesses were then called, but there was no chance for Burdett. Lord Ellenborough, the "*Jupiter hostis*," presided, and the verdict passed immediately for the Serjeant-at-Arms.[1]

[1] "Annual Register," 1811, pp. 53, 250.

Further promotion awaited the Serjeant.

In June, 1812, he was appointed Solicitor-General to the Prince of Wales, then Prince Regent. He had become the ancient Serjeant by seniority upon the death of Mr. Serjeant Cockell.[1]

An incident most honourable to him is related by his biographer. He had been sent for by the Prince, who received him at a private interview. The object of the message was to consider a matter of deep interest to His Royal Highness. Shepherd, entertaining a strong opinion upon the matter, expressed it with "an earnestness beyond the usual formality." The Regent looked surprised. After a moment's pause, however, he was desired to proceed. He retired at length, but under the impression that he had given

[1] [Serjeant Cockell]. A very humorous Serjeant, and, in his day, leader of the Northern Circuit. He lived when late evening consultations were common, and sobriety, by no means, a sure attendant upon them. Upon one occasion, on the circuit, a worthy farmer contrived to get an introduction (like Pickwick to Serjeant Snubbin) to the great man. Serjeant Cockell had been indulging in joviality, and the farmer began a lengthy tale in the vernacular. There was a pause, and the Serjeant, rolling in his chair, exclaimed "I'll—win—your—cause." This ought to have contented the farmer; but he went on with a second tedious tale of his wrongs. The Serjeant became impatient, and interrupted him this time with another. "I'll—win your cause." The stupid man would not stop, upon which the Serjeant, highly ebrius, broke out, and said, "Did'nt I tell ye I'd win—your—cause? If you do'nt get out instantly, I'll kick you out of the room!"—MS. The humour of the Serjeant was too gross for us to tell.

> "Like a full harvest moon . . . . then next in place,
> Shone portly Cockell's honest, round, red face.
> Clearness of intellect was his, combined
> With vast unbounded native powers of mind."—
>
> Pearce's "Inns of Court," 2nd ed. p. 321.

great offence. But soon afterwards he was again sent for. The Regent expressed a wish that he should sit by him. They were engaged in discussing the topic of this fresh message, when the Regent interrupted, and, laying his hand on Shepherd's knee, said to him, "with an air of great kindness, 'Shepherd, you expressed your opinion very honestly the other day upon that question, and not many would have done as much.'"[1]

This was one of the many instances in which the generous nature of the gentleman pronounced itself, and which highly distinguished George the Fourth.

The time, almost always, arrives, when the lawyer, endowed with ability, and favoured by fortune (some might say, and not without reason, by Providence), receives the reward due to merit and perseverance.

In 1813 Shepherd was the King's Ancient Serjeant. In his Court, the Common Pleas, he was a great ruler, being followed by Copley, about to take the next great honours.

In December, 1813, Serjeant Shepherd was made Solicitor-General.[2] The promotion of so able an advocate was by no means an extraordinary circumstance; but the consequences of it to the ancient and honourable Order of Serjeants were of a striking character.

[1] "Law Magazine," vol. xxv. pp. 299, 300.

[2] Romilly says that the place had been offered to Leach and Lens, and that Shepherd was appointed upon their refusal.

The precedence of the two eldest King's Serjeants over the Attorney and Solicitor-General was the acknowledged rule. It now occurred to those in office that the advancement of Shepherd afforded an opportunity of destroying this long established right of the coifed brotherhood. Therefore, as soon as the new law-officer was created, an Order in Council issued, that for the future, the Attorney and the Solicitor-General should precede all the King's Serjeants.[1]

In a superficial point of view, this might be thought an arbitrary proceeding. But a slight consideration of the practical working of the promotion presents a very different aspect. For as the Ancient Serjeant (to use a forensic phrase) "led" the Attorney-General, (and Shepherd was in that position), it naturally followed, that Shepherd, the Solicitor-General, as Ancient Serjeant, would "lead" Sir William Garrow, the Attorney-General. This was "ad absurdum," and hence the phenomenon of the great law-officer preceding himself.[2]

But now arises the question, whether Sir Samuel

[1] In 1623 it was ordered, that the Attorney and Solicitor-General have precedence over all the King's Serjeants, except the "two ancientest."—"Law Magazine and Review," vol. xxi. pp. 167, n.

And now, upon the promotion of Shepherd, then "two ancientest" were placed below the Attorney and Solicitor-General.

[2] A similar instance of change of precedence, although under different circumstances, took place at a later period, when the rank of the Queen's Advocate, who always spoke from the upper tables at Guildhall, to respond to the health of the Bar, was reduced below that of the Attorney and Solicitor-General.

Shepherd (he had been knighted) is liable to censure for his acceptance of an office by which he surrendered actually, absolutely, and at once the rights of his coifed brethren? The fair and impartial opinion would seem to be (for we must not dictate), that he had scarcely an alternative. Some of our lawyers, it is true, have clung with Quixotic chivalry to their principles, and reaped their reward. But, in this case, there was no principle, in particular, which affected the Ancient Serjeant. He, probably, had not concerned himself about the issue. It was just possible that he had not an idea of the consequences. But he must have been, doubtless, aware that in the event of his own promotion or decease, the rank of the next Ancient Serjeant would have been altered. So that, had he declined, he might only have said, "fungar inani munere."

There was, however, another, and a controlling reason for his acceptance of an office which he was able to undertake upon honourable terms.

The Chief Justiceship of the King's Bench was within his reach; for Lord Ellenborough was declining, and Sir William Garrow, the Attorney-General, was prepared to accept a less important dignity; and, moreover, the threatening malady had not yet developed itself so strongly as to forbid the high promotions of the Bench and the peerage, to which he would naturally aspire. For Mr. Justice Abbott, who succeeded, but who had not been a chief officer of the Crown, was compelled to wait nearly ten years before

his great judicial abilities claimed for him a title which his predecessors had won, with scarcely an exception, for nearly a century.

But this was one of the severe blows which the serjeants have received.

The Lord Chancellor, Lord Cairns, after an absence of promotion, most nobly stepped in to preserve the rank, by adding three serjeants to the list. It is difficult to understand why Lord Cairns should not have gone one step beyond, and have recommended to Her Majesty some serjeants to occupy the higher rank of "Her own Serjeants," *not by way of revival*, but one which the Sovereign has not, as yet, as far as we know, resolved to dispense with.

We have said, that Shepherd held persistently to the ancient institutions of his country. It was thought unjust that the lands and chattels of a person attainted of treason or felony should be forfeited. This disherison was caused by the conviction, which worked "corruption of blood." Sir Samuel Romilly made more than one strong effort to abolish this severe infliction upon heirs and successors. But he was met with determined hostility.

One of the Yorkes, well known in his day, objected even to the introduction of such a measure;[1] but the House did not adopt this stringent view. That able statesman, Sir James Mackintosh, traced the modern

[1] In 1814.

history of this aggravation of punishment. He turned into ridicule the idea that a law, through which a person unborn might, at a remote time, miss an estate, otherwise his own, could have any effect in deterring a man from the commission of a crime. And he hailed the time as favourable for abrogating these rigours. And now rose Serjeant Shepherd, then Solicitor-General. He questioned the accuracy of Sir James's historical statement, and controverted the assertion, that the corruption was an innovation. The Crown lawyer was successful, but the minority was highly respectable. Thirty-two voted for the Bill, forty-seven against it. Mr. Yorke, however, having intimated that he would not oppose the repeal if confined to felony,—that improvement was gained, and, in later days, the corruption of blood, in cases of high treason, has been much modified.[1]

In 1817 the Bill for suppressing seditious meetings occupied a considerable share of public attention. The chief contention in the Commons was, as to the punishment of death, which was incorporated in the Bill, and stoutly defended by Sir Samuel against the strictures of Romilly, Mackintosh, and others. But the Government had large majorities, and, upon the third reading, Mr. Canning appeared to lend his powerful support to the measure. It is singular that Ireland was

[1] "Annual Register," vol. lvi. p. 110 (1814).

excepted from the enactment at the special instance of the Attorney-General.[1]

In this year, likewise, the Government took an alarm against blasphemous and seditious libels, and Lord Sidmouth's well-known circular was sent to all the Lord-Lieutenants.

Sir William Garrow was then Attorney, and Sir Samuel Shepherd Solicitor-General. The question came, of course, before both Houses, as it was sought to give power to a justice to apprehend any person charged upon oath with the publication of such libels. The Government carried their Bill in the Lords by a considerable majority. In the Commons, Sir Samuel Romilly appeared to oppose the Bill founded on the circular; but he was met by the Crown lawyers, and his motion for a copy of their opinions was negatived. Upon this Sir Samuel moved resolutions condemnatory of the conduct of the minister in this case, upon which the previous question having been moved by Shepherd (now, by the promotion of Garrow become Attorney-General), a division took place, and the resolutions were lost by 157 to 49.[2]

A strong step in this direction was soon made in the case of Thomas Jonathan Wooler. The Black Dwarf was the *casus belli*, and two attacks, one upon the ministers, the other upon Lord Castlereagh and Mr.

[1] "Annual Register," vol. lix. p. 31 (1817); pp. 31, 33. [2] *Id.* p. 63.

Canning, as individual members of the Cabinet, were made the subjects of the indictment. . . . . Upon hearing it read, the audience showed signs of applause, which were with difficulty suppressed by the Sheriffs. Indeed, there was a dread of despotism at that period amongst the people, and a tendency on the part of the existing powers to repress, rather indiscreetly, the free exposition of opinion. The jury, men of impartiality and good sense, were staggered. "Supposing," said one of them, "Supposing the facts (that meant, the facts stated in the Dwarf,) to be *true*, were the jury bound to find the publication a libel?" Judge Abbott replied that they were, and he read to them an opinion of Lord Raymond, who had been a Chief Justice about a century before. Upon this, the jury went out for two hours and a half, and returned with a verdict of guilty, but still they were not satisfied. Three of them wished to offer to the Judge special grounds for their verdict. "Is the verdict of guilty," said the Judge, "the verdict of all the gentlemen of the jury?" The foreman bowed. The finding, nevertheless, was expressed almost inaudibly; it was given, if at all, in a gentle whisper, but the foreman's repeated bow was decisive in favour of assent. The Judge had twice asked the question, and twice was met with a whisper and a bow. . . . . But the matter was not yet over. Chitty, who was for the defendant, intimated, when the jury had retired to consider their verdict upon the second information, that three of the jury in the first

case had not returned a verdict of guilty. It was a strange controversy. The three jurors were prepared to state upon affidavit that they had not agreed to the verdict. But the Judge chose to consider the finding as recorded, and, notwithstanding the assertion of Wooler, that this was a conviction at the hands of nine only, the matter was, for the day, at an end.

Observing upon the readiness of the dissentient jurymen to make their depositions: "This cannot be justice, my Lord," exclaimed the defendant. Now, in order to understand this case and its sequel correctly, we must relate that the foreman stood with three of his fellows at the door of the Judge's room, for the verdict was not pronounced in open Court. It was possible, therefore, that some of the jury might not have heard the indistinct murmur of their foreman. The Judge himself was not entirely free from doubt, and soon afterwards he brought the case before the whole Court, Lord Ellenborough presiding. They were unanimous against receiving any affidavits upon the subject, but it seemed so important, that all the jurors should have heard the issue, as it was understood by the Judge, as to induce the Chief Justice himself to suggest a new trial. The Attorney-General said, that all were within hearing. That was assumed and conceded by the Court. The question was, whether *all heard*. The Attorney-General answered, that the verdict must have been heard, upon which Mr. Justice Bayley, an uncompromising Judge,

observed, that his brother Abbott had a doubt whether this was so. "If he had *seen* them," said Lord Ellenborough, "the presumption of a general hearing would have been incontrovertible, unless otherwise disabled." Then the Attorney-General wanted the Court to become acquainted with the fact, or at all events, to be satisfied that the jury did *not* hear. This proof of a negative, would, indeed, have been difficult. The Chief Justice remarked upon the danger of entertaining these applications, and did not remember that any such had ever been before made. The Court, however, were manifestly against pronouncing any judgment upon Wooler as the case then stood, and had Mr. Chitty consented, a new trial would have been granted at the instance of the Crown. But the defendant's counsel said, that his instructions were to apply for an acquittal. Upon which, Lord Ellenborough drily added: "When it comes to your turn, you will move what you think proper." And so the matter was concluded.[1]

In the same year,[2] Shepherd, Attorney-General, again appeared against Hone. The defendant was charged with publishing parodies on the Catechism, the Apostles' Creed, and the Lord's Prayer. The Crown lawyer insisted, on the authority of Hale, that Christianity was part and parcel of the Law of England, but whilst he was declaiming with "becoming gravity" upon the manner in which ridicule

[1] "Annual Register," vol. lix. p. 163—167. [2] 1817.

was attempted to be thrown upon these solemn portions of our ritual, an indecorous burst of laughter issued from the crowd below the Bar, which drew forth an instant warning from Mr. Justice Abbott. The Attorney-General: "If there is anything which can raise a smile in any man's face, in what I have read, it is evidence enough that the publication was a libel." It would not follow that in this exhibition there had been any intentional insult to the Court. No doubt many were friendly to Hone, and the grave countenance of the Serjeant contrasted with the witty absurdity of the parodies. Mr. Hone's speech, in defence of himself, was one of remarkable ability. He touched upon the rigour of the Judge for permitting his arrest in the previous May. He then attacked the special juries (the mode of striking them was, at that time, very unpopular), and, having won his way thus far, he drew with boldness and cleverness a distinction between a parody which might convey "ludicrous or ridiculous ideas relative to some other subject, and one where it was meant to ridicule the thing parodied." The latter, he contended, was not his case, and, therefore, he had not brought religion into contempt. After the usual speeches, the jury retired, but only for a quarter of an hour, when their foreman said, in a firm voice, "not guilty." However, on the next day, another information was tried against this defendant for a parody called "The Political Litany." It was evident to the juries that, blameable as the writings

were, there was a political feeling which prompted the prosecutions. This will afford a clue to the verdicts of acquittal which accompanied them. The second trial was principally occupied with reclamations from the Chief Justice and Hone. But, in spite of Lord Ellenborough's disapprobation (to say the least), the defendant managed to bring the greater portion of his parodies before the jury. As much as the Judge could do to gain the verdict for the Crown, he did; and he concluded by pronouncing this "a most impious and profane libel." There was a longer deliberation in this case. Mr. Hone's fate (for he would have been most severely punished) was suspended for one hour and three-quarters. At eight in the evening, the foreman, with a steady voice, found the defendant "not guilty."

Strange to say, the Crown was not yet daunted. Another, a third day of trial, arrived. Lord Ellenborough, a Judge of strong political tendencies,[1] of irritable temperament, and approaching his end; yet a man of highly honourable feelings, presided for the second time.[2] This fresh parody was on the Creed of St. Athanasius. It was called "The Sinecurist's Creed," and an indictment founded upon that Creed which has been open to much criticism, was, after acquittal for far more serious profanities, unwise and

[1] He was, for a very short time, a member of the Cabinet; probably, the only Lord Chief Justice who ever sat in that camera.

[2] It will be remembered, that Mr. Justice Abbott tried the *first* case.

ominous. The Attorney-General, conducting himself with most commendable kindness, observed upon the fatigues of the two preceding days, which, he said, must have wearied the defendant, and proposed a postponement. But Hone was too acute. He well knew the impression within and without caused by his triumphs. He declined the indulgence, and wished to proceed. It was the weakest attack upon him. He spoke, nevertheless, for upwards of seven hours. And neither the Chief Justice nor the Attorney-General were able to assume and enforce the strong opinions they enounced during the former days, whilst Hone, on the contrary, was confident. The jury were absent but for a few minutes after half an hour, and found the verdict of "not guilty."[1] Upon one of these trials, Hone made an allusion to the father of the Chief Justice, upon which the latter rose and said, with calmness and dignity:

"For decency's sake, forbear!"

The subscription for Mr. Hone and his family is well remembered.

"Oil for the *Hone*," &c.

In 1818 the Attorney-General took charge of, and carried without difficulty a Bill for indemnifying

[1] "Annual Register," vol. lix. pp. 171—175. In 1818 Lord Holland touched upon the case of Hone in the House of Lords, observing that the "prosecutions bore about them such marks of hypocrisy as he had never before witnessed."—"Annual Register," vol. lx. p. 7.

Ministers against the consequences of a suspension of the Habeas Corpus Act.[1]

And in the next year, 1819, he was the officer of the Crown entrusted with the Foreign Enlistment Bill, which passed the Commons by a good majority.[2]

We must now carry on the Serjeant's parliamentary career, by introducing a subject little known to the general reader, but by no means deficient in interest. It is the once famous "Trial by battel." When Achan took the "goodly Babylonish garment, and the two hundred shekels of silver," the men of Ai smote and chased the Israelites, and a miracle was wrought by the Almighty, in order to discover the transgressor. Hence, in times long after, trial by "presumptuous appeals to Providence," to use the words of our great writer, Judge Blackstone, was frequent amongst the Saxons and Normans. The Norman preferred to "wage his battel." For a considerable period, the challenge and fight were simple. The charge was made, and the conflict forthwith ensued. The man who fell was judged guilty, either of the offence, or of falsehood in making the charge. As in the case of the Armourer in Shakspeare's "Henry VI., the poet makes him say when struck down: "Hold, Peter! hold! I confess! I confess! Treason!" And the King exclaims:—

Go, hence, and take that traitor from our sight! for, by his death, we do perceive his guilt."

[1] "Annual Register," vol. lx. p. 38. [2] *Id.* vol. lxi. p. 71.

Whereas, in truth, the Armourer did not confess; he was entirely innocent, but made drunk and incapable of defending himself by his neighbours, and, according to Holinshed, the Armourer's servant, the false accuser, did not live long. But when trial by jury was fully established, and an acquittal took place in a case of murder, it became a question, how far the near relatives of the deceased, if dissatisfied with the verdict, were to be appeased? For this ordeal before twelve men, bade fair to supersede the old mode of proceeding by battel. Therefore an appeal was allowed against the finding, and a second jury might be called upon to review the facts. If the second verdict were favourable to the prisoner, he was free for ever from the charge; but, if pronounced "guilty," upon the fresh inquiry, not having "waged his battel," he was inevitably executed, the prerogative of mercy being, upon this occasion, withheld.[1] Still the trial by "battel" remained. Although much disused, it was not abolished. Certainly, if the appellant were a woman, a priest, an infant, or of the age of sixty, or lame, or blind, he or she might refuse to fight, otherwise the ancient usage was within reach of the person appealed against. And there was one especial ground for rejecting the application on the part of the prisoner to resort to arms. This was where great and violent presumptions of guilt existed, admitting of no denial,

[1] A man, named Slaughterford, was executed under these circumstances as lately as the time of George the Second.

as if to use the language of Blackstone, the accused were taken in the room with a bloody knife. In such cases the second jury must have been impanelled.

We are not entering upon a long history of "trial by battel;" but as the Attorney-General, Shepherd, was entrusted with the alteration of the law upon the subject, allusion must be made, as briefly as possible, to it.

In 1817 (Sir Samuel, being then in office), perhaps an entire century had elapsed since this recourse to violence under the sanction of law had been slumbering amongst annals almost forgotton. Yet there were several records of the custom. As, in 1380, "Duellum inter Dominum Johannem Hannesly, et Robertum Katlenton, Armigerum, in quo Robertus fuit occisus."[1]

"The last time," says Professor Christian,[2] that the trial by battle was awarded in this country was in the case of Lord Rea and Mr. Ramsey in the 7 Ch. I. The King, by his Commission, appointed a constable of England to preside at the trial, who proclaimed a day for the duel, on which the combatants were to appear with a spear, a long sword, a short sword, and a dagger; but the combat was prorogued to a further day, before which the King revoked the Commission."

[1] Duel between Master John Hannesly and Robert Katlenton, Esq., in which Robert was slain.—Bell's "Shakespeare," annotations upon Henry VI. Part II. 19.

[2] In his notes to Blackstone, vol. iv. p. 348, note (').

Raked from the ashes, where still "live their wonted fires," may be found, as chance offers, the remains of "strict statutes, and most biting laws."

Not many years since a Dorsetshire labourer made a disturbance in a church. The offence was becoming common, and the law on the subject was intricate. But industry discovered an old Act of Parliament, not passed in Protestant times, but in the reign of Mary, well known by the name of "Bloody Mary." Under this law he was committed for nearly six days, then sent to prison by two justices for three months, and, beyond that, to the Quarter Sessions. There he was to express his sense of repentance, and to find a surety for one year for his good behaviour. And if he refused to repent, he was to remain in gaol. But the Dorsetshire labourer did repent, after having been in prison for some months. Another statute, of which Lord Wensleydale had the care, prescribes an easy and mitigated remedy for these unholy brawls; but we are much mistaken if the old Act of Queen Mary is not still on the Statute-Book.

Some ten or fifteen years since, a pawnbroker gave the magistrate in London considerable trouble respecting the return of some pledges, in compensation for some misconduct. There was a legal remedy, but the broker was disposed to defy the Bench. The magistrate thought awhile, and directed the Clerk to hand a volume of the Acts of Parliament to him. It was there found that the offence charged upon the de-

fendant was punishable with a public whipping. The pawnbroker, fearfully crest-fallen, yielded at once. The punishment was such as the Bench could hardly award even at that time of day. But *there was the statute.*

Swift had a notion which partook of fear as to these old laws. He somewhere remarks, "What if there be an old dormant statute or two against him, are they not now obsolete?"

And the extraordinary modern discovery of the severe penalty against the Rapparees in Ireland must be familiar to our readers.

However, to return to the trial by battel and Sir Samuel Shepherd.

In 1817 a murder was committed in the county of Warwick. The victim was a woman. She was found dead in a pit of water, and it was evident that she had been abused. There were, certainly, very suspicious circumstances against the person who was arrested and tried; but the jury gave the prisoner the benefit of any doubt which might exist, and they acquitted him. The case must have excited a considerable sensation in the neighbourhood, for the relatives of the woman appeared to have been highly dissatisfied.

Notwithstanding the lapse of years since an appeal of murder, it must have occurred to a country practitioner in Warwickshire that there was such a proceeding to be had; and the result was singularly

curious. The appeal was lodged, and the acquitted prisoner was again incarcerated. Had he been in an affluent position, he would have been bailed; but he was a labourer in ordinary life. However, where there is sharpness on the side of one lawyer, there may be corresponding skill on the side of another. If one man discovered the dormant law of appeal, the other would not be behind in the wager of battel to meet it. Therefore, we are informed in a book of authority[1] that, on a certain day named, the Sheriff of Warwickshire was called upon to make a return to a writ of Habeas Corpus. This writ brought one Abraham Thornton, the man whom the jury had pronounced free by their verdict, upon the floor of the Court. His deadly enemy, the relation of the murdered woman, answered to his name, and took his place. After some preliminary forms, a record, called "the count," was read out to the person appealed against, and whom we will call the appellee. He put in this plea—"Not guilty; and I am ready to defend the same by my body." *And thereupon, taking his glove off, he threw it upon the floor of the Court.*

Those who are curious in these antiquated customs will find them well related by Blackstone in the fourth book of his "Commentaries."[2] It is to be observed in this case that the appellant did not take up the glove, because he denied the right of "battel" upon legal

[1] "Reports of Cases in the Court of King's Bench," by Barnewall and Alderson, vol. i.

[2] Chapter xxvii.

grounds . . . . These law points were, in reality, the "chevaux de bataille." Pleas, counter-pleas, replications, "et hoc genus omne," came in aid of the "baton," or the sword. They may be food for the antiquarians; but we must pass on.

The Court, perfectly staggered at such a threatened deed of "derring do," nevertheless, did their part honestly. If the second verdict should be "guilty," the man, although acquitted by a jury, must die. It was in vain that the violent presumptions were pressed against the many suspicious circumstances. Mr. Justice Bayley, a most painstaking Judge, combated every presumption with an ability truly his own. Lord Ellenborough held evenly the balance of justice, and, glad to escape from Mr. Chitty's heavy law, was fain to confess that the usual and constitutional mode of trial must take place. It followed, as the matter then stood, that the violent presumptions were rejected, and the high Providence was to be invoked as umpire. With the sword, or amongst plebeians, as here, with batons. Then if Ashford (for he was the appellant) could vanquish Abraham Thornton, so that the latter neither could, nor would, fight any longer, he (*i. e.* Thornton) would be adjudged to be hanged immediately. On the other hand, if Thornton should kill Ashford, or could maintain the fight from sunrising till the stars appeared in the evening, he was discharged from guilt. Again, if Ashford, the appellant, were to cry "craven," he was to lose his right

as a freeman, and became infamous. And this in the year 1818.

It might have been bad enough, difficult as the issue might have appeared, to have had the fresh inexorable trial. But the alternative, "the battel," was positively inadmissible. Probably, the appellant, Ashford, had *no stomach for the fight.* Certain is it that he withdrew from the contest, and the matter ended.[1]

It would have been strange indeed if this extraordinary legal anomaly should have been longer tolerated. Therefore, early in the Session of 1819 (the

[1] A full account will be found in "Reports of Cases in the Court of King's Bench," by Barnewell and Alderson, vol. i.; and see likewise Blackstone's "Commentaries," Book IV. Chapter xxvii.

Even as the alteration in an important branch of the English law is usually followed in the next year by a similar alteration in the Irish, so did a strange coincidence of the like nature occur in Ireland as to this trial by battel.

Allen, the well-known counsel, was for the appellant, and the celebrated Mac Nally for the respondent, the acquitted prisoner, Downes, afterwards Lord Downes, the Chief Justice, presiding. The Judge was in great alarm, a graphic description of the combat being presented to him, and no hope of reprieve being afforded him from being President of the combat.

Charles Philippe's account is very amusing. We can only give a short extract. "Am I to understand," said Downes, "this monstrous proposition as being propounded by the Bar, that we—the Judges of the Court of King's Bench—the recognised conservators of the public peace—are to become, not merely the spectators, but the abettors of a mortal combat? Is this what you require of us?" "Beyond all doubt," said Allen; "Your Lordship is to be elevated on a lofty bench, with the open air above you, the public before you, in which the combatants are to do battle till both or one of them dies." "Aye," shrilly squeaked Mac Nally, "from daylight to dusk, until your Lordship calls out to us, 'I see a star.' "—"Curran and his Contemporaries," p. 412.

"As good luck would have it, at this critical moment the case of Abraham Thornton turned up in England, quite as much to the horror of Lord Ellenborough as to the relief of Downes."—*Ibid.*

arguments for and against this mode of trial having occupied a considerable time), the Attorney-General took charge of a Bill for abolishing the custom. That the slightest opposition should be offered to such a measure must create feelings of surprise. But Sir Francis Burdett rose to move an amendment, with a view to arrest its progress. The objection he raised was not worthy of the Baronet's unquestionable ability. He denounced it as calculated to increase the power of the Crown, "inasmuch as it would deprive the subject of an appeal against what might be an illegal and unjust extension of the power of the Crown in pardoning criminals in cases of murder." A more weak suggestion could hardly be conceived. It was a most arbitrary and cruel proceeding, that, in cases where the prisoner could not "do battel," the fatal verdict of a second jury should forbid the prerogative of mercy. But Sir Francis went further, and declared that the Crown could not pardon for murder, the power being abolished by statute. This was too strong a remark, and a majority of 86 to 4 decided the success of the Bill. Sir Robert Wilson, however, made another effort, but the numbers were 64 to 2, and so it passed.[1]

For many years it was in the power of a man possessing freehold estates to launch into great expences which his personal property was quite unequal

[1] "Annual Register," 1819, vol. lxi. p. 51. See an account of "Trials by Battle."—"London and Westminster." Timbs, vol. i. pp. 238—246.

to liquidate, and from which his lands were free, as far as mere simple debts were concerned.[1] This privilege was considered hard upon creditors, and Sir Samuel Romilly made a determined attack upon the principle. "I moved for, and obtained leave," he writes,[2] "to subject the freehold estates of persons who die indebted to the payment of their simple contract debts." The proposition, as it might be supposed, met with powerful antagonists. Shepherd was then Solicitor-General, and he supported Serjeant Best in an attempt to stop the Bill, Wetherell and Davies Giddy following in the same hostile course. They were met, however, by Preston, the celebrated conveyancer, Sir Arthur Piggott, Mr. Lockhart, and Master Stephen, "who made an excellent speech." And so plain was the justice of the measure that it passed the Commons by a majority of 24—61 to 37.[3]

Sir William Grant is said to have been the first who used the well-known phrase—"the wisdom of our ancestors;" and Lord Brougham refers the phrase to this very attempt of Romilly.[4]

Having now related the Parliamentary labours of the Attorney-General, we must not omit to notice his official duties and conduct during the year 1817, when Watson was tried for the famous Spa Fields Riot, which was charged as an act of high treason. This

[1] "Simple contract debts."
[2] "Memoirs of Romilly," vol. iii. p. 132.
[3] *Id.* p. 134.
[4] "London and Westminster." Timbs, vol. i. p. 219.

important trial is so well known as to render it unnecessary to make any further observations upon it, except to refer to the temperate speech and conduct of Sir Samuel Shepherd. Probably owing to the powerful defence of Mr. Wetherell and Serjeant Copley, the recovery of the young man who was shot, and the grave character of the offence, a verdict of acquittal was pronounced, after a deliberation by a jury of nearly two hours.[1]

The case of the Luddites, in which the Attorney-General again appeared to manage the prosecution for high treason against Brandreth and others, is equally well known. His speeches in support of the indictments against those prisoners will be found in the "State Trials." He obtained convictions, and three of the ringleaders were executed at Derby.[2]

In the early part of 1817 the Chief Baron, Thomson, died. He had been a Master in Chancery, when his promotion to be a Baron of the Exchequer occurred. There was then what in legal phrase was called "The Equity Side of the Exchequer," and Sir Alexander's knowledge of equity was so considerable as to point him out as a fit person to preside. In consequence of this advancement Baron Richards became Chief in the Exchequer, and Sir William Garrow, whose services as Attorney-General were not so valuable as to be

[1] "State Trials," vol. xxxii. pp. 1—674. See the speech of the Attorney-General, p. 26.

[2] *Id.* pp. 755—1394. See the speeches, pp. 779, 1084, 1137.

indispensable, was offered the vacant seat. This very shrewd and successful advocate did not hesitate to accept a safe provision for life. So far from resenting the rise of Richards to the chief seat (for, according to the usage, it was *his*), he took leave of the Bar with much grace and gratitude. In truth, his legal attainments were of a different character from those which led to the selection of Baron Richards to give the rule. He was wise as well as fortunate to retire from the tempests of forensic combat.

The Government had provided for their Attorney-General, and the Attorney-General was content.

Sir William's memory was marvellous. He could repeat a mass of evidence which he had entered upon his note-book without referring to it. As a Judge, he did not distinguish himself as a profound jurist, but, when his day was come, he left the Bench in calmness, and without censure.

Shepherd, of course, became Attorney-General, and conducted the business of the Government with the prudence and skill which they required. Lord Londonderry used to say of him in this office, that he believed he only shammed hardness of hearing, for nothing of importance to the question ever escaped him in the House.[1]

And now the prize of the Chief Justiceship of the King's Bench was in the wheel of preferment.

[1] "Law Magazine," vol. xxv. p. 293.

Sir Samuel, who sat for Dorchester,[1] had been the Attorney-General for little more than twelve months, when Lord Ellenborough resigned.[2] There was no candidate of equal pretension. His depth of knowledge, his leadership at the Bar, his high office, his conduct in Parliament, all combined to welcome the successor of Sir William Garrow to the highest honours. "Sed fata obstant." That fatal visitation, the want of hearing, had laid its clutch upon him.[3] He had retired from his long dominion in the Common Pleas, where Best now triumphed, and the question was no longer whether he should be Lord Chief Justice, but how he was to be honourably provided for?[4] Hence

[1] In the Parliament of August 4, 1818.

[2] He died immediately afterwards.

[3] Hansard's "New Series," vol. xiii. p. 819. Mr. Secretary Peel. The debate was upon the amounts of the Judges' salaries, especially their retiring allowance. Mr. Scarlett during the discussion remembered an instance of infirmity which was in direct contrast to Shepherd. "The late Baron Wood," he said, "who was an excellent Judge, a profound lawyer, and a person of great sagacity, at a very advanced age retired from the Northern Circuit, and, instead of quitting the profession altogether, was offered the seat in the Court of Exchequer (not the best grammar), which he could not, under the circumstances, well refuse. The consequence was, however, ultimately painful, for the Baron's infirmities grew upon him so fast as to render it most unpleasant to himself, to the Bar, and to the public, to have the civil ministration of justice conducted by him, he having at length lost one eye and the use of both ears."—Hansard's "New Series," vol. xiii. p. 802.

[4] It has been said, that he was desired by the minister to accept one of the chief places in Westminster Hall, but that he had decided not to involve himself with the trial of prisoners.—"Law Magazine," vol. xxv. p. 305. Indeed, according to this authority, a compliment without precedent was paid him. After his refusal of the King's Bench, Lord Liverpool suggested that the Common Pleas, as a Court, had no *criminal jurisdiction*, and that a Serjeant might always be appointed for the circuits, as upon the occasional absence of a Judge from sickness. But he declined, gave up all private practice, and continued Attorney-General for a few months longer.—*Id.* p. 306.

it happened, that Abbott, a Puisne Judge, was appointed. It was remarkable that two of the Judges were, at this time, selected for Chiefs in the room of Lord Ellenborough and Sir Vicary Gibbs. Abbott was one, Dallas the other. Gibbs, coarsely called Sir Vinegar Gibbs, from a sourness of temper, arising, not from ill will, but ill health, had been Attorney-General, and retained his private business. His professional income was, therefore, very uncommon; but the labour consequent upon such exertions crushed his strength. That man of splendid intellect, Sir William Follett, could not rally the physical force which he had expended in amassing fortune and commanding fame. Gibbs was worn out before he became a Judge. His seat in the Common Pleas was a repose of necessity from his official post and forensic travail. Accepting the rank of a Puisne Judge, a very rare occurrence for the principal lawyer of the Crown, he had, nevertheless, the promise of a superior dignity, which was known to be at hand. So he became Chief Baron and Chief Justice of the Common Pleas, almost immediately, in succession. He lingered on for four years, displaying considerable acuteness and acquaintance with his profession, confined by indisposition for a term, yet rallying with all the powers of a brilliant mind in an enfeebled body. He died at the large house at the corner of Guildford Street, Russell Square, where Heath had lived and died in harness, and where Talfourd afterwards held his convivialities.

On the 15th of July, 1819, the Right Honour

Robert Dundas, the Lord Chief Baron of the Exchequer in Scotland, (but not a member of the English Privy Council) died at the age of fifty-nine. He was much respected, and had previously resigned. Sir Samuel had been appointed to succeed him. The Lord Commissioner, Adam, was instrumental in the promotion. The jurisdiction of the Exchequer only extended to revenue cases, and these were always tried by the full Court.[1] The death of Chief Baron Dundas happened on the day when his successor, Sir Samuel Shepherd, was expected to take his seat.[2] In the same month Sir Samuel was sworn of the Privy Council in England.[3]

His society, however, in Scotland, was such as to leave the high places in London entirely in the shadow. "*Dulce mihi furere est amico*," says Horace.

He found his early and constant friend, the Lord Commissioner Adam. The Commissioner had instituted a club of intimate friends. They met once a year in the summer, and remained together about four days. Of these were Shepherd and Walter Scott. Scott had not then avowed himself as the author of "Waverley;" but during their trips through the country Scott could not refrain from his remarks upon

[1] "Law Magazine," vol. xxv. p. 306. "It was long reported at the Bar, and believed that Sir S. Shepherd was to be made Accountant-General at the death of Mr. Smith."—"Criticisms on the Bar," p. 68, n.

If any such idea ever existed, Mr. Smith's excellent health and appetite seem to have caused that event to be looked upon as remote.—*Ibid.*

[2] "Annual Biography," 1821, p. 365. Right Hon. Robert Dundas.

[3] "Annual Register," 1841, p. 174.

spots which he had celebrated in his stories. They were, on one day in particular, visiting a picturesque place within the grounds of the Commissioner's estate, "Blair Adam." "The spot is called 'the Kierry Craigs,' and is mentioned in the novel of the 'Abbot' as being near the *howf* of the Kinross carrier. This place and name could only have been known to some intimate friend of the family in the habit of visiting at Blair Adam. At the first meeting of the club, after the publication of the 'Abbot,' when the party was assembled on the top of the rock, Shepherd, looking Sir Walter in the face, and stamping his staff upon the ground, said: 'Now, Sir Walter, I think we are on the top of the "Kierry Craigs."' Scott preserved a profound silence, but there was a conscious look, and a change in the expression of his upper lip."[1]

In February, 1830, the Chief Baron, afflicted by ill health, resigned.[2] He passed his latter years in a house which had belonged to his family, and to which

[1] "Law Magazine," vol. xxv. p. 309. Walter Scott, however, in his General Preface, p. xxviii., says, "I have often been asked concerning supposed cases in which I was said to have been placed on the verge of discovery; but as I maintained my point with the composure of a lawyer of thirty years' standing, I never recollect being in pain or confusion on the subject." He then refers to Captain Medwyn's "Conversations of Lord Byron." Byron was speaking of "Waverley," and lamented that its author had not carried back the story nearer to the time of the Revolution. "Ay," Scott is reported to have said, "I might have done so, but—" there he stopped. It was in vain to attempt to correct himself; he looked confused, and relieved his embarrassment by a precipitate retreat.

"I have no recollection whatever," says Sir Walter, "of this scene taking place."—See pp. xxix. xxx.

[2] "Annual Register," 1841, p. 174; "Law Magazine," vol. xxv. p. 309.

he was much attached, in Berkshire; but, nearly three years before his death, he lost his sight, and was only consoled by the amusement of reading, for which he was dependant upon another.[1]

On the 3rd of November, 1840, Sir Samuel died,[2] at the age of eighty. He had lost his wife, with whom he had lived very long in uninterrupted affection.[3]

The Chief Baron was not the only person of intellect in his family. A writer in "Notes and Queries" desires to have some account of Susannah Shepherd, aunt to Sir Samuel. Report gave her the praise of being a highly talented scholar, and she was said to have property at Upminster, in Essex. She was living at the age of eighty about the year 1810.[4] A name of "S. Shepherd" was known in 1718.[5]

[1] "Law Magazine," vol. xxv. p. 310.
[2] "Annual Register," 1841, p. 174.
[3] "Law Magazine," 1825, p. 290.
[4] I. 12, p. 127.
[5] "Coll. Hist. et Geneal.," vol. iv. p. 48.

CHARLES WILKINS.

Serjeant-at-Law, 1847.—Patent of Precedence, 1851.

[For many particulars in this life of Wilkins, the Author is indebted to the kindness of Robert Scarr Sowler, one of Her Majesty's Counsel, and George Atkinson, Serjeant-at-Law, members of the Northern Circuit.]

One of our greatest orators before a jury must demand a place in this roll of Serjeants, although his beginning was not promising, and his end in a worldly sense, disastrous. When men, in ordinary speech without hope, yet ever hopeful, break through the shackles which enthral them, of poverty, it may be, humble birth, friendlessness, (close companion of the needy,) we cannot but hail "*la Divina Potestate*," which lifts them from obscurity. . . . . Genius is there. As our Sheridan said in like bondage: "*It will come out.*" It is the gift of the Lord of intellect, and cannot be held in. Let us hear a high authority upon the subject. "It is interesting to notice how some minds seem almost to create themselves, springing up under any disadvantage, and working their solitary but irresistible way through a thousand obstacles. . . Nature seems to delight in disappointing the assiduities

of art, with which it would rear legitimate dulness to maturity, and to glory in the vigour and luxuriance of her chance productions. She scatters the seeds of genius to the winds, and, though some may perish among the stony places of the world, and, though some be choked by the stones and brambles of early adversity, yet, others will now and then strike root, even in the clefts of the rock, struggle bravely into sunshine, and spread over their sterile birth-place all the beauties of vegetation."[1]

Wilkins was the son of an eminent surgeon at Shaftesbury.[2] He was born there in 1800; and the skill which helped to introduce several distinguished men to the world was, probably, the same which gave us Wilkins. His youth was pleasant and joyous, for mischief he was probably the top sawyer, and the future bold bearing of the man was but the ripening of dare-devilry in the boy. The father of the Serjeant in after life came to live at Islington, whence he shortly removed to Tottenham, where he died.[3] And the name of "Shaftesbury House," which Wilkins bestowed on his spacious dwelling at Kensington, shewed that he bore no ill-will to the scenes of his boyhood.

"His father sent him to the eminent school kept by Dr. Cromby, in London, who also educated, in his

[1] The "Sketch Book," ed. 1864, p. 15.

[2] "His father is represented as a fine old man, full of intelligence. In his latter days he became a worshipper of his son."—MS.

[3] MS.

early life, Dr. Molesworth, the present venerable Vicar of Rochdale. But Wilkins only remained a short time at this school, and got only a smattering of the Latin Classics, and nothing of the Greek."[1] "He never would admit it, but I never had any doubt that he ran away from school, and never went to any other."[2]

After this, his parent, naturally enough, put him as an apprentice to an apothecary, and as sure it is, that the apprentice, in common with others of that class, thought himself ill-used, and, perhaps, he might have been. But it must not be lost sight of that many companions of his boyhood were of superior understanding, that he could quite appreciate his father's position in life, that he felt confident of his power to win one for himself, and that he shrank from the drudgery of compounding pills and potions, and other sweets of pharmacy, "Puissanciam Medicandi, Purgandi, Seignandi, Perçandi, Taillandi, Coupandi, et Occidendi, impune per totam terram." "Apprentice to a fellow, a surgeon."[3] So he made a "start off," as he often related triumphantly to his Circuit friends. "I resolved to give him leg bail. And so I did with a few pence in my pocket. All the day I trudged along the dusty road under a scorching sun: at night hungry, thirsty, foot-sore, in despair. I lay me down to rest, not to sleep. On the morrow, I got up to seek employment amongst some haymakers. This

[1] MS. [2] MS. [3] "Apothecary."

I obtained at a shilling a day, I should rather say for one day, for my hands were so blistered with the rake that I could work no more."[1] Now there is nothing remarkable in this. Others walk through dusty roads under scorching suns, and blister their hands in their first hay harvest, but what we remark upon are the incidents of this escapade, the jauntiness of its not unfrequent disclosure amongst allies, and the felicitous fidelity of the narrative. However, the country would not answer, and, therefore, the youth betook himself to the town. To what town he at first resorted is not clearly known, nor by what means he supported himself, but, as he said, "in the course of time, he contrived to earn enough to keep body and soul together." Curiosity would gladly have rent the vail which the Serjeant carefully kept closed upon this subject, and dissatisfied inquisitiveness is a parent of invention. Thus, as he would tell nothing, others would endeavour to tell for him, and they said that he would sing and recite for halfpence in different ale-houses, which was to some extent true. For he "kept body and soul together," "by singing his songs and telling his stories at public houses in the evenings, and far on into the nights, and then, 'sent the hat round.'"[2]

Of all enchantments, probably, not one is so apt to captivate as the play-house. The scenery of human life is there pictured by vivid representation. The

[1] MS. [2] MS.

sons of the great and the opulent are often "Stage-struck;" no wonder then if a man like Wilkins, with his genius and penury, just fitted to the work, should have seized upon an occasion which would at once provide him with entertainment and food. So he joined a company of strolling players. In this employment he cultivated and became master of his extraordinary voice. If he chose the part of a tyrant, he could let forth his bursts of passion so as to stun the ears of the groundlings. But he could do the gentle Thisbe, he would "roar you as gentle as any sucking-dove, or an 'twere any nightingale."

Cyrus Jay,[1] in a book just published,[2] "The Law," vouches for the history of Wilkins being an usher in his own words. "I recollect," says Mr. Jay, "his relating with much humour the following story:—'I was,' said he, 'in early life an usher in a school, in Birmingham. Some strolling players, who arrived in a small town where I was located, had distributed in every direction handbills announcing their intention to give theatrical performances for a certain number of nights. Among their corps was a large-built Yorkshireman, who possessed an infinite fund of low humour. I wished much to become acquainted with this man, and the leading members of the strolling company; for, from my youth upwards, I had always

[1] Author of the "Recollections of William Jay, of Bath, and his contemporaries."

[2] March, 1868.

been very fond of theatricals. Though I could ill afford it, being much straitened in my circumstances, I thought that the best plan to introduce myself to the players would be to invite them to a dinner at the principal inn of the town. The invitation was most readily accepted. After dinner I ordered some excellent wine; and many were the jokes uttered and laughable stories narrated in succession. While we were sitting over our wine, one of the pupils from the school brought me a note, which occasioned me to leave the room to speak to him. Through the folding doors I could hear everything that was said. I heard the big Yorkshireman call out in a strong Yorkshire accent: 'Fill up your glasses, gentlemen; the time has arrived to drink the health of the *flat*.' On my return to the room, full of mortification at the toast, its proposer thus addressed me:—'Mr. Wilkins, during your temporary absence it has afforded us indescribable pleasure to drink your health, and to wish you happiness and long life.' I immediately seized the decanter, and pouring out the last glass of wine, I hastily swallowed it, preparatory to my returning thanks, which was in these few words:—'I am much obliged to you all for drinking my health, and wishing me happiness and a long life; but you have almost performed a miracle by changing my disposition in an instant from that of a flat to that of a sharp!' I then rang the bell, and told the master to turn the scoundrels out of the house, and make them pay for

their ordinary,—a result,' he added, 'not very likely to come to pass.'"[1]

"At Birmingham he set up a school for English literature, and prided himself on imparting the oratory of which the English language was capable."[2]

He was now married, but the union did not prove fortunate, and he abandoned his abode, "gave up the school and fled."[3]

Who his wife was he forebore to tell; he never spoke of the marriage, and as we are not writing the domestic histories of great lawyers, we will not trespass upon a privacy which the chief personage in this memoir thought fit to maintain. It is sufficient to say that he exchanged tuition for politics (to say nothing of the stage), and here the resistless power within him vindicated its native energies. He is soon engaged in all the turmoil of an electioneering contest. He delivers public lectures, pours forth what were no doubt addresses suited to his audience, and gains an important influence over the electors by his eloquence and talent. Such an ally, at once fearless and successful, could not but attract the notice of the candidate, and that candidate was Serjeant Wilde. And Serjeant Wilde was, through these stormy demonstrations, the architect of Wilkins's fame and

[1] The "Law," by Cyrus Jay, p. 18. We have referred in our preface to the caution necessary in receiving anecdotes as authentic. Where, however, the story comes full and clear from the subject of it, it is gratifying to be able to record it.

[2] MS. [3] MS.

fortune. It is natural to conclude that much conversation passed between the Serjeant and his supporter, and the issue was of the highest moment to Mr. Wilkins.

In November, 1831, he was admitted a student by the Bench of the Inner Temple. The old attorney had the shrewdness to perceive the spring of forensic merit and prosperity, and he paid the entrance fee. The official entry stands thus: "Wilkins, Charles, aged 29, only son of George Wilkins, of York Place, Islington, in the County of Middlesex, Surgeon." At this period of his introduction to legal ceremonies, he was not only no raw stripling, but his reputation, fanned into quick life, doubtless, by his friend Wilde, bore company with himself amongst his new associates. When he entered the dining hall of the Inn, he was acknowledged as a man of promise. There was a kind of struggle to get into the same mess with him. He kept the table in a roar of laughter. Whenever there was a call to the Bar he was invited. How consistent with the traditional accounts of his antecedents, obscure as was his real history, and chary as he was of letting out any part of it! He sang a good song, he made a good speech, and he told a good tale. But notwithstanding his merry humour, Wilkins was resolved to rise in the profession, and the customary way of furthering these views was to enter the Chambers of a Special Pleader. By what means he raised or obtained the money to pay the necessary

fee, or whether it was paid at all, it would be both difficult and invidious to enquire. Certain it is that he became a pupil of Mr. Warren, the author of "The Diary of a late Physician," and of "Ten Thousand a year," and now, after sitting for some time in the House of Commons, a Master in Lunacy. However, as Warren was a very competent person to direct the studies of a young lawyer, it is much to be regretted that he and his pupil did not agree. It is scarcely necessary at this distance of time to enter into the merits of the quarrel. Wilkins left his master in the art of pleading, and no reconciliation took place for many years. And more than this, there is no ground for supposing that he either sought or met with any other opportunity of legal instruction. Yet, although his education for the Bar was somewhat imperfect, and his mind undisciplined, his power of receiving aid ["cram"] from a competent junior was marvellous. He had, moreover, sound ideas of the principles of law, and could give most lucid expression to them.[1] An eminent member of one of our Circuits has related the following amusing and gratifying story:—

"In the course of a year or two after he was called to the Bar, a snuff box was presented to him at a dinner at Hayward's Hotel, Bridge Street, Manchester, (where he 'put up' whilst attending the Salford Sessions), by a number of his *convives*, who used to

[1] MS.

gather round him every night during the Sessions to hear him sing his songs, and, 'pour out,' from his fund of anecdote and inimitable powers of mimicry. On that occasion his father went down to Manchester, in order to be present at this ovation to his son. The father was introduced to me, and said, in the course of conversation: 'That lad was an immense trouble to me when he *was* a lad, and I certainly never imagined that he would make his mark in the world of men as he has; but I may tell *you*, who are his friend, that there was always a strong indication of genius, real genius, under this ne'er-do-well outside.'"[1]

No doubt, he mixed much with Society, he read newspapers, he gave occasional attendance in Court, he continued the star of the hall dinners; like the owl, he "whooped out his song, and laughed at his jest," but he was laying the final foundation of the levity of character which waited upon his infancy, and which, having no moral check, left him at last helpless upon the strand. He still floundered in politics, and still had some unseen hand to pull him through his need, but he had to stand a good share of the rough in his stump oratory, and he complained that upon these expeditions, he got, to use his vernacular, "more kicks than halfpence."

Nevertheless, it does not appear that he was at any time in Parliament, although he made efforts occasionally to attain that privilege. It is mentioned, that he

[1] MS.

went down to Manchester to oppose Cobbett, when, in spite of his vituperative oratory, he was obliged to retreat before the mob-friends of that able politician.[1] He was then in the early vigour of manhood, but of course, without political judgment, and Cobbett was a dangerous enemy to an inexperienced partisan.

In due time the pleasant messmate ceased to be a student. On the 12th of June, 1835, Charles Wilkins was called to the Bar by the Society of the Inner Temple. Upon this, he went to Manchester, with the view of practising at the New Bailey Sessions there, and likewise at the Kirkdale and West Riding Sessions.

Within three years he was *facillime princeps*, although there were some formidable rivals in the field.

His good fortune, however, did not bring prudence with it. No keen memory of the past prevented him from being careless and extravagant. And he again aspired to matrimony, and became attached to a lady, whom he married. It certainly was not her fault, but the alliance did not materially aid the future prospects of the husband and wife. Yet he maintained his standing in Court, and so little was he swayed or damaged by the bitter jealousies of those around him, some of whom were not in a condition to throw stones at him, that he found himself quite able to try his chance in London, having made his footing

[1] MS.

sure at Manchester. So he came up in 1840. He took a small villa, one of the Castelman Villas, near Barnes, and here he lived for three or four years in a quiet if not economical manner.

In a criminal case, he had no competitor who could approach him. Murphy had not yet come upon the stage. He was two years later. About this time the Prisoners' Counsel Act came into force. Before this statute it was competent to cross-question, as it was once called, or cross-examine, but not a speech could be heard for the accused upon matters of fact, except in high treason, and, in former days, even in treason, counsel were confined to points of law. Now there was "full defence by counsel," in all cases, and Wilkins's voice and frame were calculated to give great effect to his addresses. Indeed, one of his admirers has been heard to say, that when he was removed, by sickness, from the Northern Circuit, he left a gap in this respect which has never been filled up. Certain it was, that although by no means deficient in our civil courts, he was the master of the day at the criminal bar, and he never lost his power. This talent was never more severely nor more honourably taxed, than in the wide-world spread case of Barber the Attorney, whose imprudence, (if indeed he was imprudent) was visited with a punishment almost in excess of the deepest crimes; and whose honour has been redeemed by the pardon of the Sovereign, the House of Commons,

the public press, and finally the restoration of his certificate.

On Wednesday, April 10th, 1844, William Henry Barker, aged 36, solicitor, Joshua Fletcher, 50, surgeon, William Sanders, 47, fishmonger, Lydia Sanders,[1] 38, his wife, and Georgina Dorcy, 32,[2] were arraigned at the Central Criminal Court, upon several indictments, for forging, or being accessaries to the forgery of, transfers of stock. On Thursday, the case just mentioned was opened before Mr. Baron Gurney, Mr. Justice Williams, and Mr. Justice Maule. For the prosecution, were the Attorney-General, Sir F. Pollock, Mr. Clarkson, Mr. Bodkin, and Sir John Bayley. Mr. Wilkins and Mr. Parry,[3] for Barber. Mr. Greaves and Mr. Ballantine, for Fletcher. Mr. E. James, for Dorey. The facts are too well known to need repetition here. Indeed, the circumstances are almost out of date.

On Monday, Mr. Wilkins addressed the jury for Mr. Barber. The energy and power of the advocate was in this, the first case, successful. The conclusion of his address is worth recording. He had but a few observations to offer before he proceeded to call his witnesses. The deficiencies existing on his part, must be apparent to the eyes of all, more particularly in a case of this description, but those deficiencies would no

[1] Daughter of Mrs. Richards. [2] Another daughter of Mrs. Richards.

[3] Now Serjeant-at-Law with a Patent of Precedence. One of his earliest briefs.

doubt be amply made up for by the clear summing up of his Lordship, who, he was sure, would be kind enough to do so, the more so considering the immense disadvantages which he laboured under, by being followed by such a powerful and gifted man as his learned friend the Attorney-General. The embarassment of a counsel was great enough in cases which frequently occurred where they had a strong impression of the guilt of parties they were called upon to defend, but when, as in this case, he had every reason to believe in the innocence of his client, how much was that embarrassment increased? His whole energies seemed benumbed and his faculties paralyzed. That very belief rendered him nervous, and deprived him of the power of satisfactorily discharging his duty. The papers of his client had been seized; without money and without friends, he had been called upon to await a Government prosecution; he had been subjected to the most searching inquiry, conducted by the most able men of the day, and therefore he stood with no other hope than that of appealing to the integrity of the tribunal before which he was arraigned. He asked not for their pity, he wished not for their sympathy, but he did most solemnly appeal to them to deal out justice to him. He required no favour at their hands, he prayed to be judged by the facts of his case, and he prayed that no light might be admitted into the chambers of their minds, but the quiet, steady light of reason. There have been (continued the learned

gentleman) men who would sacrifice a thousandfold to carry out the prejudices they have imbibed; but I will tell you a far nobler sacrifice—a sacrifice more beneficial to yourselves, and far more acceptable to heaven—I mean the sacrifice of prejudice to truth. I call upon you, therefore, to return a verdict which hereafter you can look back upon with pleasure, and to which, to the latest day of your existence, you will have no cause to be ashamed of. I ask you to acquit this man, who now stands denuded before you, who is now in the prime of life, whose spring-tide was as flourishing as the most ardent mind could wish for, and whose character has hitherto been unimpeached and unimpeachable."

After a grand display of oratory, intoned by Wilkins's sonorous voice, rising, as it were, "*de profundis*," and the addresses of the other counsel on the behalf of their respective clients, and, lastly, the reply of the Attorney-General: Mr. Baron Gurney, summed up the evidence with great fairness, and favourably for Mr. Barber. The Judge's address lasted for three hours. The deliberations of the jury were, however, very short. In little more than a quarter of an hour, they returned into Court with their verdict:—William Henry Barber, not guilty; the rest, guilty.[1]

It might have been imagined that a victory such as this, gained by one of the ablest addresses ever made in a Criminal Court, would have disarmed the Crown

[1] "Times," April 12, 13, 15, 16, 1844.

officers as to Barber. But a darker time was coming. This was

> "The uncertain glory of an April day;
> Which now shows all the beauty of the sun,
> And by-and-by a cloud takes all away."

It was determined to proceed with another case on the next day. Accordingly, on Wednesday, April 17, a fresh jury was impanelled, and in the room of Sir Frederick Pollock (who had been appointed Lord Chief Baron) the next prosecution was entrusted to Mr. Erle. Mr. Justice Williams and Mr. Justice Maule were the Judges. Barber, Fletcher, Georgina Dorey and William and Lydia Sanders were arraigned. The charge was for forging the Will of Anne Slack, with intent to defraud her. With the circumstances of the case we have no concern.

Mr. Wilkins spoke for upwards of four hours for Barber; other speeches were made; and Mr. Erle concluded with a very calm, temperate, but damaging reply.

The case was summed up by Mr. Justice Williams, but *not favourably for Barber*. The jury retired upon this occasion for more than an hour and a quarter, and then pronounced a general verdict of "guilty." Mr. Barber, in a firm, but subdued tone: "Gentlemen, I am not guilty." And again: "My Lord, Fletcher knows I am not guilty;" but Fletcher did not answer this appeal. On Tuesday, April 23, after an address of upwards of an hour from Mr. Barber, he was

sentenced with Fletcher each to transportation for life.

Having mentioned Mr. Barber in this narrative, we must be pardoned for adding some few words respecting him. It is difficult to say, so great was the prejudice, whether any advocate could have prevailed. One of the most shrewd and clear-headed lawyers in the profession conducted the case for the Crown. An orator at once vigorous and able was Wilkins; but this was a trial where it became imperative to deal with the chief points with a calm and dispassionate scrutiny, in order to put in for success. One of the few men who might have combated the talents of the late Chief Justice of the Common Pleas,[1] with hope of success, was Sir William Follett.[2] Had that considerable person been the counsel for Barber, his matchless tact would have staggered, and not improbably might have *convinced* the jury. Indeed eight of them,[3] in February, 1850, having heard that Mr. Barber had met with some opposition to the grant of his certificate, signed a paper, in which they declared, that had they

[1] Erle.

[2] Sir William was once engaged in a cause of the highest importance to the plaintiff. He had to state some very difficult scientific propositions to the jury, requiring much skill, knowledge, and industry. When he had concluded his address, the plaintiff, who was present, turned to the attorney and said: "Whether I win or lose this cause, I shall ever remain satisfied that Sir William Follett has stated my case with the same exactitude as I should myself have represented it."

[3] One was deceased; one assented, but declined to sign a document; one refused to re-enter upon the inquiry; one had been long absent from London. Total 12.—"Case of Mr. Barber," p. 130.

been acquainted with the facts which transpired since the conviction, they would have given a verdict of acquittal. They added, that they considered the failure of justice to have arisen from the want of a *separate trial.*"[1] The complete exculpation of Mr. Barber by Fletcher and the rest, is well known.

It would be out of place to weary the reader with the speeches of any advocate, however splendid his diction, and fortunate the issues of it. To use the words of one that knew him well, "he was so uniformly powerful, that it is rather hard to make a choice and a distinction between his addresses."[2] But, just returning to Barber for an instant only, when Palmer, the poisoner, was arrested, Barber was his attorney; Barber retained Wilkins, and but for that Judge, dangerous to the guilty (Lord Campbell,) who can say but that Wilkins, had he been in health, might have saved his client? He had then a Patent of Precedence, and he did move the Court with success to change the place of trial from Stafford to London. But the dread of his creditors, and his last illness, drove him from London,[3] and the defence passed into other hands.[4] This union of Barber, the hapless client, with Barber the restored lawyer, with Wilkins, the advocate, is a fact worthy of record in legal history.

Probably one of the Serjeant's most searching cross-examinations, and one, possibly, of the most able ever

[1] "Case of Mr. Barber," p. 129. [2] MS. [3] MS.

[4] Mr. Sowler, of the Northern Circuit, now one of Her Majesty's Counsel, was to have been Serjeant Wilkins's junior.

exhibited in a Court of Justice, was upon a trial in which he had to defend the proprietors of the "Yorkshireman," for a libel. The well-known George Hudson, then M.P. for Sunderland, had been connected with the plaintiff, Mr. Richardson, as a co-director of several of the northern railways. So Mr. Hudson was called as a witness for the journalist. It was not very likely that the director would tell more than he could well avoid when the interests of a brother director were concerned, so that Serjeant Wilkins had to struggle up hill to gain the testimony he desired. The examination, consequently, assumed the form of cross-examination. It was assumed that Wilkins had to deal with a reluctant witness. The conflict was of considerable duration, and it must be confessed, that the clever and wary witness in the end, baffled the acute advocate.

The charge of libel was, that the plaintiff (Richardson) had been corrupted by Mr. Hudson, in receiving certain shares given to him, as it was said, for his services and activity with regard to railways generally. There was another charge; of mismanagement, artifice, and defalcation. It was alleged, that *these* shares were given to the plaintiff for a corrupt purpose. These questions were left to the jury, and a third, namely, whether the article complained of was a libel. The jury found that the article was not libellous, so that plea was for the defendant. But they also found, that there was no evidence to shew that corruption had been used, only plenty of suspicion. That finding,

said Mr. Justice Wightman, entitles the plaintiff to a verdict on the plea of justification. But no damages were asked for.[1]

We now come to the cross-questioning, for we will not insert Mr. Serjeant Wilkins's eloquent address. One specimen of his humour will suffice. The plaintiff's counsel was endeavouring to shew the animus of the defendant, by quoting a placard circulated by the editor in these words:—

"The 'Yorkshireman' of Saturday next, July 20, will contain a verbatim report of the action for libel, Richardson *v.* The 'Yorkshireman.'—The railway frauds exposed in defence."

The SERJEANT: "We have nothing to do with that, unless you can prove we put it out."

Mr. MARTIN: "And may be had at the office of the 'Yorkshireman,' 39, Parliament Street."

The SERJEANT: "I am very much obliged to you for being our *running newsman*."[2]

Wilkins could not restrain his dramatic pleasantry. He likened the plaintiff and Mr. Hudson, alternately, to "Peachum and Lockit."[3]

Having given the merest epitome of the case, Wilkins's examination and style of it will be better understood. The object was to extract from Mr. Hudson, as we have said, admissions, so as to justify the defendant's statement in his journal.

[1] Supplement to the "Yorkshire Gazette," of July 20, 1850.
[2] *Ibid.* [3] *Ibid.*

The appeal to the memory of the witness was most searching. There was a Mr. Wilkinson, a cashier at the City and County Bank. The question was whether he was a debtor to or creditor of the Bank, when a certain new bond with the usual sureties was executed. It is difficult to say, whether the Serjeant's pressure or Mr. Hudson's self-possession and precision was most to be admired.

WILKINS: "Did he not then owe [*i. e.* when the bond was entered into] three or four thousand pounds."

WITNESS: "I am not quite sure—but I think he was a creditor of the Bank at that time. *The books of the Bank would shew it.*"

WILKINS: "I ask you now, sir, do you not believe that when that second bond was executed, Mr. Wilkinson owed the Bank three or four thousand pounds?"

"I am not able to say, but my belief and impression is, that he was then a *creditor* of the Bank."

"I ask you now, did you take any steps to ascertain the fact?"

"I have no doubt I did."

"You will very much oblige me by answering, yes or no."

"To the best of my recollection I did."

"Did you."

"I have no doubt I did. *I cannot undertake to swear to what I do not distinctly recollect. I have not the least doubt I did. In the multiplicity of business in which I was then engaged, I cannot bring any circum-*

stance to my recollection. I have no doubt every thing was done regularly."

It then turned out that Mr. Wilkinson was indebted to the Bank, to the amount of £3,000 or £4,000.

WILKINS: "Were you then Chairman of the Bank?"

"Certainly."

The severe examination sought to elicit from Mr. Hudson his knowledge that Wilkinson was a debtor. But it did not succeed. The account of Mr. Wilkinson had been overdrawn for about six months.

WILKINS: "You as Chairman did not know until October, that his account had been overdrawn from July?"

But Mr. Hudson quietly accounted for his ignorance of this fact, from his attendance in Parliament. He had no opportunity of inspecting the books.

Wilkins was very peremptory, but Mr. Hudson was too much for him. There was a question about a cheque for the Duke of Northumberland.

WITNESS: "I think I told the Duke of Northumberland, that I had the money ready for him at any moment he called for it."

"Did you tell him you had got the cheque?"

"It was not necessary to tell him that."

"I am not asking you what was necessary. Sir, did you, or did you not tell him that you had a cheque?"

Being further pressed: "I have no recollection of saying any thing about a cheque."

"I must have answers to my questions—yes or no, did you say to any parties except Lord Grey, that you had a cheque?"

Mr. MARTIN: "Surely Mr. Hudson has answered every question fairly."

Mr. JUSTICE WIGHTMAN: "After all, brother Wilkins, the question whether he said any thing about a cheque is immaterial."

This is an example of the Serjeant's unflinching resolution. He had, however, to deal with a man of considerable experience, whose testimony, according to a verbatim copy of it, edited by a barrister,[1] "produced a marked and most favourable impression in his favour, even upon those who had entered the Court with the strongest prejudices against him."[2]

Wilkins's powers are fully celebrated.

"All that the consummate skill and practised ingenuity of the learned Serjeant could suggest, was with masterly dexterity exerted to elicit every point which could appear to make his conduct censurable, or throw suspicion on the purity of his motives."[3]

Yet, although only partially successful upon this occasion, he was a most dangerous foe, and reminded

[1] Mr. Hudson's evidence in the case of Richardson v. Wodson. John Hearne, 81, Strand.

[2] P. 6.

[3] The evidence is worth reading. It consists in this pamph'et merely of Mr. Hudson's examination, but the Yorkshire Newspapers of 1850, contain the trial at length. And there the able speech of Serjeant Wilkins will be found.

the lawyers of Garrow, whose fearful attacks upon a witness, were such as to rend asunder his spirit, and disclose his inmost thoughts to the world.

In 1847, Charles Wilkins was created a Serjeant-at-Law. His business had wonderfully increased, and he removed to a very large house at Kensington, in which David Wilkie had lived. Shaftesbury House was the name of his new abode, a compliment to his native soil, which, as we have said, he would hardly have paid, had he felt any resentment against the place of his youth.

And now, lavish as he ever was, his want of prudence grew with the exuberance of his prosperity. According to his books, he was making in his best days nearly £6,000 a year. He naturally furnished his mansion in the most expensive style, and his manner of living corresponded.

The history of all spendthrifts is very similar. There is a class of men who cannot be made to comprehend the value of money. These are, for the most part, lovers of pleasure, and, to gratify this passion, they are blind to the embarassments of the present, and quite dark as to the terrors of the future. Rarely, indeed, is a prodigal, when enthralled in the meshes of extravagance and debt, enabled to burst through.

"Semper anteit sæva necessitas,
Clavos trabales et cuneos manû
Gestans ahenâ."

The insanity of a true miser consists in his denying to himself the ordinary comforts of existence, in the

midst of plenty. "*Magnas inter opes inops.*" The madness of the profligate is quite of a different character. He is on the road to ruin, but he is enjoying life to the full, and his lavish hand gives food to others. Sometimes a friendly hand arrests the progress of overthrow, by interposing medical certificates, which are, in reality, founded upon the theory that a person who is squandering his extensive means is in a state of lunacy. This process, if successful, secures a provision for the fool, and the reversion to his relatives. But this is a very exceptional case, and one not to be commended, for it would be an arduous labour to detect the germ of insanity amidst the meridian of folly.

If this little episode should, for the moment have diverted the reader from the forethought of Wilkins's misfortunes, it may not have been without its use. He was now, however, in the height of his success. At home and abroad, in Court and in vacation, he was the man of his day. The special juries awaited him when his holiday was over, and his splendid parties were the relaxations of his leisure. He was the Timon of his Kensington: "*L'Amphitryon ou l'on dine.*" His grounds were kept up at, of course, the usual expense, and both young and old flocked to a suburban villa, where "all went merry as a marriage bell."

But Charles Kemble well prophesied the fate of such as he and Edwin James. Mr. Cyrus Jay has the following anecdote:[1]

[1] "The Law," 1868, p. 298.

"I was on one occasion dining with Charles Kemble, the actor, who was very deaf. He inquired of me how Wilkins and James were getting on at the Bar; (Serjeant Wilkins had also been an actor,) and he threw a long speaking trumpet across the dinner table. I told him they were both in the hands of Jews and attorneys. He replied in a loud voice, before all the company: 'Then it is all up with both of them.' A gentleman who was sitting near me, took up the trumpet, and said both their figures were against them, and they never could have succeeded on the stage. Charles Kemble replied instantly in a theatrical manner: 'Figure has very little to do with it, so that there is the talent which they both had.' This was a very liberal expression on the part of Charles Kemble, because all the Kemble family were finely formed, and presented handsome figures on the stage."

On one of his Circuits, a memorable repartee of the Serjeant is recorded. Not long before this event, a very destructive fire originated in the Temple. Wilkins was defending a prisoner. "Drink," said he, "has upon some persons an elevating, upon others a depressing, effect. Indeed, there is a report, as we all know, that an eminent Judge, when at the Bar, was obliged to resort to heavy wet in a morning to reduce himself to the level of the Judges." Lord Denman, who had no love to Wilkins, crested up instantly. His voice trembled with indignation as he uttered the words: "Where is the report, Sir? where is it?"

There was a death-like silence. Wilkins calmly turned round to the Judge and said: "It was burnt, my Lord, in the Temple fire." The effect may be better understood than described, and it was a long time before order could be restored, but Lord Denman was one of the first to acknowledge the wit of the answer.

Smith, a name derived from the Hebrew, notwithstanding its endless and varied repetitions, afforded the Serjeant an opportunity of making a good-humoured jest at the expense of one who bore that name. It is customary to propose a new comer for the mess of the Circuit, and the candidate was a Smith. If we could tack on the leader's jovial countenance to the *mot* which he uttered upon the occasion, we might do some small amount of justice to it. Slowly he reared his portly frame. "Smith, Smith, Mr. Smith!" . . . . He then looked round complacently upon all. "I *think I have heard that name before.*" However, although Wilkins well loved a jest at the expense of others, he could not so easily endure the touch of any attempt at wit towards himself. He was in a case at the Sheriff's Court, as Mr. Jay relates, when he became disgusted with the tediousness and trumpery nature of the cause. So he looked up to the clock, and handed his brief to a junior counsel. He then thus addressed the Under Sheriff: "Sir, I must go to the House of Lords." The plaintiff was a Jew, and his attorney immediately said: "I wish there was a house of ladies." This tickled the jury, but Wilkins by no means liked it. . . . . .

Whether nettled at the miserable joke, or jealous of some attack upon his supremacy, he came back to his seat and made a most bitter address against the plaintiff in his best style, and gained his verdict, which discomfited the Jew, who looked for triumph.[1]

In 1851 he received a Patent of Precedence.

We must here relate a passage of arms between Wilkins and Baron Platt, at Liverpool. On Saturday, April 7th, 1851, the monotony of the Nisi Prius Court at the Assizes, was enlivened by a little legal fencing, between the learned Judge and the leading barrister. During the trial of the cause "Armistead *v.* Wilde," Mr. Serjeant Wilkins put a question rather sharply to a witness, called by him on behalf of the plaintiff, when Mr. Baron Platt reminded the learned Serjeant, that he was examining his own witness. Mr. SERJEANT WILKINS: "I admit, my Lord, that it is my own witness, but we all well know that very frequently our own witnesses are not favourable witnesses." Mr. BARON PLATT: "That is not the mode in which witnesses ought to be treated, because they are to be protected as well as yourselves." Mr. SERJEANT WILKINS: "Good God, what have I done to call for protection?" Mr. BARON PLATT: "The manner of addressing the witness is not such a

[1] "The Law," 1868, pp. 30, 31. "I should not omit to state," adds Mr. Jay: "That whilst Wilkins was cross-examining one of the plaintiff's witnesses, a stranger tapped him on the shoulder, and, whispering in his ear, said: 'Ask the witness whether he is not a Jew?' 'Why, you scoundrel,' said Wilkins: 'You are one!' '*But it will prejudice the jury, Sir.*'"

manner as the witness ought to be addressed in." Mr. SERJEANT WILKINS: "I am sure the witness himself did not so feel it. I have been spoken to by others above me with ten times more courtesy." Mr. BARON PLATT: "I hope you will have no more." Mr. SERJEANT WILKINS: "Eight or ten times at these Assizes, I have been spoken to in this way; I am not to be schooled and rated." Mr. BARON PLATT: "You are not to be schooled or rated; but when you are irregular in your manner or conduct, I shall interfere." Mr. SERJEANT WILKINS: "I submit to your Lordship that I have not been irregular, either in manner or conduct." Mr. BARON PLATT: "Of that I am the best judge." Mr. SERJEANT WILKINS: "You are a Judge." Mr. BARON PLATT: "And I shall not forget to act as a Judge." Mr. SERJEANT WILKINS: "And I shall not forget that I am a barrister and a man." Subsequently on the re-examination, Mr. Serjeant Wilkins enquired of the witness, whether he thought he (Mr. Wilkins) had not treated him with proper courtesy, to which he replied he did not.[1]

We have, at some length, displayed the energies of this great advocate in a criminal case of a character almost without precedent. We must also do him justice in the Civil Court, at Nisi Prius, as it is called. An action, one of the last, for criminal conversation, before the introduction of the tribunal of Probate and

[1] "Anecdotes of the Bench and Bar," p. 96.

Divorce, was tried at Liverpool, at the March Assizes for 1852. The defendant was a clergyman, and Serjeant Wilkins was his counsel. The case was of the highest possible interest, and the sensation in Liverpool extreme. The damages were laid at £10,000, and Sir Frederick Thesiger came down specially to conduct the plaintiff's cause. Mr. Atherton (afterwards Attorney-General) and Mr. Cowling were his juniors; and for the defendant there appeared Wilkins, Hugh Hill (afterwards a Judge of the Queen's Bench) and Mr. Monk.

On Tuesday, March 30, Mr. Serjeant Wilkins addressed the jury for Mr. Middleton, the usual evidence having been given to prove the plaintiff's case.[1]

"GENTLEMEN:—

"I marked yesterday the breathless attention with which all of you followed the observations of my learned friend the Attorney-General, and I cannot help thinking that you must have been disappointed indeed, at the close of this case, when you discovered how very disproportionate the evidence was to the statement of the Counsel. As a specimen of rhetoric he might have invited criticism. The composition was faultless. The selection of his epithets, the rounding of his periods, the elegance of his diction, all attracted and received admiration: but as applied to this case it seemed to me utterly inapplicable, and

[1] It will be found in the "Liverpool Mercury," April, 1852.

many of the beautiful sentiments which he uttered seemed to me to bring out in bolder relief the deformity and nothingness of his case. He began, Gentlemen, by stating to you the irksomeness of his duty. If his duty were irksome in merely stating the case of his client, what must mine be, knowing how much easier it is to accuse than to meet the accusation; looking at the disproportion also in point of interests confided to his care as compared with those that are now in mine, whose duty is the more difficult, the more irksome, the more painful. Just see what it is, Gentlemen, that you are called upon to do by the plaintiff in this case. You are asked by him to pronounce a verdict far more destructive and far more dreadful in its consequence than death. You are asked by the plaintiff to hurl into everlasting shame the woman whom my learned friend designated as the wife of the man's bosom, and at the same time to bring shame, derision, and scorn upon a Clergyman of the Established Church of this land, who up to this time has borne a character altogether unreproached."

The learned Serjeant then made some strong remarks, as to the compulsion upon the plaintiff to bring the action. And he then insisted strongly that there had been no diminution of affection. He then went on to describe what he considered to be some insult inflicted upon the lady.

"Gentlemen," continued the Serjeant: "before you

pronounce a verdict for the plaintiff, the law demands from that plaintiff that he shall make out, to your entire satisfaction, his case. That case is not to be built up by suspicion and conjecture, that case is not to rest upon inference which the facts will not justify, but he must leave no reasonable doubt upon your minds that his history is a true one, that his suspicions are well founded, that in point of fact, the parties whom he accuses are guilty. Bearing that in mind, Gentlemen, I think you will pause long before you come to that conclusion."

He thus spoke of the testimony of the servants:—

"Oh! I confess that in this case, as I have in others, I tremble when the happiness of ladies is placed in the hands of female servants. I do not know a class of people, from my own experience, in whom so little confidence can be reposed, when they come to speak of facts reflecting on their mistress. There is no class of people so little fitted by education for such purposes—for, generally speaking, they have had no education at all; sprung from the meanest orders, they bring their suspicions into a family, and justify the description of a popular author, who designates them as "the nuisance of genteel life." Your happiness, and my happiness, and the happiness of all of us, may be marred by the plotting of such beings as these. Offend them, you provoke their revenge, and they will seize every opportunity with avidity to gratify that revenge; discharge them, and they regard

it as an insult, and no dependence can be placed in what they will hereafter say respecting you.

"And now, Gentlemen," continued Mr. Serjeant Wilkins: "I believe I have gone through the whole facts and circumstances of the case. I have occupied a considerable portion of your time, but I hope you don't think I have occupied you a minute more than I ought to have done. I have a solemn duty to perform. I do not talk about damages; because, if you should give a verdict to the plaintiff, you will cause a calamity worse than death to fall upon these two parties. Give this man a verdict! What becomes of his wife? Although I am here to day as counsel for the defendant, I declare to you solemnly that I feel more for her than I do for him. What is to become of the plaintiff's wife? Give him a verdict! Where will she look for sympathy? Give him a verdict! Where will she look for protection and countenance? Go where she will, the withering finger of scorn will be pointed at her; and even her own sex will deny giving her sympathy. My friend says, each circumstance is not to be taken in its isolated form, but that they must be taken as a whole. I do so: and taking them altogether, I say they do not amount to anything to justify Christian and cautious men in coming to a conclusion that the charges are true. And again, who is this man that is charged? He has been set apart for the holy calling of the church; long has he maintained a

character of sanctity and propriety, and he has been placed above the common order of men. By a verdict against him you would at once pull him down, and declare him guilty of a foul offence before the world; you would say that his garb of sanctity has been the garb of a hypocrite; that his preaching was but a vain mockery; that while with his lips he was pronouncing a prayer, his heart was filled with lust and wickedness. Before you come to such a conclusion, I entreat you to weigh every fact. It seems to me that already you are privileged to convince the plaintiff that he may with safety restore his confidence to his wife, and to show my client that, although he may be under a heavy infliction, this has only been an instrument for chastening his heart and purifying his affections."

This was one of the most eloquent and, as it turned out, persuasive speeches delivered by the able Serjeant on the Northern Circuit.

Mr. JUSTICE CRESSWELL, then proceeded to sum up the case; and his observations were very strong in the defendant's favour.

The jury retired for about an hour, when the following curious dialogue occurred:—

The FOREMAN: "My Lord, I have to state that we do not agree upon any verdict, and I have also to state to your Lordship my conviction."

The JUDGE: "I cannot hear any thing about your conviction."

FOREMAN: "I was not going to state it, my Lord, but——"

The JUDGE: "Nor can I hear any opinion you have upon the case."

FOREMAN: "I am not going to state anything, my Lord, beyond this,—that I do not believe we can come to any determination whatever."

The JUDGE: "You must try."

FOREMAN: "Allow me, my Lord, with all deference, to state that my conviction is now as deep as it is possible to conceive, that a verdict will not be found in this case."

The JUDGE: "I am very sorry I cannot act upon it. You have a very disagreeable duty to perform, and that you must determine to do. You must, therefore, retire to your room again."

A JUROR to the Foreman: "Perhaps you had better state how many are on each side."

The JUDGE: "No, gentlemen, I can hear nothing of that sort."

The jury then retired, and did not re-appear till twenty-five minutes to six, when, their names having been called again, the foreman said: "Our verdict is for the defendant."

The JUDGE: "I am a good deal surprised you have had so much difficulty in arriving at that conclusion."

A JUROR: "We have had none, my Lord, except one party."

His Lordship then certified for a special jury, upon the application of the Serjeant.[1]

[1] "Liverpool Mercury," Friday, April 2, 1852. The trial commenced on March 29, and concluded on March 30.

Wilkins was now retained by Mr. Barber to defend Palmer, the poisoner. But, on the eve of the trial, he was at Boulogne, which he dared not quit at the moment, through fear of arrest. The defence fell into the hands of the well-known leader of the Home Circuit, Serjeant Shee, afterwards the first Roman Catholic Judge of modern times. And disease, the fell destroyer of life, whether prosperous or miserable, had at length broken in upon Wilkins's misfortunes, It was dropsy. His case was beyond hope. He was ruined, and he was sinking. So, he retired to his chambers to die. . . . . But he was not forgotten in his trouble. With that grand nobility of spirit which belongs to the English Bar, a subscription was at once proposed, and amply responded to. The Judges who were wont to go the Northern Circuit, the Serjeants, the Queen's Counsel, were profuse in their offerings. And the fund seems to have been wisely administered, for, when all was over, there was a residue. And this surplus was, by an unanimous resolution, decreed to the widow.

Thus we have brought the splendid advocate of the first Circuit in England, not exactly to "the worst Inn's worst room," but to an unpretending chamber in Queen's Bench Walk, in the Temple, whither he had come from Hampton after quitting Shaftesbury House; worn by disease, and never again to rise.

"Anima, vagula, blandula,
Quæ nunc abibis in loca?
Nec, ut soles, dabis jocos."

Yet all was not darkness. He had a faithful wife to attend him. To praise her would be almost to dispraise affection. Words may not express her attachment. It was beautiful to see her, fallen from high prosperity to the bad day, yet ever loving, ever watchful; for him, an angel, though in sorrow. He had been honest towards her; she repaid him by fidelity unto death. And the last days, the last hours are not necessarily embittered by the recollections of the past. Whatever might have been the negligence of Wilkins in religious duties, it is believed that his end was pious. He went to a place where, beyond question, there is neither rise nor fall, neither defeat nor triumph, jealousy nor adulation.

The following notice appears in the "Gentleman's Magazine," of March 4, 1857:—"At his chambers, Queen's Bench Walk, Temple, Mr. Serjeant Wilkins; he having been, for some weeks past, in a state of health which almost deprived his friends of any hopes of his recovery. The Temple Church bell, shortly after his demise, tolled the event, which, after being known, was received with deep melancholy."

Charles Wilkins was of the middle size, thick-set and burly, and of a pale or fair countenance. His voice was a deep barytone, which he had carefully cultivated, and which became a powerful auxiliary in a profession which earns the greater success if every word of the advocate can be distinctly heard. His loud speech had great sway with juries, particularly

in the ordinary conflicts between contending parties. The late Serjeant Thomas was wont to amuse by a story about Wilkins in the Under Sheriff's Court. Wilkins had come special, and was the grandee. Thomas was on the other side, and when Wilkins had ended his address, he walked away, of course, to another Court. Thomas would not lose his opportunity, for he was himself not a bad hand with Sheriffs' and Palace Court Juries. So he got up, and looking towards the jury, exclaimed: "Now the hurly burly's done." "There he goes, gentlemen, with his tail behind him." This was nothing but the gathering up the gown common to barristers when they rise to go. Very possibly Wilkins was in frolic, and Thomas, (who was a humourist,) made the most of it. But Wilkins's "life was gentle." He had a warm heart, and his acts of kindness to persons in distress, are without number. He was, however, quite capable of showing resentment, and he was then dangerous. The least reflection upon his wife's origin (she was an actress,) would convert a sincere friend into a bitter enemy. He loved her to distraction, and we have just related how deeply and constantly she repaid his affection. His features were regular, and his face, either in repose or in play, was eminently pleasing. But, like his delineation of character on the boards, he could exchange the bland countenance when incensed for another visage, in which the images of passion and scorn were faithfully depictured. Be-

yond doubt, his manners were coarse, in the ordinary sense of that word. He would, naturally, have acquired an unpolished address, softened indeed by kindlier feelings, but by no means improved in the stormy passages of his struggling life. . . . . .

"Yet," says a contemporary: "He was the most fascinating man I ever met with—warm hearted and generous to the last degree upon *impulse*—but very jealous, and sometimes very vindictive, that is to say, as long as any passion could exist in such a man—very wayward, very capricious, but always worth listening to as a splendid lesson to be studied, and, in a measure to be guided by, in the 'ways of the world.'"[1]

Of Wilkins it might be said :—

"I feign not love where most I hate,
I wait not at the mighty's gate;
I fear no foe, nor fawn on friend,
I loathe not life, nor fear mine end."

[1] MS.

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ERRATA.

Pp. 192, 193, 194, 196, 197, 199, 202, 203, in the notes; after "Life," for "Vol." read "p."

P. 335 last line but one, for *continued* read *contrived*.

P. 439 note (2) for "Marg." read "Marq."

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