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OR

FORTY YEARS FULL PRACTICE

AT THE

Philadelphia Bar.

BY

DAVID PAUL BROWN.

"MAGNUS DICENDI LABOR—MAGNA RES, MAGNA DIGNITAS, SUMMA AUTEM GRATIA."—CICERO

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THE FORUM.

CHAPTER I.

FORENSIC ETHICS AND ETIQUETTE.

We opened our *first* volume with an Essay upon Forensic Eloquence. We now introduce the *second*, with what are quite as essential to honorable elevation at the Bar—Ethics and Etiquette. Eloquence may enable us to obtain practice, but Ethics and Etiquette can alone render it secure and permanent. Good morals and good manners would seem to belong to each other, and we therefore take leave to unite them. Without these, the golden round of professional fame can never be attained—indeed, nothing can be accomplished:—

"Every grace that marks the orator,
The force of rhetoric and flowers of speech

> That Athens practised, or Minerva taught,
> Though all were summoned to perform the task,
> Would all be baffled in the weak attempt."

In entering upon the practice of the law, the candidate, while assuming what the Romans called the *toga virilis*, takes an oath, "To support the Constitution of the United States and of the State, wherein he is admitted —to behave himself in the office of an attorney, according to the best of his knowledge and ability, and with all good fidelity, as well to the Court as to the client— to use no falsehood, nor delay any person's cause for lucre or malice."

Properly understood, he is not only bound not to delay his *client's* cause for lucre or malice, but not to delay *for* his client, the cause of his adversary, unless where it is believed to be necessary, for the purpose of doing justice to the case he supports. He must not knowingly do wrong to any one, but always remember that he is a minister of justice.

Such, then, is the oath taken by every member of the bar, upon his admission. That part of it which relates to supporting the Constitution of the United States and of the State, resulted from comparatively recent enactment, but the other portion was the form of qualification prescribed by the Act of Assembly of Pennsylvania, of 1752. The force and effect, however, of this obligation, depends, at last, upon its con-

scientious interpretation. It may be so restricted as to render it almost ineffective—like all human provisions, safeguards, or inventions, it may be invaded or avoided by the craft or cunning of bad men.

The phrase, "All good fidelity to the Court and the client," might be construed to mean more devotion or obsequiousness than sound morality would require or allow. And the phrase, "Nor delay any man's cause for lucre or malice," if restricted as some appear inclined to restrict it, to the delay of your own client's cause, would, we think, obviously fall short of the spirit of that portion of the oath, "which requires that you should delay *no* man's cause." So that it comes to this, that the potency of the oath depends as much upon the principles of him who takes it, as upon its own terms. Oaths may make bad men worse, but rarely make bad men better.

The system of ethics that is derived from such an oath, may, or may not, be worthy of approval. The best system of forensic ethics or moral philosophy, as applied to the legal duties of men, is of divine authority: "Do unto others as you would be done by;" that is, as you justly deserve to be done by; "Love your neighbors (or your clients,) as yourself;" which means, do the same justice to them that in their condition you would be rightly entitled to expect—you are not to do more for them than you would rightly expect; nor to love them better than yourself—not to

sacrifice your conscience or your heavenly hope to them—and certainly not to adopt Lord Brougham's notions, in his defence of Queen Caroline before the House of Lords, which run thus :—

"An advocate, by the sacred duty he owes his client, knows, in the discharge of that office, but one person in the world—his client, and none others. To save his client, by all expedient means; to protect that client at all hazards and costs, to all others, and amongst others, to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the winds, he must go on, reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client's protection."

These principles—if they are so to be considered—being uttered, no doubt, under high professional excitement, can certainly never be approved by any just or reasonable man. They would, if carried out to the extent suggested, make the advocate worse than a highwayman, and render him, under cover of the law, a virtual outlaw.

Lord Erskine maintains almost as bold, but much more tenable ground, in holding this language :—

"I will for ever, and at all hazards, assert the dignity, independence, and integrity of the English Bar, without which, impar-

tial justice—the most valuable part of the English Constitution—can have no existence. From the moment that any advocate can be permitted to say, that he will, or will not, stand between the crown and the subject arraigned, in the court where he daily sits to practise—from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or the defence, he assumes the character of the judge—nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation, puts the heavy influence, of perhaps a mistaken opinion, into the scale against the accused, in whose favor the benevolent principles of the English law make all presumptions, and in which they command the very judge to be his counsel."

The doctrine of Lord Hale, however, comes nearer to the true rule, than either of the great authorities to which I have adverted, when he says:—

"I never thought that my profession should either necessitate a man to use his eloquence, by extenuations or aggravations, to make any thing look worse or better than it deserves, or could justify a man in it: to prostitute my eloquence or rhetoric in such a way, I ever held to be most basely mercenary, and that it was below the worth of a man, much more a Christian, to do so."

But Chief Justice Gibson places the obligation of counsel upon a much more honorable and conscientious footing, than any of these distinguished Lords, in 2 Barr's Pennsylvania State Reports, 189:—

"It is," says he, "a popular, but gross mistake, to suppose that

a lawyer owes no fidelity to any one except his client, and that the latter is the keeper of his professional conscience. * * *

"He violates his official oath, when he consciously presses for an unjust judgment; much more so, when he presses for the conviction of an innocent man. * * * The high and honorable office of a counsel, would be degraded to that of a mercenary, were he compelled to do the biddings of his client against the dictates of his conscience."

A lawyer is not morally responsible for the act or motive of a party, in maintaining an unjust cause, but he *is* morally responsible, if he does it knowingly, however he may "plate sin with gold." We do not speak now of the mere impression or opinion of counsel, but actual *knowledge*. Suppose an action brought to recover from a widow or an orphan, all they have in the world, and the counsel is informed that only half the money was due by the husband or father of defendant, as co-partner with the plaintiff, and these facts could not be shown by defendant—what lawyer would claim to recover in such a case? We repeat it, a lawyer is bound to refuse a case that he believes to be dishonest, or to retire from it, the moment he discovers it to be so. And he is also bound to avoid litigation, unless it is necessary, and when necessary or unavoidable, always to adopt the least offensive means for bringing it to a satisfactory result. The law is the handmaid of justice, and in its administration should never be attended with undue severity or malevolence. He is not bound,

even in every just cause, to accept the retainer of his client or to bring a suit. Some men profess the doctrine, that a lawyer might sue his own father, or any other person. That would be a gross impropriety, and would ruin any man that would perpetrate it. Domestic and social obligations are always to be regarded. Even suits against members of your own profession, should always be reluctantly and delicately entered into, and except in rare cases, never with the exaction of professional compensation. In short, always mingle as much kindness as possible, with the performance of duty; and you never will, or never ought to, make an enemy or lose a friend. When we say as much kindness as is possible, it is not to be understood that you are to treat all cases alike, in this respect. Kindness to some, would be a dereliction from duty. The heartless oppressor, the crafty trickster, the bold and blushless villain, the wanton calumniator, or the cold-blooded assassin, hardly belong to humanity, and can scarcely claim the protection of human sympathy or generosity.

A lawyer has a right to take all the advantage his learning and talents afford him, in order to sustain a good cause or defeat a corrupt one; but he has no privilege to substitute his talents or learning for the honesty of a case, and thereby render iniquity triumphant. Where he has doubts as to the correctness of his positions, he may fairly incline in favor of the party he

represents, and sustain his views by every authority and fact that the law or evidence may supply, leaving it, of course, to the court and jury to ratify or reject them. He is not to decide the case, nor is he morally answerable for the correctness of its decision; but he *is* answerable for the correctness of the motives by which he is influenced. We are not about to suggest a reward for a virtue, for that would be to render the virtue questionable; but this we may say, that if an advocate were always governed by this principle, though he may not always gain his cases, he would at least, always be certain to gain such cases as he did not deserve to lose.

He is not only not knowingly to urge an unjust cause, but he is not to contribute to the gratification of his client's malignant passions, in the discussion of any cause, however just, but as far as he can, return good for evil. A client called suddenly upon counsel, and laid a heavy fee upon the table—"I am," said he, "the defendant in a case which is now going on, and I wish to engage you, and hope you will treat the opposing party with some severity, as he has practised great severity upon me." "Before I take your fee," said the lawyer, "let us understand each other; do you wish me to treat the plaintiff with severity, whether I may think he deserves it or not? If I think he deserves it, I shall do it without your stipulation; and if I think he does not deserve it, I shall

not do it for any fee you can pay." Of course, the client saw his folly, and the case proceeded upon the fair and honorable terms of the counsel.

A lawyer, we assert, is not bound to take every cause that is tendered to him—he is no man's man. He is the adviser, but not the slave or serf of his client. He is not only not bound to take a case which he clearly perceives to be unconscientious, but he is bound to *discourage* its institution. Yet it must not be supposed, because counsel may fail in the *result*, that the cause was unfounded and unworthy of support—much less that he *knew* it to be so. Sometimes the most honest case may be destitute of evidence to support it; whereas, upon the opposite side, craft, industry and fraud, may present impassable obstacles to recovery. The counsel is not to be adjudged merely from results, or from the opinion of those, who know nothing of the condition of the parties and their relative rights, but what appears upon the trial. Every lawyer knows that there are cases in which he is perfectly assured of two things—first, the honesty of the case; secondly, the corruption of the adversary. And yet he is almost as certain that *his* case must fail, and the *opposite* party triumph. What is he to do? He is to lead the forlorn hope—throw himself into "the imminent deadly breach;" and, to use a strong figure, conquer or die. What can the spectators or auditors know, while they presume to judge him, of the nature

of the information of which he is the sacred depository, and upon which must mainly depend the question as to his conscientious rectitude? There never was a lawyer in full practice, who has not lost cases equal in merit to any that he ever gained. Death, accident, loss of papers, absence of witnesses—too much confidence in the honesty and candor of the adverse party, an ignorant, partial, or prejudiced jury, and all the thousand shapes that craft may assume, and all "the ills that flesh is heir to," may defeat the best case and support the worst; and yet the counsel upon both sides may be utterly deceived or exempt from blame. To show a glaring case, in which men of the highest honor were concerned, let us direct attention to The Commonwealth v. Van Vliet, a case of great notoriety and of unparalleled iniquity.

The defendant was prosecuted for having stolen three thousand dollars in foreign gold, (sovereigns.) The prosecutrix swore that she had that amount of money, which she had been collecting for a long time; that the prisoner upon one occasion introduced himself into her house, under pretence of desiring to buy old watches or jewelry; that at the time he entered she was engaged in counting her gold, but put it in her bureau, for the purpose of bringing down an old watch; that when she came down, after a few minutes conversation the prisoner left the house, and upon her then going to the drawer, the gold was gone. She swore,

also, to the identity of the prisoner, who was a Frenchman and speaking very broken English, and somewhat deformed in person.

The next witness was a confederate, who testified that he knew the defendant, and had lived with him for about two weeks; that on the day of the alleged loss of money, the defendant came home and had with him a large quantity of gold, of the description sworn to; that they counted it together, and that the number of sovereigns exactly corresponded with the amount lost; that the day after, these sovereigns were melted down by the mint, and that the product, in new American coinage, was handed over to the defendant. The officer of the mint proved the melting, and the payment to the defendant. The new coin was all found on the person of the defendant.

Now, upon this testimony, what could be plainer than the guilt of the defendant?

The defendant was a stranger—he denied his guilt; nobody knew him. He averred he had brought the money from Liverpool—produced some little evidence that he had such money on his arrival. But this would not do; he was convicted, and the money was about passing into the hands of the prosecutrix.

Newly discovered testimony, was the ground of motion for a new trial. The new trial was granted, and by consent of the Attorney General, a commission issued to England.

Upon the second trial it appeared that the prosecutrix had no such money.

That the defendant had received English sovereigns for French gold, in Liverpool.

That he had employed the confederate to interpret for him for two weeks, and had counted the money with him, and then carried it to the mint and obtained in lieu, American gold.

That having dismissed his interpreter, that person concocted the above scheme, with the prosecutrix, for the purpose of gratifying his revenge, obtaining the money, and dividing the spoils.

He was, of course, acquitted.

Three eminent gentlemen were concerned for the prosecution; they, no doubt, thought the man guilty. The defendant's counsel were convinced of his innocence, but his isolated situation deprived him of the benefit of testimony. Indeed, if the rule which forbids a commission in a criminal case, had not been relaxed, he might probably have even been convicted on the second trial.

As there is no difficulty as to what counsel should do in an honest, though feeble case, neither is there any question as to what he should do, when, after having been retained, he discovers that his case is unsound and dishonest. He is bound to abandon the cause at once. He is not bound, as has been observed, to do more for a client than the client could justly do for

himself. Or if he has, in error, advanced so far in the cause, that he cannot abandon it without compromising too far the interests of his client, he must at least be careful, while he watches its progress, not to adopt its principles, and thereby forfeit his own self-respect and the approval of his own conscience.

An action of ejectment was brought, many years ago, to recover a large tract of land lying in ——— county. The defendants relied, for their defence, upon an adverse possession of upwards of twenty-one years. The facts, so far as they are necessary to be known, are these:—The defendants entered upon a tract of several hundred acres, and cleared and occupied some four or five acres, leaving the remainder of the tract unenclosed and unimproved. Subsequently, however, to the original occupancy, they caused the rest of the tract to be marked off, the trees to be notched, &c., &c. The case came on for trial—as to the three or four acres, there was no difficulty; but the struggle rested upon the rest of the tract. The defendants' counsel sent for the axe-carrier, who had notched the trees, but upon his private examination it appeared clearly, that the appropriation of the "debatable land" had been made but twelve years before the action brought. Then arose the question of ethics—and the first question was, whether they should examine their witness? Of course that was easily disposed of, and the witness was dismissed. This being done, the case went to the

jury upon the evidence and inferences as they previously stood, and the trial eventuated in a verdict for the defendant for the entire tract. The counsel for defendant, however, were compelled, upon the argument, to urge presumptions upon the jury; which, though consistent with the evidence submitted, were, of course, inconsistent with the actual state of the case, as it would have been exhibited by the axe-bearer. This verdict, though gratifying to professional pride, was not very satisfactory to the conscience of the counsel; and having met the plaintiff, who was a man of wealth and liberality, they suggested to him, that as their clients were poor men, and as the case had been tried, they thought some terms might be agreed upon to settle the question forever, and to give the defendants a marketable title. "Very well," said the plaintiff, "the property is worth ten dollars an acre, but as you have got a verdict, and as you say the occupants are poor, let them pay me a dollar an acre for the land, and I will execute a deed to them." The money was paid—the conveyance executed, and the controversy ended.

Upon this case being mentioned to some members of the bar, different opinions were expressed in relation to it. A gentleman of a high moral standard and an eminent lawyer, expressed the opinion, that the course pursued was entirely justifiable. First, because the counsel were not bound to call the witness, who would

destroy their client. Secondly, that they were permitted to maintain that, upon the evidence the plaintiff was not entitled to recover. Another gentleman admitted the first proposition, but observed, in relation to the second, "that the defence did not rest upon any alleged insufficiency of the plaintiff's title, but upon maintaining affirmatively the possession of the defendant for twenty-one years, and endeavoring to induce the jury to believe what his counsel knew was not the fact;" which was utterly inconsistent with every principle of moral philosophy. Even in a criminal case, which is the severest test to which counsel can be subjected—though counsel may contend that the case for the prosecution is not made out by the evidence—they have no right to contend that presumptions may be built upon the evidence, which, although the evidence may possibly warrant them, the counsel know to be contrary to fact and truth.

In these remarks I have referred mostly to civil proceedings; it is proper that something should be said in regard to criminal, or State trials. There is, let it be remembered, a vast difference between civil and criminal cases. A sympathetic heart may be allowed to soften the rigor of the sternest and most inflexible justice. A man may be morally guilty—that is to be left to his Creator. The only question submitted to a court and jury is, whether he is guilty according to law—guilty upon the issue tried. A

learned judge, forgetful of this principle, pressed the conviction of a prisoner, where the evidence was somewhat doubtful, and gave, as a reason, that there had been several other charges against him. And the same judge passed a sentence of three years (the full limit of the law,) in a case of larceny; stating, in excuse, that the prisoner had been acquitted upon a former bill, of robbery, of which he no doubt was guilty.

Men, who take public offices, must discharge public duty; but private counsel should never prosecute a capital charge—NEVER TAKE BLOOD MONEY.* The Attorney General, or District Attorney, is bound to perform the function of public prosecutor, yet even he should do it, firmly, liberally, humanely. He should be a "sacrificer, but no butcher." "Still," in the language of Cicero, "it is always more honorable to defend, than to prosecute. It seems to be the part of a harsh character, or rather of one that is scarcely a man, to bring the lives of men into jeopardy." In addition to this, it is not only more

* A most atrocious murder, which occurred in Delaware county, by which the feelings of the entire county were outraged and incensed, led to an application to a member of the bar of this city, whose services, it was supposed, would secure a conviction. He had scruples as to the propriety of taking the price of blood, and said so, but desired some time to consider the subject. He then wrote to Mr. Rawle, stating the case, and requesting his opinion. The answer was brief, and thus it ran: "Cicero thought, and I think so, too, that it is always more honorable to defend than to prosecute, where life or death is the issue." Of course the case was declined.

consistent with humanity, but with sound policy. It adds much to the general influence of the arguments of counsel. If a lawyer is found to-day prosecuting a petit larceny, and to-morrow defending a highway robber—maintaining one sentiment at one time, and another at another, what confidence or reliance can be reposed in him? Besides, it hardens the heart, and substitutes suspicion for confidence.

But what are the obligations of counsel for a DEFENDANT in felony—and especially in capital felony? Still to act conscientiously, to serve his client honestly, to the best of his abilities. He must utter no falsehood, resort to no subterfuge, and carefully guard the accused against every attempted invasion of his rights and privileges, either from court, counsel, or witnesses. The advocate is sworn to give to his client the full protection of the law, according to the best of his skill. But it may be asked, "Will you defend those whom you know, or strongly suspect, to be guilty?" The answer is, "Counsel are, in most cases, not able, and perhaps, in no cases have the right, to *determine* the question that they are called upon to *argue*—its determination must depend upon the judges and the jury."*

A young member of the bar, who has since reached

* A lawyer is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence, or what shall be the result of legal argument.—*Dr. Johnson.*

some eminence, when applied to in a first case, which was somewhat complicated and doubtful, waited on the late Mr. Rawle, stated the case, and remarked at the same time, that he thought it a bad one. "You are," said Mr. Rawle, "a presumptuous young man, thus to venture in the outset to determine, what a court and jury only can decide after hearing all the testimony."

Judge Sharswood—at once a good example and high authority—in his able treatise upon professional ethics, has well defined the position of court and jury, when he says, "Every case is to be decided by the tribunal before which it is brought for adjudication, upon the evidence and upon the principle of the law applicable to the facts, as they appear *upon* the evidence. No court or jury are invested with any arbitrary discretion to determine a cause according to their mere *notions* of justice. Such discretion, vested in any body of men, would constitute the most appalling of despotisms. LAW, AND JUSTICE ACCORDING TO LAW; this is the only secure principle upon which the controversies of men can be decided. It is better, on the whole, that a few particular cases of hardship and injustice, arising from a defect of evidence or the unbending character of some strict rule of law, should be endured, than that general insecurity should pervade the community."*

* It is not so material that these arbitrary rules should be fixed *one* way or *another*, as that that they should be FIXED.—*Sir William Grant.*

You might as well expect a physician or a surgeon to abandon a patient, who he thinks must die, as to expect a lawyer to abandon a cause of which he has little hopes. It rarely, if ever, happens, that the offender in a grave criminal charge admits his guilt, even to his counsel. He may admit the bare act charged against him, but he suggests, in connexion with it, such causes, motives, and influences, as to deprive the act of the essential character of a crime, or affect it, in its degree. A man is charged with murder—it is known, and he admits to his counsel, that he struck the fatal blow, but also states that the deceased, at the instant, had treated him with great indignity—had pulled his nose, or spat upon him, or committed an outrage upon his domestic peace and honor. This is killing, it is true, but no murder, either in *foro humano*, or perhaps, in *foro conscientia*. What shall prevent honorable counsel from maintaining that, at most, it is but manslaughter, or *homicide se defendendo*.

The time of trial arrives—the counsel takes his position by his client—he knows what, perhaps, no one else but that client knows; he carefully surrounds his defence with every possible safeguard—from a prejudiced jury, from zealous witnesses, from illegal questions or answers, from perverted views of the law or evidence, from inflammatory appeals of the prosecuting counsel, and from the errors of the court. It is for the prosecution to prove its case.

After the prosecutor's case is established, of course the defendant's counsel is not to deny the blow, though he is not compelled to admit it. He is certainly not to suggest that the blow was struck by *another*. Heaven forbid! but he is to introduce such evidence as he has, of general reputation, or relative or direct facts, tending to furnish a correct view of the true character of the transaction, and the causes which gave rise to it. Certainly no Christian would deny the propriety of such a course.

In the case of The Queen v. Courvoisier, for the murder of Lord William Russell, it was charged against Mr. Charles Phillips, one of the counsel for the defendant, that after he had been informed by his client of his guilt, he actually attempted to maintain that the murder had been committed by a person known to be *innocent*, in order to protect the prisoner against condign punishment.* Now, such a course could rest only upon the erroneous and flagitious doctrine of Lord Brougham in the Queen's case. Certainly no dispassionate and honest man can justify or vindicate it for a moment. Where is the oath of the counsel, to "conduct himself with all good fidelity, as well to the court as to the client." Where is his duty to himself? where is his still higher duty to the JUDGE OF JUDGES?

In the case of Adam H——, who was tried for the

* This proved to be an unfounded accusation.

murder of his wife, and who afterwards dissected her body with a case-knife. The defendant, before trial, acknowledged his guilt to his counsel in Philadelphia, and afterwards confessed it upon the gallows; still, there were some flaws and discrepancies in the evidence for the prosecution, and a number of surgeons were honestly prepared to swear (and some on the trial did swear,) that the dissection was so skilful and scientific, that it was almost impossible that any man, except with appropriate surgical instruments, and with a knowledge of surgery, could have accomplished the dissection in the manner in which it was performed. The counsel knowing the guilt of his client, declined resting the defence on the ground that the prisoner had not committed the homicide—but was willing to rest it upon the alleged provocation to the act. Which, allow us to say, with great respect for those who know more and think differently, would have been the only available reliance for the unhappy Dr. Webster, charged with the murder of Dr. Parkman, of Massachusetts.*

Those who condemn professional men *most*, know the *least* of them, and censure in the very blindness of ignorance and prejudice. We do not believe a respect-

* Adam H—— was defended by gentlemen of high legal character in Baltimore, who, not being cognizant of his confession, were, of course, not embarrassed by any conscientious scruples, arising from such knowledge. The defendant was convicted and executed.

able lawyer ever defended a prisoner, whom he had not some reason to think, if not innocent, not guilty to the extent of the charge. Can it then be required of counsel that, by withholding their aid, they shall not only prejudice a case, but prejudice it unfavorably to the party who has applied to them in his extremity, and who, according to his own statements, which he hopes to establish, is a man more sinned against than sinning. Certainly, the humanity of those who aid their fellow-creatures in distress and imprisonment, is some voucher for the rectitude of those feelings from which that aid springs.

The counsel is the depository of all the most important secrets and interests of his client—life, liberty, property, character, every thing. And to say that they should be most religiously guarded and preserved, is to say no more than to remind him of honor's sacred tie, and the oath that binds him to fidelity.

Even the "*sigillum confessionis*" is nothing in comparison with the sanctity and inviolability of the confidence reposed by a client in his legal adviser. Every thing entrusted to counsel that can possibly affect his client's interest, should be kept as close as "nature's taciturnity." Remember, you are "his other self,"—no earthly power can compel you to reveal what he has confided to you—he may waive this protection, but you cannot violate its obligations. A lawyer who would, in any circumstances, divulge what he has

learned under professional sanction, would at once, and directly lose caste. We have known this, however, carried to rather an absurd extent. There may be cases in which the communication might be of the utmost importance to a client, and we are not so clear that the counsel is not bound—unless the client forbids it—to give his client the benefit of his evidence, where the injudicious examination of the opposite party affords the opportunity. This obligation does not only rest upon the lawyer in court, but it binds him wherever he may be. There is scarcely a lawyer in full practice, either in civil or criminal cases, who, if he divulged all that he must know of the affairs of his clients, would not ruin a large portion of the community.

Another rule to be observed is, always to consider that the knowledge derived from your client, is held by you in trust, and can be used only, for his purposes. Suppose you hold two judgments against C., one for A. and the other for B.; and B., whose judgment is the latest, directs you to issue a *testatum* execution into the adjoining county against property belonging to defendant. You could not, with propriety, issue your execution upon the first, to the exclusion of the second judgment, allowing you are equally bound to both the clients—as he that is most vigilant, is most regarded in law and conscience.

One of the most difficult positions, and most to be avoided, is to be the counsel of adversaries—of course

not in the same case—in different cases. It always leads to suspicion and confusion, even when the management of counsel is the most unexceptionable. But passing from morals to manners:—

Etiquette, which originally signified but a card or ticket, or letter, by which intercourse or information between men was facilitated and improved, by the modification of time and fashion, has now become a word significant of the ceremonies that belong to the decorum of society. It still, in one sense, retains its original signification, although no longer confined or applied to its original purpose. *Then* it was a mark or card appended to a package, expressive of its contents. *Now* it has become a rule, regulating the manners and refinements of fashionable, professional, and social intercourse. It is our purpose simply to apply it to forensic life, and not merely as relating to habits, but to the morals and influence of the profession. Indeed, it may almost be considered as virtually belonging to the ethics of the bar—manners are sometimes morals.

Reverence for age.—No young man can prosper in his profession, who is unmindful of due respect to seniors at the bar. He that is so, breaks down his own safety and dignity, should he live to be old—in respecting them, he respects himself. Flippancy, frowardness, a forwardness exhibited by the youthful towards the aged barrister, is a mark of vulgarity

and low breeding, which, however it might gratify the vulgar and the low, must ever disgust those whose good opinion and support are worth preserving. We speak not now of comparative *talents*, but simply of *years*, or stages in life.

In ancient Rome and Greece, gray hairs were considered "a crown of glory"—at the forum, in the senate, at the olympic games—everywhere. We may all remember, from the reading of boyhood—which, well applied, furnishes admirable lessons for after life—the anecdote related of an aged citizen, presenting himself among a mixed and crowded assembly in Greece. The Athenians beckoned him to take a seat among them, but upon approaching for that purpose, they closed their ranks and laughed at his disappointment, whereupon, disgusted with this insolent cruelty, the youthful Lacedemonians at once relinquished their seats, to render the old man comfortable. "I see how it is," said the aged citizen, in terms of well-deserved rebuke, "the Athenians *understand* politeness, but the Lacedemonians *practise* it." Irreverence towards old age, in those ancient States never was tolerated, much less sanctioned. Themistocles was rebuked by Phocion for speaking out of his place, and taking precedence of his seniors. But there is a better rule, and of higher authority, which runs thus: "Speak, young man, if there be need of thee, and yet scarcely when thou art twice asked. If thou be among great men,

make not thyself equal to them, and when ancient men are in place use not many words."

The senators, conscript fathers, nay, kings and tyrants almost always manifested due regard for age, and listened to its precepts with deference, or beheld its infirmities with sympathy.

Among us, let it further be said, that respect for advanced life, is not simply inculcated upon the BAR—it is due from the COURT, itself, as an example to the bar. If we are considerate to the young, and encourage them where they falter, and raise them when they fall, we are equally bound to sympathise with second youth, and revere those men who, exhausted by a life of learning and labor, like dying ancestors, are declining into the narrow house, after having garnered up wisdom, experience, and honors, of which we are to be the inheritors. We must be pardoned in saying, that while respect for *office* is necessary, respect for old age is natural and most commendable. When, therefore, a judge upon the bench, elected by the "most sweet voices" of the populace, builds his hopes of popular distinction upon an assumption of learning superior to that of a man of twice his age; or familiar with some modern case, smiles at the venerable advocate, who ventures to refer to the *ancient* land-marks of the law, his faltering steps not having kept pace with modern improvements—judicial vanity may be gratified, but prudence and propriety are forgotten.

"That is not the law now," said a learned judge to Mr. N., "it has been overruled by the case of Den v. Fen, published in the last volume of Barr's Reports, or in the Legal Intelligencer of last week." "I don't know," was the humble reply, "any thing of the case the court refers to; I know that what I maintain *was* the undisputed law for more than a century—there have been no legislative changes; the judges have been changed, it is true, and if the law has changed with them I did not know it, and I could not help it."

Of course, the court have the right to suggest to the counsel what they please, in regard to the points of law involved in an argument; but there is a manner and a time for all things—they should aid the young, but they should, at least, listen to the old. There is a wisdom in years, that at all events inculcates the propriety of an apparent deference to its opinions. *Young* America, we trust, will live to be *old* America; and the pernicious example of to-day will be a precedent for centuries to come. "The poisoned chalice shall be commended to our own lips," or the lips of those who, for want of a safeguard, become its ready victims. The courts will sometimes listen for ten "mortal hours," to a speech made up of a "Battle of the Books," refreshed only by an occasional complimentary reference to recent newspaper opinions of their own. But everything that is older than the court itself, or the new constitution, in conformity with the spirit of the times, should not

be looked at with doubt, or treated with contempt. Every new generation is wiser than the past. The pupils laugh at the lessons of the masters; and even some judges forget that they derived their lofty honors, not from their superiority at the bar, their unequalled learning, or their great experience, but in some cases from their party and political influences. Look at the judges before they graced the bench! Did they maintain a higher position than their legal brethren? Certainly not. Does it require greater learning or talents to make an accomplished judge, than an eminent barrister? Far from it—it requires *different*, but not *superior* qualifications. The judge who decides, encounters less difficulty than the advocate, who is to argue and to convince. The former is aided and instructed by the labor, research, and talents of the latter. We think, in all modesty it may be said, that the bar, in its different departments in this country, and in every part of the world, has always been, at least equal to the bench: it may be construed treason, to say more. It is true, there have been Hales, Holts, and Mansfields on the bench in England—and so have there been Erskines, Garrows, Dunnings, Plumers, Nortons, and Broughams, at the bar. True, there have been Marshalls, Washingtons, Kents, and Tilghmans with us—and so have there been Pinckneys, Websters, Wirts, Lewises, Wilsons, Hamiltons, Ingersolls, Rawles, Binneys, Sergeants, Chaunceys, and a long list of forensic

stars, that in their individual and accumulated splendor "pale the ineffectual fire" of the judiciary. But to take another view, the judges in England have often been suspected of pandering to a corrupt ministry, or a worthless king; whereas, there is no evidence on record, of a lawyer of any note, under any influence, ever having deserted or betrayed his post. An eminent lawyer writing on this subject, says: "The absurd tendency of the public mind seems to be, to glorify the bench, even at the expense of the bar. According to my observation for thirty years, the bar has always been equal to the bench, in all qualities which adorn the profession in Pennsylvania." Rightly understood, the judges and the bar should be considered as integral branches of a great system, relatively necessary to each other, and through each other to the community —deriving their utility and efficiency from their combined and harmonious adaptation to the great objects of public justice. So much for due reverence to age, *independently* of talent.

If, with seniority you *couple* lofty talent, the obligations of respect are increased in strength. There is then an intellectual, as well as moral power, to which we should freely submit, not as slaves, but as generous aspirants for professional honors. This submission is the first step towards a superiority or equality of worth. A reverence for the great attainments of others, and their modest acknowledgment, gives an assurance

that we know *their* value and our *own* deficiencies. The man who is conscious of his own intellectual wants, will soon learn how to supply them. The man who clearly discerns his own faults, is surest to amend them; and he that admires and approves the virtues of others, becomes incapable of envy, in the desire of rivalry. But to turn from the inner to the outer man:

Dress.—It is certainly by no means essential to a member of the bar, that his dress should be studiously considered or nicely adjusted, but still a proper regard to decency of exterior and the claims of the profession, as evincing a becoming respect for the opinions of others, may contribute to enlarge his sphere of influence, and to recommend him to those portions of society whose perspicacity never enabled them to discover virtue in poverty, or genius in rags.* The annals of the bar inform us that Dunning, the putative author of Junius, who became one of the chief lawyers of his time, lived for years in poverty, without a second coat to his

* One of the best lawyers of his day, who was admitted in the year 1791, and who for learning and acuteness, had but few superiors, in the latter part of his professional life lost his fortune, and became careless of his personal appearance. His business, too, seemed to get thread-bare, with his apparel. In this state of things he complained to a friend, and asked what he would advise? "I advise you," was the reply, "to order an entire new suit of black, shave every day, and take your stand regularly at the bar, that you may be seen of men—clients never flock around those who appear to stand in need of their support."

back, and without a case on the docket. The only *habits* that recommended him to notice, were his *habits of industry*, and even those would hardly of themselves have brought him into favor, but that the East India Company, in an emergency requiring immediate preparation, was referred to *him*, as having nothing else to do. He performed the work so much to their satisfaction, as to place him in a position in court which led to all his future fame and fortune.

Further—justice, in addition to her celestial qualities, is invested with female privileges, and is rarely to be wooed or won by negligent or slovenly suitors—a begrimed face or sullied hands scarcely become the purity of her temple, and the apparel of her ministers should be appropriately adapted to her august ceremonials and decrees.

A martinet is one who, though prim and precise in dress and drill, shrinks from the scars of war—that is, he is all outside. A prig or a dandy is one who, while he wears fine clothes, wears them for his personal adornment, is constantly in fear of their being injured, and thinks of little else. But a gentleman, in the true sense of the word, is one who regards dress and fashion as a tribute to the usages of society, but as constituting no merit in himself.

We are no sticklers for wigs or gowns—the former often cover an empty pate, and the latter a hard or corrupt heart; but a consistent professional dress, is

just as necessary in a court room, as is a fashionable dress in a ball room, and much more important.

In England, the bar at one time applied to Lord Denman for permission to lay aside their wigs and gowns. His Lordship, like a reasonable man, gave permission, simply enjoining, in lieu thereof, that they should appear in what might be called a becoming court dress. For a few days the new regulation worked very well, but at last the bar seemed to have lost its identity. Clothes of all colors and descriptions were intermixed—"black spirits and white, blue spirits and gray," flitted through Westminster's sacred halls. The bar and the people were confounded together—manners were as much changed as habiliments, and at last it became indispensable that the offcast trappings should be again resumed.

But, as has been said, we are no advocates for the imitation of foreign example. Let a lawyer dress as he chooses, provided he always dresses as a gentleman. We care nothing for the texture, value, color, or fashion of his garments. He should be clean; for if he is dirty *out*side, rely upon it, he is dirty *in*.

Deportment towards the Court.—A lawyer should not address the Court with his gloves and overcoat on; he might as well do so with his hat on. It is most remarkable that such matters should require to be mentioned, ordinary gentility would seem to forbid the necessity. Nay, he should not be permitted to remain

in court with his cloak or overcoat on, to the annoyance of every one about him, and to the disgrace of the bar. The judges never fall into this error. They dress simply and becomingly, instead of carrying their whole wardrobe upon their backs. If the bar ever expects to be looked upon as a class, the success of their anticipations must depend upon themselves, and their due observance of high social and professional courtesy and refinement.

Again, dress without consistent address, is nothing. We never saw a barrister *standing up* within the rails in Westminster Hall or Lincoln's Inn, unless he were engaged in a cause. We never saw one sitting in any manner unbecoming a gentleman—never saw one lolling upon a settee or dosing in his chair, or agitating or settling a personal dispute, or complaining of the court, or propitiating his client upon a lost suit, or forgetting that he belonged to a privileged order, and was bound to act up to his high calling. We are sorry to say, among *us*, there are not equal exterior observances of decorum. Still, though our manners are less conventional or artificial, we have some merits of which they cannot boast on the other side of the Atlantic. The members of the bar with us are more united in feeling, more liberal, less technical, less sectional, and less jealous of each other. There is, indeed, no body of men more free from antipathies than the Philadelphia Bar. This is somewhat attributable to the ab-

sence of attorneys and special pleaders, who, in the mother country are apt to foment and prolong disputes, not only between clients, but even among their barristers or counsel.

There is another matter for which the entire American Bar of the present day, bear an honorable comparison with any other bar within the scope of our information—we mean sobriety or temperance. We know them well, and we are not going too far when we say that there are, in a profession of *five hundred lawyers* in Philadelphia, (which, in this respect, justly represents the entire bar of the United States,) not *five* who are tainted with the vice of intemperance, or who, in more figurative and classic language, worship at the infernal shrine of Bacchus.

In this regard, we have even improved upon the state of the bar some forty years ago. At that time the members of the bar scarcely exceeded *one* hundred —all men of education. Of these one hundred, perhaps five, (over whose names charity draws the veil,) rarely appeared in court without having apparently indulged in "potations pottle deep," at some *other* bar. In the interior of the State, until within the last twenty years, it was still worse. Sobriety and inebriety, in some counties were about equally divided—a sort of half-and-half mixture. But to their credit, be it said, it is not so *now*, and has long ceased to be so. In a very general practice, we remember no recent instance in our

own State, or the neighboring States, of such shameful abandonment of moral and professional decorum. The time used to be, when topers excited sympathy—now they produce disgust. In former times, we have known many an inebriate who has had credit for *great* talents, upon a very slight capital, merely because it was wonderful that he should have *any*, when a temperate man, exhibiting greater ability, would not have been considered many removes from a fool—such was the admirable consistency of popular opinion. But, as we have said, the times are now changed, and we are changed with them.

Temper.—"Counsel," says a learned judge,* in treating of professional ethics, "should bear in mind the wearisomeness of a judge's office. How much he sees and hears in the course of a long session, to try his patience and temper. Respectful submission,—nay, even cheerful acquiescence, in a decision, when, as is most generally the case, no good result to his cause can grow from any other course,—is true wisdom, as well as propriety. An exception may be noted to the opinion of the bench as easily in an agreeable and respectful, as in a contemptuous and insulting manner. The excitement of a trial of a cause, is no doubt often the reason and apology for apparent disrespect in manner and language; but it is to be observed, that petu-

* Judge Sharswood.

lance, or conflicts with the bench, which render the trial of causes disagreeable to all concerned, has more generally an injurious result upon the interest of clients. It is highly important that an advocate should be always equal. He should most carefully repress anything like excitability or irritability. When passion is allowed to prevail, the judgment is dethroned; words are spoken, or things done, which the parties afterwards wish could be unsaid or undone. Equanimity and self-possession are qualities of unspeakable value."

This is all perfectly sound and true, and the doctrine should be closely observed by the COURT, as well as by COUNSEL. Petulancy produces petulancy, and is not confined to, nor does it always originate with, the bar; and, although the "wearisomeness" of the judge's office should be borne in mind, the vexations to which counsel are subjected, are also entitled to be remembered. Mutual forbearance produces mutual satisfaction, and adds grace to dignity. Respect for the court is necessary, but regard for counsel is not less to be inculcated; and above all, a strict maintenance, in all circumstances, of the rights of a client. We are told that, when Horne Tooke, in the course of one of his late trials, asserted that "there was not a single counsel who would venture to support his own conscientious conviction, against the opinion of a presiding judge, there was not at the time a single lawyer present, whose hollow bosom did not echo the sentence, and silently admit its truth." Thank

heaven this is a reproach that has never rested, and we trust never will rest, upon the American bar.*

Business intercourse.—Passing to the direct professional business intercourse between counsel, what rules shall be laid down? First, kindness to your juniors; reverence towards your seniors, and frankness and courtesy to all. Firmness and fidelity are perfectly reconcilable with courtesy and kindness.

By all means, in all circumstances, maintain your composure; if you lose that, you lose all. If asked what is the most desirable attainment of a lawyer, we would say, —composure. A wealthy and venerable gentleman of this city, whose only son had recently been admitted to

* In a work published some thirty-seven years ago, upon the decline of the British bar, there are the following hints, which are worthy of our regard:—"It cannot be denied, that there is a servile and crouching spirit in the bar towards the bench, inconsistent with the equality on which all gentlemen are placed, and with the liberal nature of their early education and attainments. It may perhaps be conceded, that a small portion of this subserviency may arise, among the younger barristers, from timidity or misapprehension, without attributing to it a baser motive, more especially where political questions are involved, where the reputation or liberty of an individual is concerned, it is impossible to trust to them; they will not speak out with decision and fearlessness; for the consequences of doing so stare them full in the face; they therefore shrink from the performance of their duty, and rather abandon a man to a dungeon than abandon their own hopes of success in their profession;—not that the bench should not be treated with all becoming deference; but there is a deference due to ourselves, and the cause of truth and justice."—*Criticisms on the Bar, by Amicus Curiæ.* London, 1819.

practice, called upon us, and, with a perfectly natural interest in the future advancement of his son, inquired what course we would recommend in order to his success at the bar. "Your son," was the reply, "has had an excellent education in literature and in law; all that he will require in order to render his faculties and learning available, is composure." "Aye," said the anxious parent, "but how is that to be acquired?" "That," we replied, "must depend upon himself, and upon time and circumstances. He must learn it, as Peter the Great learned to conquer, by being flogged and defeated over and over again; deriving instruction from every overthrow. In short, he must let no man be master of his temper, but himself."

But to pass from the Forum, to the etiquette of the office or chamber, of counsel. Here, wherever you affix your sign, you must observe the most rigid system; your hours of business should be early and regular; your papers should be preserved in perfect order, indorsed and labelled; and when not in use, deposited under their appropriate letter in your case. This costs but little time, and saves much, to say nothing of its obviating an appearance of negligence and confusion. Never retire to your bed without having arranged all your business for the next day. You will then sleep soundly, and awake cheerfully; and cheerfulness is important in carrying you through the cares and turmoils that await you. The *mind* always works best

when the *heart* is at ease. Keep your table always clear of surplus documents or papers. Any such unnecessary accumulation springs from indolence, and produces distraction. I know the practice in this respect, among members of the bar, varies greatly. Mr. Lewis's office was an Augean stable; Mr. Rawle's was much better, but nothing to boast of; Mr. Ingraham's, although he was a man of system in most matters, was a sort of *omnium gatherum*, where you could find everything, and nothing. On the contrary, Mr. J. R. Ingersoll's, Binney's, Sergeant's, and Chauncey's, were models of cleanliness, neatness, and system. We remember, in referring to to the difference of opinion and practice on this subject, a distinguished lawyer and senator of the United States, from Virginia, who called upon me at my office, in company with Mr. Dallas. The office table had but few papers upon it, and he half jokingly observed, "Certainly, judging from your table, and that of Mr. Dallas, you must, both of you, do but little business; you should see my table; it is covered and piled with papers, half way to the ceiling."

Punctuality.—It has been truly said, that the man who wants punctuality, wants everything. Keep your appointments as faithfully as possible. Avoid attending before your appropriate time, for that is a loss to yourself; and avoid coming after, for that is a great loss to others. There are men who never keep a business appointment, except by chance, whereas chances

or unforeseen contingencies should be the excuse for breaking them. There are others again, that always take the half hour grace, as it is called, which may be grace, but it is not honesty; for it compels the punctual to pay the debts of the negligent. Grace is intended for religion, and not mere worldly business; in the latter it is improperly named—it should be called *disgrace*—and the man who adopts it will be doomed to the fate of the foolish virgin—ever coming too late, and being unprepared when he does come. *Other business*, is no excuse; indeed, the truly busy men rarely attempt such excuses. Want of punctuality is the vice of the indolent and indifferent, and in youth it is particularly to be deplored. We have never known a young man, who practised upon this principle, that ever acquired any professional distinction. Punctuality is not only an important virtue in itself, but it is a voucher for all the other virtues.

Clients.—As to consultation and communication with, and advice to clients, the mode of receiving and dismissing them, these are matters so dependent upon circumstances, convenience, habits, and tastes, that no suggestions of ours could be serviceable, and certainly none can be required. Of course, men who confide to you their business or their character—their liberty or lives—are entitled, in return, to a patient, generous, and grateful consideration.

The last subject to which I shall advert, is *profes-*

sional correspondence—perhaps one of the most important duties of counsel, not only as relates to his clients, but his brethren of the bar. A letter should never remain unanswered, if it be merely to acknowledge its receipt. Great inconvenience sometimes arises from an omission in this respect. The obligations of duty should be strengthened by a rigid habit, which every succeeding day will render easier. There are some men who rarely write, and never answer letters; and their indolence increasing by indulgence, in time it will become a labor to write their own names. We waive all consideration of the neatness of the writing, folding, and sealing, which have formed a subject of special notice from high authority.*

When Lord Nelson, off Copenhagen, in reply to a letter from the governor, took particular care to fold and seal his letter, observing at the time that he must not appear to be in a hurry, by omitting any ceremonies; he had a reason for the course he adopted. But promptitude is more desirable than perfumed, bath, or gilt paper; and the best impression for the seal is, *Instanter*.

In these remarks, we have confined ourselves to office business or intercourse; but we may conclude

* Judge Sharswood's Professional Ethics. "A plain, legible handwriting every man can write, who takes pains. A good handwriting is a passport to the favor of clients, and to the good graces of judges, when papers come to be submitted to them."

by saying, that courtesy should not be confined to place, but should be manifested at all times, and to all persons,—even to a tribe almost as numerous as the plague of Egypt, and as great a curse; we refer to the applicants for subscription to all sorts of books, and every kind of phantastical experiments. Still, civility is cheap; and we should therefore be civil, for fear we may fall into some error. We remember a case in point. Passing out of the office in great haste to attend court, a rather rough though intelligent-looking man, with a large book under his arm, stopped me on the steps, saying, "I want your signature." "What is it?" was the hasty answer, supposing it to be a contribution, or subscription to some literary work. "Some music," said he, in a half quizzical way. "Well," was the answer, "walk along with me,—I can't go back,—and as soon as I reach a convenient place, I will subscribe. Accordingly, reaching my grocer's, we walked in, and, upon opening the book to sign it, I found a check for a thousand dollar fee! the signature required was simply to the receipt. This *was* music indeed, and of a most *silver* sound. Suppose I had treated this person coldly, though I should, of course, have received the money, I should have made an enemy, besides having the story reported at my expense.

Having thus referred to the Etiquette of the *Bar*, strictly so called, allow us to bestow a passing notice upon the students of law, who at least require some

attention. The young gentlemen who have assumed the *toga candidus*, that is to say, who have become candidates for admission to this highly honorable profession, should bear with them the constant recollection, that it requires more than the perusal of books in order to their becoming accomplished practitioners. Civility and politeness should also be part of their learning. Engaged as they are in their studies, in the receiving room of their preceptor, they are necessarily brought into contact with the clients and members of the bar. They partake of some of the privileges of the counsel, and also share in some of his obligations. In this position they should be careful to manifest proper attention to those who call; to observe due ceremony towards all, and especially to the aged; in short, never to forget that they are gentlemen. You can generally tell the preceptor by the pupil, and they mutually suffer for each other. In some offices, a visitor is furnished with a chair; kindly informed when his turn comes for admission to the sanctum of the office, or, if the principal is absent, when he will return; thus contributing to the comfort of the client, and making him comparatively at home. In other offices, the students will be found lounging on the settee or their chairs, with their feet above their heads; never rising when they are addressed; apparently offended at being interrupted, and returning short and surly answers to the most kind, respectful, and natural inquiries. This is not the worst

of it. The tree afterwards inclines to the bent of the twig. Their roughness grows upon them, and they are never able to acquire that gentleness and sympathetic kindness that should belong to the profession, and which was so invariably displayed by the late Charles Chauncey, who, in this respect, and indeed in all others, was an admirable model for imitation. His practice was among the largest at the bar; and it was as much attributable to his cordial manner, as even to his eminent legal abilities.

A churlish student never acquires a large practice; while, on the contrary, blandness and courtesy of demeanor enlist the affections of those with whom we are in habitual intercourse; and if they do not always indicate great learning, they at least adorn that which we possess. If, therefore, your natural good feelings will not teach this lesson, let your future hopes become the inducement.

Thus much for your reception of clients. As to the preceptor himself, there is little to be said. If, by his own example, he has not taught you to respect others, he has no right to complain, if he himself is not respected.

Observe neatness, and system, and care with your books. After having finished with them, return them uninjured to their proper places. Keep the office and the papers confided to you, in order. Deliver the letters or documents of which you are the messengers,

promptly—delay nothing. The biographer of Burr,* states that *his* rule was, never to do to-day, what might be done to-morrow; it is a much safer rule not to postpone what can be done *this* moment, to the *next*. No one can command to-morrow; and, certainly, in regard to important professional concerns; "We know not what a day may bring forth." A fortune may be lost, —reputation may be lost,—life itself may be lost,—by the neglect of improving a single hour; and what is the remorse, and where is the consolation for your own voluntary neglect, to which all these evils may be justly attributable. Ethics and etiquette combine in enjoining promptitude and attention.

So much for the relations of Counsel and Client—some further notice is due to the relative position of Counsel and Court.

Private interviews of counsel with the Court, in order to make private or exparte statements, or to endeavor to impress their views, is undoubtedly wrong, and tends to corrupt justice. So, to send, or authorise clients, to have such interviews. No gentleman will adopt this course; it is unfaithfulness to the Court. But it is not unfrequently invited by the Court itself. Judicial ethics must not be lost sight of. What client ever

* It is also stated of Napoleon, that he at times allowed letters to remain unopened for days; and assigned as a reason, that time answered one third; one third required no answer, and the remainder deserved no answer.

spoke to Judge Washington or Judge Tilghman? When judges read newspapers on the bench, and consult with reporters during a trial, or confer with tipstaves, or advise parties, or receive private complaints against counsel, they invite to every evil, that is thus reprehended. The judge has no right to hear anything of a cause out of Court, and he can always prevent it; and if he do not prevent it, he encourages it.

That counsel are bound to support the Court in its proper province, when it comes in conflict with the jury, no lawyer will deny. But counsel are equally bound to resist an encroachment by the court upon the proper province of the jury—fidelity to the client demands it. The judge may lay down the law correctly, and the jury is bound to conform to it; but no judge has the right to determine upon the character of the witnesses, the weight of the testimony, or the application of the evidence submitted to the jury. If the court leave, as they are bound to leave, the facts to the jury, telling them, that if they find them in one way, their verdict should be for plaintiff—if another way, for defendant, the verdict ought to stand, unless the law be erroneously laid down, or injustice manifestly done, of which, when convinced, a new trial may be granted, and all injustice avoided. If the judges broadly decide that the plaintiff or defendant cannot, in point of law, succeed upon the facts proved, they encroach as much upon the rights of the jury, as

the jury encroaches upon the Court, by finding a verdict against the law—both would be wrong. The latter, however, might be remedied much easier than the former.

In some cases the counsel may say, "he does not ask a verdict against the charge of the Court;" but there are cases in which his course should be different. Suppose, according to his view, the charge should be grossly wrong—the amount in controversy large—he is concerned for defendant; if the verdict go against him, he is to carry up the case—give security for more than he is worth—toil through years of anxiety and delay—afterwards encounter difficulties as to the facts out of which the law arises, or as to the character of the witnesses from whom they are derived. Are these no reasons to forbid a time-serving acquiescence in the views of the Court, which he believes to be wrong?

Was this Erskine's doctrine in his conflict with Buller?

It is such deference as this, that has done more to break down the independence of the bar, than all other causes combined.

As to the morality of pleading the Statute of Limitations, a word should be said,—this plea is authorised by law, and has the sanction of reason. The statute rests upon the probability of payment—death, destruction of papers, loss of receipts, &c. The lawyer has the right to rest upon this presumption, furnished by his own science; nevertheless, if he actually knows

that the note is due, unless there be some statute against conscience, he had better not undertake the case. A lawyer that would maintain such a defence, would file such a plea to avoid the payment of a debt known to be just.

As to suits for fees—the Roman and English advocates, it has been said, consider it dishonorable to sue for fees. The Romans get their fees beforehand, in the shape of gifts, and therefore this honorable doctrine costs them nothing. The English barristers receive their fees from the attorney, before they enter upon their duties.

Perhaps the better course is, to make the rich pay, and let the deserving and impoverished poor, the indigent widow and helpless orphan go free. Not only do not ask, but do not consent to receive fees from them. The Lord is their treasurer, and will pay their debts abundantly.

As to contingent fees—Judge Sharswood says, that contingent fees, depending by agreement upon final success, are altogether indefensible, at least in all ordinary cases. And Judge Rogers has declared, that the practice that has obtained of contingent compensation, has been a subject of regret.

Certainly, contingent fees are generally and properly condemned, but should not be *universally* condemned. The first men at this, or any other bar, have received them, but in peculiar circumstances. I remember an

action brought for a valuable square of city property—the claim was surrounded by great difficulties, and liable to heavy expense. The claimants were destitute. Where was the moral or professional impropriety, in stipulating that in case of recovery, the counsel should receive ten or twenty per cent. of the land, as a requital for their services and expenses? What can be the objection, on the score of morals or professional honor, to this mode of securing a just compensation? It is much more honorable, than to refuse to bring the suit because the client cannot pay a fee.

There never was an eminent judge on the bench, who previously had been eminent at the bar in this country, that has not received contingent fees. In fact, fees are always more or less contingent; first, it is a contingency sometimes whether you get them at all—then the amount must somewhat depend upon the extent of labor, and lastly upon its success. A lawyer rarely charges, and never receives, as much for failure as for success. The old practice of paying beforehand does not now exist, and when it did exist, it was not as advantageous to the client as the present system of professional compensation, and it was much more humiliating to the counsel.

How far it may be judicious to sue for a fee, may be questionable, and must depend upon circumstances. We do not consider it to be dishonorable to resort to the law to vindicate a meritorious and just claim—it

may not be eligible. It does not degrade the bar to maintain its legal rights. It is a strange doctrine, that the law will vindicate the rights and redress the wrongs of all but her own immediate family—her own children. This is to encourage wrong against them, and to make their suffering more than equal to their honors. Judges receiving stated salaries, and an elective judiciary, somewhat dependent upon the favor of the people, may very safely and complacently advocate this doctrine; but it is pernicious in its influence upon the character and interests of the profession.

A member of the bar may refuse, and often does refuse, to receive a fee when he is entitled to it; that is charitable—it is honorable: but where is its charity or honor, when he is told that it is virtually optional with the client to pay him or not. The doctrine contended for *unsuccessfully* in the case of Mooney v. Lloyd, 5 Sergeant & Rawle, 412,* (though afterwards adopted,) is the true doctrine upon the subject.

The last matter in this rambling essay that I beg leave to present, before recurring to the series of professional portraits, is the present mode of *administering*

* A suit cannot be sustained by a gentleman of the bar against his client, for a compensation for services over and above the attorney's fee allowed by act of assembly. But if the client gives a note or bond for such compensation, an action lies thereon. Physicians may sue for their fees. Contra, Gray v. Brackenridge, 2 Pennsylvania Reports, 181. Foster v. Jack, 4 Watts, 337. Adams v. Stevens, 26 Wendell, 451.

oaths in courts of justice, as impairing the sanctity of the obligation, and the solemnities of judicial tribunals. The very foundation of justice rests upon the oaths of witnesses and juries; yet *how* are they administered? not, as in some of the courts of Great Britain, by the dignified officer of the Court, but by some blundering subordinate, who runs over the ceremony in a manner neither intelligible to others nor himself. What sanctity can there be in such an obligation? The jury are huddled hurriedly together, especially in our criminal courts, like sheep in a pen—all is haste and confusion, and in the hurly burly, the great object of their proceedings is lost sight of. A well-behaved dog should be tried with more ceremony. The tip-staves are bawling, children crying, the judge scolding, the district attorney grumbling, the clerk taking recognizances, the sheriff calling the jury, the defendant making his challenges, the crier calling the witnesses, the deputy is talking to the Court, the grand jury have just been into Court, and in the midst of all this uproar, oaths are administered. Now imagine such a scene as this, and then tell me, whether this is a Court of Justice—*or a rout.* It is in vain to say that these matters cannot be managed better—order is nature's first law. Why not at least make an effort to establish some system, that will combine comfort with propriety, and at the same time conduce to the promotion of justice?

CHAPTER II.

HENRY BALDWIN, L.L.D.,

ASSOCIATE JUSTICE OF SUPREME COURT, UNITED STATES.

BORN, 1777—DIED, APRIL, 1844.

JUDGE BALDWIN was the successor of Judge Washington, and received his appointment on the 6th day of January, 1830, from President Jackson, to whose cause he had always been devotedly attached. It was understood when Mr. Baldwin was invited to Washington, after Jackson's election, that it was the intention of the President to appoint him Secretary of the Treasury. Jackson, however, with all his infirmities of temper, was a man of cool and discriminating judgment, and a moment's reflection convinced him, that from the views entertained by Baldwin on the subject of the tariff, an irreconcilable difference of policy would be the consequence of such an appointment. The result was that the Treasury was given to Samuel D. Ingham, whose notions were supposed to be more

congenial with those of the Executive. Jackson, however, was not a man to overlook either his friends or his enemies, and he seized the first opportunity of requiting the fidelity of Baldwin, by appointing him, without solicitation, the successor of the lamented Washington, upon the bench of the Supreme Court of the United States.

Henry Baldwin was born in New England, and became a graduate of Yale. He removed to Pennsylvania in early life, read law with A. J. Dallas, and was admitted to the bar on the 6th of March, 1798. He was in full practice for many years in the city of Pittsburg, where his business was very extensive, and his character for rectitude, talents, and legal learning, distinguished and unblemished. His industry was most untiring, and his zeal in behalf of his clients deserving of the highest praise. Even in Congress, to which the suffrages of his fellow-citizens elevated him, and where he continued for years, he exhibited the same business tact, the same powerful grasp of his subject, and the same unremitted fidelity to his duties, for which he had always been renowned, giving a practical refutation of the doctrine, that lawyers are never remarkable as statesmen, or distinguished in legislative or national councils. Our business with him, however, relates to his character as a Judge; and assuredly no judge that ever sat upon the bench in this country was subjected to a severer test than that to which he was doomed.

He was the successor, as has been said, of Bushrod Washington, who had held his post for thirty years, with the admiration and approval of all who knew him. Any man to succeed *him*, without thorough competency, would have suffered so much by the comparison, or contrast, as to have been utterly destroyed.

Judge Washington, though a most unostentatious man, always paid due observance to those forms which appertained to his judicial office, and which had received the sanction of centuries. The city of Trenton belonged to the third district; and there the practice had always prevailed, of the Marshal and his attendants, with the appropriate symbols of their office, receiving the Circuit Judge upon his arrival to open the court, in order to escort him to his lodgings, and thence to the Court. After the death of Judge Washington, his successor, Judge Baldwin, was thus received and attended upon to his lodgings, where he was waited for until he was in readiness for Court. Upon coming out, instead of appearing to appreciate the ceremony, he turned facetiously, and with apparently great simplicity, to the assemblage, and exclaimed, in seeming surprise—"Why what's the matter, boys—what are you doing with all these sticks?" This, of course, was the death of this time-honored custom.

The judicial manners of Judge Baldwin were certainly not equal to those of his predecessor. This could

scarcely be considered a reproach, for certainly, in that respect, Washington had no rival; but the amiability, kindness, and generosity which Judge Baldwin always displayed, contributed very much to lessen the disparity; and the profoundness of his legal learning, and his indefatigable devotion to his duties, were such as in a measure to compensate the public for the bereavement they had sustained. A kinder and more conciliating judge, and one who had stronger sympathies for the bar, or tenderer consideration for its youthful aspirants, rarely, if ever, graced any bench. Towards the close of his life, the severity of his studies, and some unfortunate speculations, by which he had become embarrassed, materially affected his physical health, through which his temper was rendered somewhat more irritable, the equanimity of his mind disturbed, and the serenity of feelings temporarily overcast. Few men, however, under similar annoyances or afflictions, would have manifested equal philosophy or fortitude.

As an advocate, prior to his appointment to the bench, though prominent in his own district, he was but little known, except by reputation, in the Eastern District of the State. He had, however, upon several occasions been engaged in important cases in this city, and in the language of John Sergeant, (who was generally engaged with him,) it might be truly said, "He was a powerful man, and never struck a blow without leaving his mark."

In the year 1844, after lingering for some months,

and with very little hope entertained of his recovery, he passed to that "bourne whence no traveller returns."

Few men during his time were more identified with the history or interests of his State. Few men to great learning united greater simplicity of demeanor; and few men, as citizens, lawyers, or judges, were more highly appreciated while living, or more deeply deplored in death.

Judge Baldwin was a man of sturdy frame, some five feet ten inches high, dark complexion, round and agreeable face, indifferent but not careless in his dress, and of the most open frankness, familiarity, and cordiality of feelings. He was not, perhaps, calculated to shine in the circles of fashionable life, although his manners were exemplary, but he was calculated to shine in those higher spheres in which, mere fashionable life, never dared to show itself. He was a great man among great men, and among the humble he was the humblest. Content with the riches of his own resources, and the permanency of his own fame, he had no occasion to envy others; and instructed by his own difficulties, in the obstacles to advancement, he looked with commiseration and charity upon all those who had attempted it in vain.

He had been brought up in a rough school, but there was still much unction in his manners; it could hardly be otherwise, from his naturally amiable feelings. That is a merit which education rarely gives, and still more rarely takes away. He had been poor, rich, and poor

again, and from all these conditions had derived improvement. He was disposed to be indolent, but became, by persevering habit, a man of untiring industry. He was unhappily, like Lewis, addicted to the vice of smoking excessively—a great fault in a lawyer, and much greater in a judge; and there is but little doubt, that although it might at times have been matter of enjoyment, at others it subjected him to considerable annoyance, and probably eventually led to his death.

These views perhaps require explanation:—a confirmed smoker or opium eater becomes nervously irritable, when deprived of his indulgence. Of course, a judge cannot smoke on the bench, and he is rendered uneasy, inattentive, and sometimes petulant. In this respect chewers and snuff-takers have a great advantage, as any one will perceive who notices the relative effects of tobacco, with regard to those different uses, upon the judiciary. The man who can avoid them all, may felicitate himself (and congratulate others,) in having escaped these physical evils, and their consequent pernicious influence upon the composure and equilibrium of the mental structure.

Judge Baldwin was a man of great sensibility, and was particularly alive to his judicial character. Perhaps he had too great a desire for the approval of others, in which he differed widely from Judge Washington, who seemed utterly dependent upon his own scrupulous convictions of right; who would not have flat-

tered "Neptune for his trident, nor Jove for his power to thunder;" and to whom, the syren voice of popular favor was matter of total indifference. If he ever desired popularity, in the language of Lord Mansfield, it was "that popularity that *follows*, not that which *leads*."

It has been said, that during the last four years of his judicial life, the health of Judge Baldwin was materially impaired, which was somewhat produced by habitual smoking, but much more by personal troubles and anxieties. Even the mind, through the medium of a disordered nervous system, for a short time seemed to lose its balance, and to share in his physical infirmity. But it was so ordered by the beneficent Creator of earth and heaven, that with this tendency, his temporal career was not so prolonged as to substitute a drivelling state of mental chaos, for the glories which he had garnered up, and the spotless temple which he had erected by his honesty, industry, and intellectual wealth.

Heaven forbid that his frailties should be "dragged from their dread abode," to be exhibited unnecessarily to a censorious world. But to show how jealous he was of his judicial reputation, even when his faculties were under a temporary shadow, but a short time before his death, at the close of the day's session, taking a member of the bar by the arm, he requested him to go with him to his chambers. While there, Judge Baldwin manifesting great nervous agitation, turned

to his companion with a very anxious countenance, and said, "I think I have heard you observe, that there is scarcely any occurrence or incident of life, of which Shakspeare in the universality of his genius, has not expressed clearer and more satisfactory views, than can be found in any, or in all other writers combined." "Why," said his friend, "the whole world says *that*, and you must not give me as its author." "Well, then," rejoined the judge, "can you point me to any passage of the poet, in which he expresses an opinion of the case which I shall now state? A dissenting opinion was delivered by one of the judges of the Supreme Court at Washington, which was erroneously reported in regard to its principles, in the ensuing volume of United States Reports. The judge spoke to the reporter, and explained to him the errors, which the reporter promised to correct in his subsequent Reports; when, strange as it may seem, the next volume, instead of containing the promised correction, reasserted the correctness of the opinion as originally reported. Now, sir," said the Judge, his eye lighted up with indignation, "can you furnish me, from Shakspeare, with any expression or sentiment reprobating conduct so unworthy as that?" The person to whom he thus addressed himself knowing something of the difference between the judge and the reporter, and desirous of avoiding further colloquy, replied, "Certainly, I can show you passages that condemn the whole series of The U. S. Reports."

The Judge was delighted—handing down from his shelves a copy of Shakspeare, he was furnished with certain extracts, that without much straining might be rendered applicable to the subject in question. The result was, that the very next day he wrote an elaborate letter to Chief Justice Marshall, recounting all the circumstances before related, and concluding with a quotation of an entire scene, taken from the immortal bard.

Upon another occasion, which was during his more palmy days, after he had delivered a very zealous and decided opinion in a case of great importance, in the Circuit Court, a verdict passed immediately for the plaintiff; whereupon a motion for a new trial was entered, and reasons were filed. The reasons being drawn by the defendant's counsel, under considerable excitement, were expressed in language not, perhaps, of the most measured respect—"The Court erred in statement of facts." "The Court erred in principles of law, and the Court further erred in applying the law to the facts."

The Judge received the motion and reasons, and at the time said nothing; but about a week after, and just before the case came up for argument, taking the reasons in his hand, he approached the counsel, and exhibiting to him the papers with the most winning kindness, said, "Do you think, my young friend, that I deserve all this?" Of course, good feeling by that

time had taken the place of irritation—the paper was withdrawn and another substituted of the self-same name, but of a softer nature.

It must have been a matter of great felicity to Judge Baldwin that, until a year or two before his death, during the entire term of his office, he enjoyed the judicial companionship of Judge Hopkinson—than whom no one could have been a more pleasant or valuable associate.

Judge Hopkinson was born in Philadelphia in 1770, and died on the 15th of January, 1842, studied law with William Rawle, and was admitted to practice in the Supreme Court on 4th of May, 1791.

Judge Hopkinson was a man of about the middle height, very slender in his person, and wore his hair tied, in the fashion of the times. Towards the close of his life, he was slightly bald. His features were good, and had great play and intelligence. His eyes, which were gray and small, were very expressive of intellect, and brightened and saddened in sympathy with his thoughts. His voice was clear, but neither powerful nor melodious, and the flash of occasional pathos was too often interrupted by striking a vein of merriment or wit. He was an acute, but not a profound lawyer; but still, his accomplishments, and his excellent temper and manner, and his sterling honesty rendered him a most agreeable, excellent, and upright judge. As an advocate, he was unsurpassed, and in social and convivial life unequalled. He possessed one quality, which is always

observable in orators when elevated to the bench—he invariably kept his eye fixed upon the counsel who addressed the court; in other words, he appeared to be *alive* to his business. He was what may be called a great purist in language, and never undervalued forensic embellishments. His own language was simple, but choice, and yet he was sometimes negligent or common place. He would run words unnecessarily together, and destroy their beauty and dignity. Ain't and won't, and can't and don't, &c., were sometimes embodied by him into the most sublime sentences. These were small matters, but small matters blur and impair great ones. He had no envy—no meanness about him, and he appeared to rejoice as much in the great speech of *another*, as if it had been his *own*.

We have said he was remarkable for his repartee—this arose from his extraordinary quickness of apprehension and comparison, and yet, strange to say, the mother wit and spontaneous sallies of Sampson Levy, were quite as distinguished for their pungency and fire, and even more agreeable for their matchless good humor. We have heard it said, that upon this *cue*, no man ever entered into a conflict with Levy, without coming out of it SECOND BEST. If Levy had not always the first blow, he had certainly always the last. Besides, his unrivalled reputation for success, was, itself, like the king's name, "a tower of strength."

We have remarked that Hopkinson had no superior

as an advocate; and we submit, that there are but few efforts of oratory that embrace more simplicity, beauty, strength and pathos, than are displayed in the exordium to his opening speech on the trial of Justice Chase before the Senate of the United States, in 1804. We quote it, because it is an indication of his usual exquisite style early in his professional career, and which adhered to him, to the last:—

"Mr. President,—We cannot remind you and this honorable Court, as our opponents have so frequently done, that we address you in behalf of the majesty of the people—we appear for an ancient and infirm man, whose better days have been worn out in the service of that country which now degrades him, and who has nothing to promise you for an honorable acquittal, but the approbation of your own consciences. We are happy, however, to concur with the honorable managers in one point—I mean the importance they are disposed to give to this cause. In every relation and aspect in which it can be viewed, it is indeed of infinite importance. It is important to the respondent to the full amount of his good name and reputation, and of that little portion of happiness the small residue of his life may afford. It is important to you, senators and judges, inasmuch as you value the judgment which posterity shall pass upon the proceedings of this day; it is important to our country, as she estimates her character for sound, dignified, and impartial justice, in the eyes of a judging world. The little, busy vortex, that plays immediately round the scene of action, consider this proceeding merely as the trial of Judge Chase, and gaze upon him, as the only person interested in the result. This is a false and imperfect view of the case. It is not the trial of Judge Chase alone—it is a trial between him and his country, and

that country is as dearly interested as the Judge can be, in a fair and impartial investigation of the case, and in a just and honest decision of it. There is yet another dread tribunal to which we should not be inattentive—we should look to it with solemn impressions of respect—it is *posterity*, the race of men that will come after us; when all the false glare and false importance of the times shall pass away; when things shall settle down in a state of placid tranquillity, and lose that bustling motion which deceives with false appearance; when you, most honorable senators, who sit here to judge, as well as the defendant who sits to be judged, shall alike rest in the silence of the tomb; then comes the faithful, scrutinizing historian, who, without fear or favor will record the transaction; then comes a final and impartial posterity, who, without regard to persons or to dignities, will decide upon your decision; then, I trust, the high honor and integrity of this Court will stand recorded in the pure language of deserved praise, and this day will be remembered in the annals of our land as honorable to the respondent, to his judges, and to the justice of our country."

We are not permitted to indulge in further quotations, but must hasten to the close of our assumed task.

Judge Baldwin died 21st of April, 1844. His term of office, particularly while holding this circuit, must have been a most gratifying one. With Hopkinson as an associate—a man of the most agreeable conversational powers—great learning and great wit—there could scarcely have been a better adapted judicial companionship. They manifested always the greatest regard for each other. They bore no mental resemblance, and according to Dr. Johnson's notion, this possibly contributed

to their harmony. Baldwin was all labor, and Hopkinson all genius. Their opposite qualities were both improved by being united. Toil was to some extent lightened of its load, and fancy deprived of her superfluous plumage. Thus they passed along, "dwelling in unity," and after a joint judicial tenure of upward of twelve years, within about a year of each other, they rested from their labors—leaving to the nation the benefits of their learning, their virtues, and their example. They were about the same age, and had both been eminent lawyers at the bar.

Baldwin was unsurpassed for depth of research, and Hopkinson had but few rivals as an advocate. From the age of thirty until he entered upon political life in 1835, he was concerned in almost every case of interest. He had not the strength of Lewis or of Ingersoll, but he was a most fascinating and successful speaker. His merit consisted more in the beauty and fitness of his thoughts than in the choice of his language—though not unfrequently all were united. It is not easy to conceive of a more simple and touching exordium than that with which he introduced his speech before the Senate of the United States, in the case of Judge Chase, which we have already noticed, as a fair specimen of his general style.

In taking leave of Justice Baldwin and Hopkinson, we may be pardoned for introducing—as a connecting link in this series—a brief notice of Archibald Ran-

dall, who succeeded Judge Hopkinson in March, 1842, and who in his turn was succeeded by Judge Kane, in 1846:—

"Judge Randall was admitted to the bar in April, 1818, having studied law in the office of Messrs. Peters and Delany, who were extensively engaged in the admiralty and other practice in the District Court of the United States for this district. He was a laborious and diligent practitioner, and was remarkable for his sound common sense, his amiable and unassuming deportment, and his uniform courtesy to his brother members of the bar. In February, 1834, he was appointed an Associate Judge of the Court of Common Pleas by Governor Wolf, and on the death of Judge Hopkinson, he was in March, 1842, made the Judge of the District Court of the United States for the Eastern District of Pennsylvania.

"In both stations he displayed some of the best qualities of an American Judge. His temper was cool, his judgment clear and calm, and his decisions have given general satisfaction, and have stood, with very few exceptions, the test of ulterior judicial scrutiny. The Bankrupt Act, and informations for breaches of the revenue laws brought before him a large amount of business, and many intricate and difficult questions, which were all satisfactorily disposed of.

"For the last two years the death of Judge Baldwin devolved upon him exclusively the duties of Circuit Judge for this District, and too much praise cannot be awarded to him for his faithful performance of them. It may be said that they were the immediate cause of his death, for he was in court during the preceding week, and had but recently finished the hearing of the motion for a new trial in the case of the crew of the Cactus. He died with harness on his back."

CHAPTER III.

ROBERT COOPER GRIER, L.L.D.,

JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

BORN, MARCH, 1794—APPOINTED, AUGUST, 1846.

HAVING thus passed through the monuments of the venerable dead, "whose good is oft interred with their bones," and drawn from their memory, profitable instruction, it is proper that some notice should be taken of the LIVING, who occupy those places which the learning, wisdom, and virtue of the departed have consecrated to an endless fame. Of the dead we may freely speak, and I rejoice to say, proudly speak. Their relatives—their children and their children's children—need never be ashamed of their lineage, but should feel bound in its contemplation, to pursue those footmarks, which their ancestors have left to direct them in their worldly career, and encourage them in their heavenly hopes.

With regard to the living, our task is more delicate, more difficult, and more dangerous. Their worldly destiny is not yet accomplished. They give bright forebodings, it is true, but life is a checkered and changeful scene, and hopes apparently well-founded, often prove delusive and fallacious. Our enjoyment of the present is prudently mingled with our fears of the future. History, alas, has taught us

> "How many mighty and majestic minds,
> In after life, demolish the proud structure
> Elaborated and adorned by youth
> With gems of science—trophies of the war,
> Garlands of love, and spoils of great ambition—
> DEATH IS THE CROWN OR CRUCIFIX OF FAME."

A distinguished and faithful biographer* has excused himself from writing the lives of the recent dead, from the fear of hurting the feelings of relations and friends. If this is to be deprecated, who shall venture to notice the living, without serious apprehension of giving pain and provoking resentment. And yet it appears to us that a public life should at least endure without shrinking, a liberal public scrutiny; and it also would seem that the living are more appropriate objects of examination than the dead. To speak justly of the living or the departed, is equally a tribute due to posterity. Oblivion or contempt is the worst reproach to which a high public functionary can be subjected.

* Lord Campbell.

We cannot, therefore, consistently with these views and our proposed plan, altogether omit, the notice of at least some of those with whom we are in daily intercourse. We may not say all that they deserve—all that we incline to—nor speak of all who deserve to be spoken of; but what is said, shall be truly said. This is not an eulogy but a history; and it would impart no character to others, and, indeed, possess none of its own, if it either dealt in unmeasured and unmerited praise, or descended, under the garb of candor and sincerity, to obloquy and abuse.

There is not a man of whom we speak, towards whom we harbor any resentment, or from whom we expect any favor, or of whom we acknowledge any fear; where, then, is the excuse for reproach, or the inducement for flattery. Still, we confess it is more agreeable to a generous mind to approve than to condemn.

It cannot be expected that the limited dimensions of our canvas will allow us to group together, much less exhibit individually, all who are deserving of being portrayed in this picture, but the instances selected, in merchants' phrase, may be considered as samples of the respective classes of which the Bench and the Bar are at present composed. There is an isolated portion of the profession, so small as scarcely to form a class, to which we do not feel called upon to refer. They deserve no praise, and require no

censure. If the twelve disciples contained a Judas, it is hardly to be expected that among five hundred lawyers, there should be no derelicts. If the Gospel is not entirely free from human frailty, the disciples of a mere worldly profession can hardly challenge an exemption. With this explanation we shall proceed in our allotted course.

Judge Grier was born on the 5th of March, 1794, in Cumberland County, Pennsylvania, where his father, the Rev. Isaac Grier, at that time resided. The mother of Judge Grier was the daughter of the Rev. Robert Cooper, of the same county. Both the father and the maternal grandfather were members of the Presbyterian Church. In the year of Judge Grier's birth, his father removed to Lycoming County, on the West Branch of the Susquehanna river, where he derived his support from a grammar school which he taught, and the proceeds of his farm. He was a superior Greek and Latin scholar, and a faithful and exemplary pastor. His son at a very early period began to learn Latin under his instructions, and at twelve years of age had mastered the usual preliminary course of Latin and Greek, as taught at that time. In 1811, he entered the junior class of Dickenson College, half advanced. In the meantime, in 1806, his father had removed to Northumberland, where he took charge of an academy, and also served three congregations in the capacity of clergyman, but still mainly depended for the support

of his family, upon the revenue of his farm and his teaching.

While at Dickenson College, the aptitude of Robert C. Grier, in the classics, had placed him far in advance of all competitors in that branch. Dr. Cooper, (formerly Judge Cooper,) was the Professor of Chemistry, and from him Mr. Grier, who was a great favorite, derived most valuable instruction in that department of science.

Mr. Grier graduated in 1812, but continued in the College as a teacher until 1813, when he returned to Northumberland, to assist his father at what, commencing as an academy, had then become a college.

In 1815, beloved and revered by all, his father died—and the acquirements of the son led to his appointment as principal of the college, though at that time he was scarcely twenty years of age. In this situation he graduated the classes, delivered lectures upon chemistry, taught astronomy, mathematics, Greek and Latin, and studied law at the same time. No doubt the very variety of his employments contributed to relieve each of them, and thereby to facilitate the acquisition of all.

His law instructor was Charles Hall, Esq., of Sunbury, through whom he was admitted to the bar in 1817, and commenced practice the same year.

His professional career commenced at Bloomsburg, Columbia County, Pennsylvania, where he did not remain long, for in the year 1818 he had moved to Dan-

ville. Here his practice became extensive, and so continued until he was appointed by Governor Wolf President Judge of the District Court of Alleghany. This appointment was on the 4th of May, 1838.

In October of the same year he removed to Pittsburg, and resided in Alleghany City, till September, 1848, when he came to Philadelphia—he having been on the 4th of August, 1846, nominated and confirmed one of the Justices of the Supreme Court of the United States, in place of Justice Baldwin, deceased.

Since the elevation of Judge Grier to the bench of the Supreme Court, his course has been marked by great uprightness and ability. At Washington he has not only *pronounced*, but *gained*, golden opinions. He is no doubt a sound lawyer and a competent general scholar. As to his native energy and capacity, no one can entertain a doubt.

In addition to those qualifications, he is possessed of that, without which, all of them, would be nothing—a heart of kind and generous feeling. His honesty requires no eulogy. To *possess* it, is not so great a virtue in a judge, as it is a vice to *want* it. A dishonest judge could not breathe the atmosphere of the Supreme Court of the United States. Such an one has never been heard of there—and we trust never may be.

As Judge Baldwin enjoyed the happiness of a long companionship with Hopkinson as an associate, so it

was the good fortune of Judge Grier to be connected with Mr. Kane (as the District Judge for the Pennsylvania Circuit). They entered upon their respective offices within a month of each other, and have ever since largely contributed to mutual assistance and relief.

John Kintzing Kane, was a graduate of Yale College, and afterwards entered the office of the late Judge Hopkinson, of whom he was a favorite student. He was admitted to practice in the year 1817—became in January, 1845, Attorney General of Pennsylvania—and was appointed by President Polk, in the year 1846, upon the death of Judge Randall, District Judge of the United States—a situation which he still holds —and well deserves to hold.

For the competency of his predecessors in office, with the exception of Judge Hopkinson and Judge Randall, we must mainly rely upon tradition—we literally know but little else. There are no Reports of the Court prior to the time of Judge Peters. We disparage none of those judicial functionaries, however, when we say, that in fitness for their posts, no one of them was superior to the present incumbent. Mild, calm, patient, systematic, industrious, and just, we doubt much whether he has had any superior among the district judges of the country. He is not only a competent judge, but a ripe scholar and a finished gentleman; and whatever GRACES he may as-

sume,* which, in our view, should be rather imitated than condemned, he at least takes no AIRS. He is a faithful man—a religious man—a firm man—and has always been pure in his life and his office. What more is required to be said of any public servant?

We have been present at the trial of many cases before him, and deeply interested in some of them, and we are bound in justice to say, that a more painstaking, courteous, and altogether amiable Judge, we never desire to see. It is impossible that a judge should please everybody, and do justice to the law and himself. Counsel and parties sometimes convert legal into personal differences. This is very absurd. A judge cannot decide both ways—and if he listen to both sides, and give the case the best lights of his conscience and judgment, he performs his duty, and no one has either right or reason to complain.

Judge Kane is about sixty-one years of age. As a young man, as we remember him, (being his cotemporary), his appearance was eminently handsome; his person was slender, and of the middle height—he had fine eyes—aquiline nose—large mouth, and excellent teeth—added to which he possesses unexceptionable delicacy and refinement of manners. In early life he gave high professional promise, which in after years

* The judge is very particular in his costume, and exacts a most rigid observance of neatness and order from all concerned in the progress of a trial; if this be an error, it is, as Judge M'Kean says, "on the right side."

he amply fulfilled. He has always been a man of a strict sense of honor, and we need not say, of undoubted probity, and unstained fidelity in the discharge of his arduous and diversified official duties. But let us return to the Circuit Judge.

Judge Grier is now in the sixty-third year of his age, and in full health and vigor, both of body and mind. Notwithstanding some pretty severe professional encounters, arising from sudden, and natural excitement, we have kind feelings towards him, and those feelings naturally lead to a favorable estimate of his judicial character. It is always more agreeable to praise than to censure; but truth is preferable to either, and we must therefore be allowed to say, that, whatever may be the powers exhibited by Judge Grier, while sitting in banc, neither he nor any other man can abide the test of a comparison at Nisi Prius, with Judge Washington. No man can come up to the expectation of the community, while Judge Washington remains in the memory. The judicial glory of the Third Judicial District of the United States, is buried in his grave. It is no disparagement to any man to say that he is lower than one who had no equal, during thirty years, as a Nisi Prius judge.

Mr. Justice Grier, however, is a man of more general and practical knowledge than Judge Washington. His classical attainments are higher and more cultivated. The grasp of his mind is stronger and more

comprehensive; but for experience and perspicuity,—patience and dignity,—and above all, disinterestedness, no judge that has preceded or followed Judge Washington, ever equalled him.

Judge Grier is a man of large proportions; upwards of six feet high; apparently of great muscular power, and iron constitution, and somewhat corpulent; of sanguine temperament; ruddy complexion, and a most agreeable and good-natured face. Notwithstanding an occasional roughness of manner, and harshness of voice, no one can fail to perceive that this is the result of the situations into which, in early life, he was thrown, rather than of any want of gentleness and kindness of nature. If he happen to give the slightest offence, he atones for it so soon, and so willingly, that he secures a friend, where some men would make an enemy. It must further be said, in justice to Judge Grier, that during his exercise of the duties of a federal judge, he has encountered extraordinary difficulties arising from national legislation, on the subject of slavery. These difficulties somewhat arise from his being a Pennsylvanian by birth. Our citizens look with less favorable eyes upon one who was born among them, when even the official post imperatively *compels* him, to run counter to the liberal policy of the State.

Judge Baldwin, who was not exposed to the annoyance of the Fugitive Slave Law, or the excitement of the Missouri question, or the odious Nebraska agita-

tions, and the revolting questions to which they have all given rise, was a much sterner and severer judge in his adjudications, in every matter connected with the conflict between North and South, than Judge Grier. He was born in Connecticut; bred, and cherished, and honored in Pennsylvania; and yet, he seemed to *rejoice* in an opportunity of manifesting his loyalty to southern policy.

He not only carried out the law, but he appeared to do it *con amore*, which can hardly be said of any decision of Judge Grier, who, whether right or wrong, always appears to be swayed by a desire strictly to perform his duty, however he may sympathize with the oppressed.

We can conceive even of such a man, from a high sense of official obligation, maintaining the laws he is sworn to administer, with unflinching firmness; but we cannot conceive, whatever may be his sense of duty, of his looking upon the sufferings and agonies of his fellow-creature, without reluctating in their contemplation.

Laws may control mere judgments, but they cannot, or should not, change the hearts. In the harshest and severest decrees, mildness and sympathy are becoming. Justice may drop a tear into the wound she inflicts, without compromising her divine character.

CHAPTER IV.

JEREMIAH S. BLACK, L.L.D.,

CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA.

BORN, JUNE 10, 1810—APPOINTED, JAN. 1, 1851.

THE first Chief Justice, among the judges elected, for the Supreme Court, was the HON. JEREMIAH S. BLACK. The distribution of honors under the law standing thus:—

"The judges of the Supreme Court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well, subject to the allotment hereinafter provided for, subsequent to the first election. * * * *

"The first election shall take place at the general election of this Commonwealth. The persons who shall then be elected judges of the Supreme Court, shall hold their offices as follows: one of them for three years, one for six years, one for nine years, one for twelve years, and one for fifteen years; the turn of each to be decided by lot, by the said judges as soon after the election as convenient, and

the result certified by them to the Governor, that the commissions may be issued in accordance thereto. The judge whose commission shall first expire, shall be Chief Justice during his term, and thereafter each judge, whose commission shall first expire, shall be Chief Justice; and if two or more commissions shall expire on the same day, the judges holding them shall decide by lot, which shall be Chief Justice."

Under this allotment, Judge Black drew the three years term, Judge Lewis six years, Judge Gibson nine years, Judge Lowry twelve years, Judge Coulter fifteen years. Judge Gibson and Judge Coulter dying, Judge Knox was appointed to the place of the former, and Judge Woodward to the place of the latter; and were afterward confirmed by the voice of the people.

Thus, on the first day of January, 1851, Jeremiah S. Black became Chief Justice, for three years, which was the entire length of his term of office—he had the shortest term, but the highest post; and as he held the first place, he is entitled to be first considered.

He was born in Somerset County, State of Pennsylvania, on the 10th day of June, 1810, and after a pretty thorough mathematical and classical education, for which he was perhaps as much indebted to his own youthful ambition and industry, as to the competency of his teachers, he quitted school, and adopted temporarily the occupation of a farmer.

Young Black was not only well versed in the Latin

and Greek classics, but he was a devotee to English literature, and perhaps his appetite increased from the great difficulty of gratifying it. The books were very limited, and served to stimulate, rather than to satisfy his desires. From a glance into one or two of the dramas of Shakspeare, he had become fascinated with that author, and this gave rise to the following amusing anecdote, relating to that subject. After having been withdrawn from school, he was placed upon the farm. Poetry, however, rarely ploughs well, and never runs a straight furrow. When the boy should have been in the field, he was building castles in the air, and instead of reaping the grain, he was engaged in fancy's garden, plucking flowers.

All his tendencies were towards reading, but without any special or peculiar end. At one time, his father being about to set off upon a visit to Philadelphia, inquired of his son, whether he could do anything for him? "Yes," said he, "father, I wish you would bring me Shakspeare's plays." "Shakspeare's plays!" was the reply. "Why, Jerry, you have certainly had enough of PLAYS, suppose I bring you some WORKS."

Shortly afterwards, at the age of seventeen, he became a student of law in the office of Chauncey Forward, then member of Congress; a brother of Walter Forward, a man of great legal and political distinction. The father of Chief Justice Black was a man of respectability and influence, and from the years

1814 to 1818, was a member of the Legislature, and afterwards for many years an Associate Judge, and toward the close of his life, and at the time of his death, a member of Congress.

In the year 1831, when the subject of this memoir attained the age of twenty-one, he was admitted to practice, and speedily—through the estimation in which his father was held by the entire county—he was launched into an unusual run of business for a young man, which was secured and rapidly increased, by his attention and perseverance in the performance of his professional duties. Such was the reputation he acquired in a few years for fidelity and ability, that in April, 1842, he was appointed, by Governor Shunk, President Judge of the Sixteenth District, composed at that time of Franklin, Bedford, and Somerset counties, to which Blair and Fulton were afterwards added, when those counties became organized.

This was an extensive circuit, and required great energy, indefatigability, and promptness in the presiding judge; and no one can deny that the obligations imposed upon him, were cheerfully and satisfactorily discharged.

In this post, Judge Black continued until January 1st, 1851, when he was nominated and elected, as already stated, one of the Judges of the Supreme Court of Pennsylvania, and became Chief Justice by

the mode of allotment appointed by Legislature, for the term of three years.*

Of the deportment of Judge Black as Chief Justice, both in banc and at Nisi Prius, we have enjoyed full opportunities of knowledge, and can therefore speak with more safety, than when compelled to rely upon the representations of others, who may be swayed by favor or influenced by prejudice.

The style of Judge Black's composition is unlike any other with which we are acquainted. It is fluent, sententious, argumentative, facetious and sarcastic. It is, to our mind, a beautiful style, and the wonder is, where he should have formed it. There certainly could have been no temptation within the ordinary jurisdiction of a county court, to lead to so much perfection in composition; nor could his opportunities while at the bar account for his literary excellence—nor had he the advantages Franklin and many others enjoyed, in a printing-office, which, in itself, with a bright pupil, is the best of schools. Where, then, did he obtain it? He obtained it where Shakspeare, and Johnson, and Chatterton, and Burns, obtained theirs—from the force of innate genius; by which opportunities of knowledge are not only improved, but created.

Still, he must have read much—all his productions

* At the expiration of his term in 1854, he was re-elected by a large majority, and is continued in his judgeship for fifteen years.

show it. But there are many who have read more, whose reading has turned to comparatively little account, for want of that nice appreciation and adaptation of language, which is remarkable in all the literary efforts of Chief Justice Black. If we were asked to say in what the chief merit of his composition depends, we should answer, in the perfect clearness with which he exhibits his thoughts—whether right or wrong, no man can misunderstand him. He is not one of those, whose attempted illustrations render the idea intended to be conveyed more obscure; or who obliterate the impressions already made, by uselessly travelling over the same ground. He does not draw so much from reports as from the pure fountain head. He drinks from the living waters of the law, instead of indulging and disporting himself in the dirty, turbid, and devious channels, which have received the sediments of the science, without its philosophy or purity.

There is one quality possessed by the Judge, that may be appropriately called *alacrity*. He enters cheerfully upon his duties, is remarkable for the quickness of his apprehension, and manifests undivided attention to the business in hand. No man who observes him during the progress of an argument or a trial, can fail to perceive that his mind is actively engaged in noting all its phases, narrowly watching its tendencies, and in deducing its just results. The intelligence of his countenance, the quickness of his eye, and the vivacity of

his whole manner throw a charm over the most perplexing and embarrassing investigations, the effect of which all acknowledge, but none can describe.

On and off the bench, there is a modesty, a candor, a sincerity and good humor about him, that favorably impress all within the circle of their influence. This is obviously natural to him, and of course, therefore, it is uniform, and requires no effort.

In the directness of his opinions delivered in banc, he has no superior. His style is very clear and very pure, sententious, cogent, and perfectly intelligible, and if sometimes defective in taste, it is from his occasionally throwing into it too much pungency, piquancy, and wit, which tend to excite our risibles, instead of conforming to the rule of judicial gravity.

Chief Justice Black is about five feet ten inches high, of strong, compact, and active frame, apparently capable of enduring great physical toil, and no inconsiderable intellectual application. His countenance is animated and intelligent, and indicates plainly great acuteness of apprehension and comprehensiveness of thought. He is a brave, manly and ingenuous judge. He approaches a point courageously, never blinks it or fritters it away; and when he commits an error—for men will err, even though they are judges—he obviously takes more pleasure in confessing his faults, than in boasting his virtues. This is one of the highest qualities of a judge.

We would as leave argue a question before Judge Black, sitting in banc, that he had decided at Nisi Prius, as though he had never decided it at all. How unlike this is to a selfish and opinionative judge, who considers sticking to what is wrong, as equivalent to making it right, and who will not, or cannot sacrifice his personal and intellectual pretensions, to his moral and official obligations. Obstinacy is a virtue only when it is enlisted in behalf of truth, virtue and justice, and sanctioned by reflection and wisdom.

Judge Black is quick, but not hasty. His temper upon the bench is amiable, and his manner, though not the most bland and courtly, exhibits great frankness and warmth of heart—two of the best substitutes for etiquette and social refinements.

Wherever known, he would have been considered a man to be remembered—no common-place man, no ordinary case lawyer. Nor are his classical attainments much inferior to his legal lore. His eulogy upon Chief Justice Gibson, reflects equal honor upon his head and his heart, and I remember to have heard it said by one of the literati, who had a right to judge, that the best biography or memoir of General Jackson that ever was produced, was written by *one* Black, from the backwoods of Pennsylvania, whom he had never seen, but should always admire. That Black, from the backwoods of Pennsylvania, was Jeremiah S. Black, who finally became the Chief Justice of Pennsylvania. We shall have occasion

hereafter, in a more appropriate place, to introduce some extracts from these masterly performances. His success, in the last instance, is not so wonderful, when it is known that in some respects, General Jackson was the prototype of Judge Black. The same firmness of character, the same self-reliance, the same generosity, the same unflinching integrity, the same devotion to friends and antipathy to enemies, the same native and indomitable energy characterize them both. That there should have been sympathy between them, therefore, is no matter of surprise, and those who sympathize most with others, best understand, and can best describe them.

Having spoken of the style of Judge Black, we are free to admit that, in such estimates, men are likely to be governed by their own individual tastes. There is no exact and established standard by which opinion can be regulated. Some men judge style from the sentiments it expresses; as others judge sentiments from the style. Some condemn what others approve; and in this state of diversity and contrariety of opinion, we cannot do better, in closing this memoir, than submit to the test of criticism, a few brief extracts from those productions, to which we have taken occasion to refer. And in the first place, as it is always gratifying to find eminent men shedding light upon others holding a similar position, we present to the readers Judge

Black's notice of the lamented Gibson, his immediate predecessor in office:—

"By this bereavement the court has lost what no time can repair; for we shall never look upon his like again. We regarded him more as a father, than a brother. None of us ever saw the Supreme Court before he was in it; and to some of us, his character as a great judge was familiar, even in childhood. The earliest knowledge of the law we had, was derived in part from his luminous expositions of it. He was a judge of the Common Pleas before some of us were born, and was a member of this Court long before the oldest was admitted to the bar. For nearly a quarter of a century he was Chief Justice; and when he was nominally superseded by another as the head of the Court, his great learning, venerable character, and overshadowing reputation, still made him the only chief whom the hearts of the people would know.

"At the time of his death, he had been longer in office than any cotemporary judge in the world, and in some points of character he had not his equal on the earth. Such vigor, clearness, and precision of thought, were never before united with the same felicity of diction. Brougham has sketched Lord Stowell justly enough as the greatest judicial writer that England could boast of for force and beauty of style. He selects a sentence, and calls on the reader to admire the remarkable elegance of its structure. I believe that Judge Gibson never wrote an opinion in his life, from which a passage might not be taken, stronger, as well as more graceful in its turn of expression, than *this*, which is selected with so much care, by a most zealous friend, from all of Lord Stowell's decisions.

"His written language was a transcript of his mind; it gave the world the very form and pressure of his thoughts. It was accurate because he knew the exact boundaries of the principles he discussed. His mental vision took in the whole outline, and all the

details of what he saw. He made others understand him, because he understood himself—

'Cui lecta potenter erit res
Nec facundiæ deseret hunc nec lucidus ordo.'

"His style was rich, but he never turned out of his way for figures of speech. He never sacrificed sense to sound, or preferred ornament to substance. If he reasoned much by comparison, it was not to make his composition brilliant, but clear. He spoke in metaphors often; not because they were sought, but because they came to his mind unbidden. The same vein of happy illustration ran through his conversation, and his private letters. He never thought of display, and seemed totally unconscious that he had the power to make any. His words were all precisely adapted to his subject. He said neither more nor less than just the thing he ought. He had one faculty of a great poet—that of expressing a thought, in language which could never afterwards be paraphrased. When a legal principle passed through his hands, he sent it forth clothed in a dress which fitted it so exactly, that nobody ever presumed to give it any other. Almost universally, the syllabus of his opinions is a sentence from itself, and the most heedless student, in looking over Wharton's Digest, can select the cases in which Gibson delivered the judgment, as readily as he would pick gold coins out from among coppers. For this reason it is, that, though he was the least voluminous writer of the Court, the citations from him at the bar are more numerous than from all the rest put together. The dignity, richness, and purity of his written opinions, was by no means his highest title to admiration. The movements of his mind were as strong as they were graceful. His periods not only pleased the ear, but sunk into the mind. He never wearied the reader, but he always exhausted the subject. An opinion of his was an unbroken chain of logic from beginning

to end. His argumentation was always characterized by great power, and sometimes it rose into irresistible energy, dashing opposition to pieces with a force like that of a battering ram. He never missed the point even of a cause which had been badly argued. He separated the chaff from the wheat almost as soon as he got possession of it. The most complicated entanglement of fact and law would be reduced to harmony under his hands. His arrangement was so lucid, that the dullest mind could follow him, with the intense pleasure which we all feel in being able to comprehend the workings of an intellect so manifestly superior. Yet he committed errors—it is wonderful that, in the course of his long service, he did not commit more. A few were caused by inattention; a few by want of time; a few by preconceived notions, which led him astray. When he *did* throw himself into the wrong side of a cause, he usually made an argument which it was much easier to *overrule* than to *answer*. With reference to his erroneous opinions, he might have used the words of Virgil, which he quoted so happily in Eaken v. Raub, 12 S. & R.—

'Si pergama dextera defendi potui
Hac defensa fuisset.'

"But he was of all men, the most devoted and earnest lover of truth for its own sake. When subsequent reflection convinced him that he had been wrong, he took the first opportunity to acknowledge it. He was often the earliest to discover his own mistakes, as well as the foremost to correct them. He was inflexibly honest. The judicial ermine was as unspotted when he laid it aside, as it was when he first assumed it. I do not mean to award him merely that common place integrity, which it is no honor to have, but merely a disgrace to want. He was not only incorruptible, but scrupulously, delicately, conscientiously free from all wilful wrong, either in thought, word, or deed. Next, after his wonderful

intellectual endowments, the benevolence of his heart was the most marked feature of his character. He was a most genial spirit; affectionate and kind to his friends, and magnanimous to his enemies. Benefits received by him were engraved on his memory, as on a tablet of brass; injuries were written in sand. He never let the sun go down on his wrath. A little dash of bitterness in his nature would perhaps have given a more consistent tone to his character, and greater activity to his mind. He lacked the quality which Dr. Johnson admired. He was not a good hater. His accomplishments were very extraordinary. He was born a musician, and the natural talent was highly cultivated. He was a connoisseur in painting and sculpture. The whole of English literature was familiar to him. He was at home among the ancient classics. He had a perfectly clear perception of all the great truths of natural science. He had studied medicine carefully in his youth, and understood it well. His mind absorbed all kinds of knowledge with scarcely an effort."

The Eulogy upon Jackson, though less polished, is equally eloquent and cogent. It breathes the spirit of him whom it commends—

"Among the military leaders of this country, whose talents were developed by the last war, Jackson stands alone and peerless, without a rival to come near him. He had all the qualities of a great commander; courage, vigilance, activity and skill. His attack was the kingly swoop of the eagle on his prey, and his defence was like that of the roused lion when he stands at bay in his native jungle. His character in this department is indeed *sui generis* altogether. The history of the world contains no record of any man who has done so much, and done it so well, with means so

inadequate. He was *not* a 'fortunate soldier.' All the circumstances with which he was surrounded were adverse. But his daring spirit made fortune bend to him, and compelled her to bless his standard with a success she never meant for him.

"It is not, however, upon his military services that his fame rests principally. His defence of our Constitution deserves, and posterity will pay to it, a higher praise than his deeds of arms are entitled to. For him peace had her victories far *more* renowned than those of war. They elicited from him higher qualities of mind and heart. The nerve that meets an enemy on the field is comparatively a cheap virtue, for thousands in all ages have had it. But it is not once in a century, that a man is born with the high *moral* courage, which fits him to take the lead in a great reform."

"This priceless gift was bestowed on Jackson in all its perfection, and it placed him in the very front of the world's march. He saw further into futurity than any man of his time, and his was the fearless honesty to tell his countrymen what he did see. He had a heart full of hope and manly trust in the people; and they were true to him, because he was true to them. He pursued wise ends by fair means, and in doing so, he knew fear only by name. No abuse was too sacred, no fraud too popular, for the unsparing hand of his reform. He was no demagogue to fawn upon the masses and flatter their prejudices. He spoke to them like a friend, for he was their friend—their devoted and faithful friend—but he told them plain truth, whether they liked to hear it or not. He knew that no appeal for evil purposes could be made to any people so successfully, as one addressed to their covetousness, and that no deity had votaries so faithful or so numerous as those of Mammon, the meanest and 'the least erect of all the spirits that fell.' He saw the frightful superstition which made strong men bow before the shrine of that base idol, covering the nation as with a dark pall, and weaning the hearts of the people from the worship of liberty and justice. Did he encourage their strong delusion by

joining in the adoration? No; he struck at the false god in his very temple, and took his priests by the beard even between the horns of the altar.

"He has been called ambitious. In one sense this accusation of his enemies coincides exactly with the praises of his friends. He *was* ambitious. But his was the ambition of a noble nature—an affectionate yearning to be loved by his country as he loved her—an intense desire to leave behind him a name hallowed by its association with great and beneficent actions—and to sleep at last in a grave made sacred by the veneration of the wise and the virtuous. Let those who object to such ambition make their worst of it. But, if any one supposes that his life was at all influenced by the vulgar love of power for its own sake, or by the sordid desire to pocket the emoluments of public station, let him remember this: that there never was a period from Jackson's arrival at the age of twenty-one till the day of his death, when he might not have been in the public service if he had so chosen; yet he spent more than half his time in private retirement. He never in his life, upon any occasion, solicited the people or any of their appointing agents for a place. His countrymen pressed upon him eleven different offices, without any procurement of his. Some of them he accepted with reluctance, and *all of them he resigned* before the terms expired, except one; that one he surrendered back to the people, after having held it as long as Washington held it before him.

"Others have said that he was overbearing and tyrannical—a contemner of all authority. No one can deny that he *was* a man of strong will, impetuous passions, and fiery temper. But he was most emphatically a law-abiding man. If there ever lived one who would go further to defend the constitution and laws of his country, or more cheerfully shed his blood to save them from violation, neither history nor tradition has told us who he was. There is not a solitary act of his life among the many adduced to support this charge, which is not capable of a most clear and satisfactory

defence. It is certain that, when engaged in the public service, he never suffered any one to interfere with his plans. When he formed them, he executed them; and if it became necessary to do so, he was ready to stake, not only his mortal existence, but his character (which was infinitely dearer to him) on the issue. It is this unequalled *moral* courage which lifts him so high above common great men. Others have been willing to die for their country, but he perilled life, fortune and fame together. And let it never be forgotten, that these things were uniformly done in defence of public liberty—it was always for his country, never for himself, that he 'took the responsibility.' "

CHAPTER V.

ELLIS LEWIS, L.L.D.,

PRESENT CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA.

BORN, 1799—APPOINTED, 1854.

Ellis Lewis was born in Lewisburg, York county, Pennsylvania, and is now fifty-seven years of age. His paternal ancestors were from Wales, and were persons of respectability. His maternal ancestors were from Drogheda, in Ireland; some of them intermarried with English while abroad, so that the Lewis family may be said to have brought with them a cross of English, Irish, and Welsh origins.

Ellis Lewis was one of four brothers; three became lawyers. In early life they had all been practical printers. The eldest, Lewis, was a doctor of medicine, as well as a lawyer. James was a practising lawyer at the York bar, and ranked highly in the profession; the fourth brother was the editor of a paper in York and Baltimore.

At nine years of age Ellis Lewis was bereft of his parents, and a few years after he entered into "that best of schools," a printing-office. He was afterwards employed in an office in New York, where he became a companion and friend of General George P. Morris. From New York he returned to Lewisburg, studied medicine for a time and then went to Baltimore, where he attempted to renew his business as a printer. This not succeeding, he next betook himself to Williamsport, Pennsylvania. In 1820, he began the study of the law, and in 1822, was admitted to the bar, and shortly after brought his wanderings to a favorable close by marriage. In 1823, he became deputy Attorney General, for Lycoming and Tioga counties. He was assiduous to his duties, though he labored for years under a painful and distressing indisposition, which so reduced him, that he had to be borne upon a litter to York county, where he was relieved from the effects of his disease and restored to usefulness.

He resigned his appointment and removed to Bradford, where he soon succeeded in establishing himself in a lucrative business. He was a self-made man, and he was therefore competent to self-support; he did not, however, confine himself to the law.

In 1832, he entered zealously into the political arena in behalf of General Jackson. From his distinguished services at that juncture, he was sent as a delegate to

the State convention, and was soon after elected to the legislature, by an overwhelming majority.

His legislative career, though highly distinguished, was terminated by his appointment as Attorney General, in 1833, by Governor Wolf. As Attorney General, he refused all fees for public promotions, leaving them to his deputies—an example worthy of imitation.

In the autumn of 1833 he resigned the office, having been appointed President Judge of the Eighth Judicial District of Pennsylvania, composed of Northumberland, Lycoming, Union, and Lancaster. There he continued twelve years, when he was appointed President Judge of the Second Judicial District, containing the city and county of Lancaster. To show his extraordinary industry while on the bench, he also discharged the duties of Professor of Law, and Medical Jurisprudence, in Franklin college, Lancaster, and at the same time assisted in the publication of a valuable law journal.

While holding this position, there was an incident deserving notice, showing the extent of his fame, and the reliance that was always placed upon his veracity and integrity of character, by all who knew him. It runs thus:—

"A short time before the territory of Iowa was fully organized, so as to enforce the laws, two men were arrested for passing counterfeit notes in *Dubuque*. As the people had no other court in operation at the time, what is known as a lynch court, was con-

stituted. It consisted of a sort of town meeting, with a gentleman of the name of Peter Hill Engle, acting as president. The two men accused were fairly tried and convicted. The testimony against one of them was perfectly clear; he had passed a number of spurious notes, and had a large quantity in his possession. He was sentenced to receive a certain number of lashes, as there were no jails or penitentiaries. The other convict had passed no spurious notes, nor had any been found in his possession; on the contrary, all the money in his possession, amounting to eight hundred dollars, was admitted to be genuine. But the evidence was, that the two had lodged at the same inn the night before, and had travelled together that day. This primitive tribunal drew the inference, from the circumstances, that *one* passed the notes, and the *other* was the treasurer, to take charge of the genuine money received in their business operations. The one found guilty of being the treasurer of the company, immediately appealed from the decision. On being asked to what tribunal he appealed, he paused a moment, and then answered—'I appeal to Judge Lewis, of Pennsylvania.'"

The record, with the evidence, was accordingly certified to Judge Lewis, by President Engle, with his written opinion, giving the reasons of the court for the decision. The defendant, whose name was Titus Losey, had been sentenced to pay a fine of eight hundred dollars, and the record showed that the fine had been collected. Judge Lewis entertained the jurisdiction, and gave a written opinion, that the mere circumstance of being found in company with a counterfeiter, was not sufficient to repel the general presumption of innocence; that man was naturally a social animal; that

this feeling would be manifested more readily where two strangers meet in a new country, and happened to lodge in the same inn, and to be journeying in the same direction. On the whole evidence, the judgment below was reversed, and restitution of the fine (which had been collected,) awarded. The record was duly remitted to Judge Engle, to be carried into execution, and the decision was promptly obeyed and the money refunded.

An extraordinary case presented itself before the August sessions of the Lycoming County Court, in 1842, which is entitled to notice, from its bearing upon parental authority, domestic happiness, and religious freedom. It was the case of The Commonwealth v. Armstrong.

The circumstances were these:—In February, 1842, the defendant prohibited the Rev. William S. Hall (the complainant,) from administering the ordinance of baptism, by immersion, to his minor daughter, aged about seventeen, she having previously been baptized in the Presbyterian church, to which her mother belonged. The prohibition was attended by threats of personal violence, if the complainant persisted. On the second sabbath in April following, the complainant baptized the daughter without the father's knowledge. This coming to the father's knowledge, on the following Monday he followed the complainant with such threats, as induced his present application for surety of peace.

Upon the exhibition of these facts, Judge Lewis in substance thus expresses his opinion :—

"Whatever may be the rights of a parent in defence of his child, it is clear he has no right to take the law into his own hands, and to inflict punishment upon those who have already injured him. This is vengeance, and not defence. The defendant, therefore, must give surety in $500 to keep the peace, &c.; but as we have authority to impose the costs, we direct the complainant to pay the costs, which his own first wrongful act has occasioned."

So far for the judgment in the case, but the reasoning and law which authorized that judgment is of superior importance, and thus, in the language of the learned judge, his views are explained, so far as is necessary to our present purpose :—

"The authority of the father results from his duties; he is charged with the duties of maintenance and education. These cannot be performed without the authority to command and to enforce obedience. The term education, is not limited to the ordinary instruction of the child in the pursuit of literature; it comprehends a proper attention to the moral and religious sentiments of the child. In the discharge of this duty, it is the undoubted right of the father to designate such teachers, either in morals, religion, or literature, as he shall deem best calculated to give correct instruction to the child. No teacher, either in religion or in any other branch of education, has any authority over the child, except what he derives from its parent or guardian; and that authority may be withdrawn whenever the parent, in the exercise of his discretionary power, may think proper. If he should come to

the conclusion that the attendance of his child upon the ministration of any particular religious instructor is not conducive to its welfare, he may prohibit such attendance, and confine it to such religious teachers as he believes will be most likely to give it correct instruction, and to secure its welfare here, and its eternal happiness in the world to come. He cannot force it to adopt opinions contrary to the dictates of its own conscience, but he has a right to its time and its attention during its minority, for the purpose of enabling him to make the effort incumbent on him as a father, of 'training it up in the way it should go.' He may not compel it against its own convictions of right, to become a member of any religious denomination, but after it has been initiated, with its own free will, into the religious communion to which its parent belongs, he may lawfully restrain it during its legal infancy, from violating the religious obligations incurred in its behalf, by placing itself under the religious control of a minister whose opinions do not meet its parent's approbation. The patriarchial government was established by the Most High, and, with the necessary modifications, it exists at the present day. The authority of the parent over the youth and inexperience of his offspring, rests on foundations far more sacred than the institutions of man. 'Honor thy father and thy mother,' was the great law proclaimed by the King of kings. It was the first commandment, accompanied with a promise of blessings upon those who obeyed it; while the dread penalty of death, was inflicted upon all who were guilty of its infraction. 'The eye that mocketh at his father, and despiseth to obey his mother, the ravens of the valley shall pick it out, and the young eagles shall eat it.' Prov. xxx. 17. 'The stubborn and rebellious son, who will not obey the voice of his father, shall be stoned with stones, that he may die, and all Israel shall hear and fear.' Deut. xxi. 21. Abraham 'commanded his children, and his household after him, to keep the way of the Lord.' Joshua resolved, both for himself and his house, to serve the Lord. And

the house of Eli was destroyed because his sons made themselves vile, and he restrained them not. 'My son, keep the instruction of thy father, and forsake not the law of thy mother.' Prov. i. 8, 9, and Prov. vi. 20. 'A fool despises his father's instructions.' Prov. xv. 5. 'A wise son heareth his father's instructions.' Prov. xiii. 1. 'Cursed be he that setteth light by his father or his mother, and all the people shall say, Amen.' Deut. xxvii. 16. It was justly remarked by the hoary professor of moral philosophy, in his treatise upon that subject, that the words 'train up a child in the way it should go,' imply both the right and the duty of the parent to train it up in the right way. That is, in the way which the parent believes to be right. The right of the father to command, and the duty of the child to obey, is thus shown upon the authority of the Old Testament, to have been established by God himself. And the teachings of the New Testament abundantly prove that, instead of being abrogated in any respect, the duty of filial obedience was inculcated with all the solemn sanctions which could be devised from the new dispensation. The fifth commandment, 'Honor thy father and thy mother,' was repeated and enjoined by Saint Paul, in his Epistles to the Collossians, 'Children, obey your parents in the Lord, for this is right.' Ephesians, vi. 1. 'Children, obey your parents in all things, for this is well-pleasing unto the Lord.' Collossians, iii. 20. If anything can give additional weight to the authority on which rests the doctrine of filial obedience, it is the practical commentary furnished by the Saviour himself. In his quality of God, it was incumbent upon him, to be about the business of his heavenly Father at Jerusalem, 'both hearing the doctors, and asking them questions.' But in his quality of man, he left the temple and all its teachings of wisdom, and in obedience to the wishes of his earthly parents, 'he went down with them to Nazareth, and was subject unto them.' Luke, ii. 51. Dr. Adam Clark, in his Commentaries on the tenth chapter of Genesis, declares that the duty of children to their parents,

is next in order and importance to the duty we owe to God. No circumstance can alter its nature or lessen its importance. 'Honor thy father and thy mother,' is the sovereign, everlasting commandment of God. Paley, in his 'System of Ethics,' declares it to be the duty of a parent to educate his children, to form them for a life of usefulness and virtue, and asserts that he has a right to such authority, and in support of that authority, to exercise such discipline as may be necessary for these purposes. Dr. Adams, in his work upon the same subject, says, that children are to regard their parents as standing in the most venerable and the most endearing of all earthly relations to them, as those to whom, under God, they owe everything that they are, and everything they hope to be. They are to regard them as the persons to whose kindness, care, and government they have been committed by God himself. The great and good Dr. Wayland, President of Brown University, and a distinguished minister of the gospel of the same denomination with the prosecutor, declares, in his work on moral science, that 'the right of the parent is to command—the duty of the child to obey. Authority belongs to the one, submission to the other. This relation,' he continues, 'is established by our Creator. The failure of one party, does not annihilate the obligations of the other. If the parent be unreasonable, this does not release the child; he is still bound to honor, and obey, and reverence his parent. The duty of parents is to educate their children in such a manner, as they (the parents,) believe will be most for their future happiness, both temporal and eternal. The parent is under obligation to cause his children to be instructed in those religious sentiments which the parent believes to be according to the will of God. With his duty in this respect, no one has a right to interfere. If the parent be in error, the fault is not in teaching the child what he believes, but in believing what is false, without using the means which God has given him to arrive at the truth. In such matters he is the ultimate and the only responsible autho-

rity. While he exercises his paternal duties within their prescribed limits, he is by the law of God exempt from interference, both from individuals and from society. In infancy (under twenty-one,) the control of the parent over the child is absolute—that is, it is exercised without any respect whatever to the wishes of the child.' These are the sentiments of a man of great learning, piety, and purity of heart, of one whose fame has extended itself into every part of this wide-spread Union, and the learned and the good of other nations have been taught to know and to appreciate his exalted worth. His works will remain after the present generation shall have passed away, an imperishable monument to his memory. The doctrines of the common law are in accordance with these principles; it is the duty of the parent to maintain and educate the child, and he possesses the resulting authority to control it in all things necessary to the accomplishment of these objects. The law assigns no limits to the authority of the parent over the child, except that it must not be exercised in such a manner as to endanger its safety or its morals. If the parent should transcend his authority in this respect, an appeal does not lie to the minister of the gospel of any denomination whatever. Application for relief can only be made to the authorities, entrusted by the supremacy of the law, with the high power of controlling parental authority, when the morals or safety of the child require such interference; 1 Blackstone, 450; 2 Kent's Commentaries, 205. The Orphans' Court has by law the right to appoint guardians for orphan children; but so careful has the Legislature been of the right of the parent to have his offspring brought up in the religious persuasion to which he belongs, that the Court is bound to have respect to this consideration in the selection of guardians, and persons of the same religious faith as the parents, must be preferred over all others. The highest judicial power in the commonwealth dare not attempt to estrange the child from the religious faith of its parents. Shall this power be exercised by a private individual,

because he happens to be a minister of the gospel? Shall any man, high or low, be allowed to invade the domestic sanctuary, to disregard the parental authority established by the Almighty, to set at nought the religious obligations already incurred in behalf of the child at its baptism, to seduce it away from its filial obedience, or even to participate in its disregard of parental authority, for the purpose of estranging it from the faith of its parents, or introducing it into a religious denomination different from that to which its parents belong? God forbid, that the noblest and holiest feelings of the human heart should be thus violated—that the endearing relations of parent and child, should be thus disturbed—that the harmony of the domestic circle should be thus broken up, and that the family altar, itself, should be thus ruthlessly rent in twain and trodden in the dust."

The opinion of Chancellor Kent, as expressed in the following letter to Judge Lewis, imparts to the doctrine contained in the foregoing decision, the ratification of one of the most distinguished jurists of the country or the age.

"New York, October 5, 1842.

"DEAR SIR:—I have received, and read with much pleasure, your opinion in the case of Armstrong; and I agree with you in reasoning and conclusion. Before I received your friendly letter, (for which I thank you,) I had noted in a blank leaf, in a proper place in my commentaries,* the decision, as a just explana-

* The entry referred to by Chancellor Kent, will be found in a note to pages 262 and 263, of the second volume of his Commentaries on American Law, published in 1844. It runs thus:—"In the case of the Commonwealth v. Armstrong, in the sessions of the peace for Lycoming county, 1842, Mr. Justice Lewis, the president judge, decided, after a

tion and application of the parental authority, to a case like the one before you.

"With the assurance of my respect and esteem,

"I am, dear sir,

"yours truly,

"JAMES KENT."

"Hon. Ellis Lewis."

The Honorable R. C. Grier, in a letter upon the same subject, of the date of the fourteenth October, 1842, says:—"It is clear as a demonstration, and the conclusion incontrovertible, by any who acknowledge themselves bound by the law of the land, or the word of God,—to the parent is committed the sacred duty

learned examination of the subject, that a minister of the gospel had no right, contrary to the express commands of the father, to receive an infant daughter, under the immediate guardianship of the father, from the church to which the father belonged, and in which the child was baptized and instructed, and initiate it by baptism, into another church of a different denomination. It was held to be the *right* and *duty* of the parent, not only to maintain his infant children, but to instruct their minds in moral and *religious* principles, and to regulate their consciences by such a course of education and discipline. All interference with the parental power and duty, except by courts of justice, where that power is abused, is injurious to domestic subordination, and to the public peace, morals, and security. 'Parents,' says a distinguished jurist on natural law, 'have a right by the law of nature to direct the actions of their children, as being a power necessary to their proper education. It is the will of God, therefore, that parents should have and exercise that power.' 'Nay,' he observes, 'parents have the right to direct their children to embrace the religion which they themselves approve.'"—*Heinicius*, b. 2, chap. 3, secs. 52–55.

of bringing up his children in the 'nurture and admonition of the Lord, &c.'"

The opinion of Judge Lewis is also fully endorsed by Dr. Wayland, President of Brown University, (Providence,) one of the most eminent moral philosophers of the time.

Judge Lewis has received the degree of Doctor of Laws and Doctor of Medicine, and he richly merited both. Indeed, if his honors had been equal to his deserts, D.D. might also have been appropriately conferred upon him. To say that these distinctions are not matters of pride with him, would hardly be believed; for if we were called upon for an opinion as to what is his highest ambition, we should incline to the belief, that it is directed to eminence in *all*, rather than any *particular* science. The diversity of his application is such that the change seems to afford relief, and he knows each branch of his studies better, from extraordinary familiarity with all.

But his highest quality is his conscientiousness. His judgment is sometimes eccentric, but his conscience, never. No influence can swerve or sway him from what he believes to be right.

In 1851, Judge Lewis, under the Constitution, and amendments of 1850, was elected a judge of the Supreme Court, and, by allotment, provided for by law, became entitled to the post for six years. The judge who held for the shortest term, (three years,) was to

sit as chief justice; the next shortest, (six years,) in turn became entitled to that position. Upon the expiration of Judge Black's term, Judge Lewis succeeded him, and became chief justice, from the first Monday of December, 1854, for six years.

Since Judge Lewis has been in his present situation he has abundantly sustained his former character, and fulfilled the expectations and hopes of those who knew him best and loved him most. For industry, he is unequalled; and industry such as his, let it be observed, is rarely the companion of a genius so comprehensive and various.

He is not only a sound and discriminating lawyer, but he is well versed in medical jurisprudence, of which, as is known, he became a professor at Franklin College. His character as an advocate stood high while at the bar. He was familiar with the principles of general science, and he acquired a respectable knowledge of the liberal arts. Nor is he deficient in classic literature; and whatever obstructions he has encountered in an arduous, various, and honorable career, he has triumphed over by an industry and energy, seldom if ever excelled.

Chief Justice Lewis is now in the 57th year of his age; five feet seven inches high; of a slender, but agile person; black hair; a dark, deep-set, penetrating eye, indicative of great kindness, great spirit, and great quickness of apprehension. Any one to look at him,

would know him at once to have been a model of industry all his life.

He is perhaps too much of a politician; but that is not his fault so much as the fault of the circumstances into which he has been thrown, by those accidents which are ever attendant upon the wayward footsteps of self-taught men. But, politician as he is, no one shall justly assert that he ever was a political strategist, or deny that, in all his relations, private or public, political, professional, or official, he has always proved a faithful and an honest man. He ever bears in mind the doctrine of Socrates, that "Three things belong to a judge: to hear courteously, consider soberly, and give judgment without partiality."

To say that he is an ambitious man, is to say no more than may be readily conceived from the traits of his life already exhibited; but his ambition has ever had an honorable direction, and never stooped from its lofty flight to unite with meanness, or to play the pander to power, at the sacrifice of principle. He is a humane though a just judge; conciliatory and forbearing with the bar, indulgent to the young and inexperienced, and especially sympathetic towards those who struggle for advancement in their profession, under sullen influences, and against adverse circumstances—

> "Taught by that power that pitied *him*,
> He learns to pity *them*."

In a late work upon phrenology, Judge Lewis is spoken of in very favorable terms; and without giving the author credit for deriving his opinions from phrenological denotements, some of his remarks are perfectly well founded. He says, "Judge Lewis's temperament is the best imaginable; that it will sustain an extraordinary amount of exertion; and bend instead of breaking under disease." This may all be true, and indeed is so; but we should presume that this picture was drawn, not from the developments of phrenology, but from an intimate knowledge of Judge Lewis, as obtained from the experience which his whole life has supplied.

CHAPTER VI.

THE JUSTICES OF THE SUPREME COURT, UNDER THE CONSTITUTION OF 22 FEBRUARY, 1838, WITH THE AMENDMENTS OF 1850.

JUSTICE WOODWARD.

We shall for the present draw no comparisons; but regulating our anticipations by our experience, there would be little hazard in saying, that in all the qualifications of the judicial character, extensive legal learning, sound morality, and most urbane and agreeable manners, there have been but few judges in the State, perhaps in the country, who, at his age, have given promise of greater excellence or eminence than the Hon. George W. Woodward. Let it not be said our praise is too general in regard to the members of this Court to be acceptable or valuable. This is nothing to us. If there be general merit, there should be general approval. We borrow no man's opinions, and ask

no man to adopt our's. Truth is more desirable and more valuable and more lasting than popularity. We do not mean to say, that all or any of these judges are without faults; but we leave it to others to find them out; and trust we shall never manifest that very questionable virtue, of *seeking* for vice or blemishes, where they do not betray themselves.

Judges have a pretty hard life, and need not be envied. They can not please everybody, and they never satisfy the party or the counsel against whom they decide. How unreasonable, then, is it, when they encounter so many prejudices, to withhold from them the just meed of approbation. There is no safety in a judge that is swayed by any other consideration than a sense of duty. A very distinguished judge, upon an occasion, not many years since, nonsuited the plaintiff, to the great displeasure of the counsel, of course, which the judge perceiving, said to him, calling him aside, "You seem to be hurt." "To be sure I am," hastily replied the counsel. "I think I have reason to feel hurt." "I think you are mistaken," said the judge. "Remember, we have both our duties to perform, yours have been faithfully performed, and I trust so have mine. You have no more right to make yourself the judge, than I have to make myself the counsel." This once understood, and there can be no dissatisfaction.

Judge Woodward's birth was on the 26th of March, 1808, in the village of Bethany, Wayne County, Penn-

sylvania. His parentage was as respectable as any in the State, of which no other voucher can be required than the moral and religious training of their son.

The academic education of young Woodward was principally received at Geneva, New York, and at Wilkesbarre, in Luzerne County, Pennsylvania. Upon its completion he entered, at the latter place, into the office of the Hon. Garrick Mallary, and was admitted to practice at August term, 1830.

In the spring of 1831, a few months after the admission of Judge Woodward, Mr. Mallary was appointed to the Bench of Northampton, Lehigh, and Bucks Counties, and upon assuming his seat, transferred his entire professional business, which then extended through all the counties of North-eastern Pennsylvania, to his favorite pupil, Mr. Woodward, who, though at that time not twenty-three years old, had already given an earnest of that industry, fidelity, and ability, which could not fail to secure future success and eminence at the bar. Judge Woodward, from the time of his admission, remained in Judge Mallary's office, which he retains still, down to the present moment.

Here he continued in the enjoyment of full practice at the bar until the beginning of the year 1841. Certainly no man of his age, at least in the interior of the State, was ever more rapid in his advancement, more implicitly relied upon by the community, or more deserving of that advancement and reliance.

In 1841, through his professional labors and exposure upon the circuits, his health beginning to fail, he accepted a commission as President Judge of the Fourth Judicial District, composed of the counties of Huntingdon, Mifflin, Centre, Crawford, and Clinton—territorially the largest district in the State. The two counties first named were taken from the district the next year, and in the other three, Judge Woodward presided until the expiration of his term of office, in the spring of 1851.

Declining an *election* in the Fourth District, (for at this time the office had by constitutional provision become elective), and also declining a nomination on the state ticket for the Supreme Bench, he returned to his practice at Wilkesbarre, with the full intention of continuing at the bar for several years; and such was his popularity with all who knew him, that he would have had no difficulty in retrieving his former lucrative and extensive business. But upon the death of Judge Coulter, in the year 1852, the appointment to the Supreme Court, in the place of the deceased judge, being tendered to him by the Executive, he accepted it, and thus unexpectedly, but not undeservedly, reached the highest judicial honors of the State.

At the fall election (for the Governor's appointment was temporary and provisional,) he was chosen by the people for the full constitutional period of fifteen years, from the first day of December, 1852.

Judge Woodward is now about forty-seven years of age, of an agreeable face, and graceful person. He is upwards of six feet high, well proportioned, always appropriately apparelled, and ever kind, attentive, and dignified in his deportment. Calm, patient, and meditative, he closely marks the progress of a cause and the course of the argument; exhibits no fretfulness, rarely interrupts counsel, never jumps to conclusions, but always bides his time. In his charges at Nisi Prius, and in his opinions in banc, no man can fail to perceive the lofty, legal, and moral tone of his mind. In his person, as we have elsewhere said, he strongly resembles Chief Justice Gibson at his age; but there is very little resemblance in the structure of their minds. Judge Gibson's attainments were more comprehensive and diversified, but less concentrated and available; his mental grasp was stronger, but it was not so steady. Judge Gibson struck a harder blow, but did not always plant it, or follow it up, so judiciously. Judge Gibson sometimes rose above expectation, Judge Woodward never falls below it. Judge Gibson's industry did not uniformly equal his talents. Judge Woodward's talents are, if possible, surpassed by his industry. Judge Gibson was, perhaps, the greater man, Judge Woodward the safer judge.

When it is remembered that this comparison is made not between men of an equal age—for Chief Justice Gibson was more than twenty years the senior of Judge

Woodward—we must in our computation, upon the one side, throw into the scale the experience which a score of years will probably produce; while on the other, we must make allowance for the infirmity and defects, which are almost invariably attendant upon a life perplexed with accumulated cares, and protracted beyond the Gospel allowance of three score years and ten. It is, indeed, much to be doubted, whether a man ever *improves* intellectually after he is sixty. He may still continue to acquire knowledge, but he also gradually loses much that he had previously gained. The impressions made upon the mind of the aged, as compared with the impressions upon youth, are like the writing in sand, compared with the inscription upon the retentive rock.

In January, 1837, he became a member of the Convention for the amendment of the Constitution of 1790. This Convention was in session from time to time from January, 1837, until the 22d of February, 1838. It consisted, as is well known, of some of the ablest and most distinguished men of the State. And when it is remembered that Mr. Woodward was then under twenty-eight years of age, and had been admitted to practice but about seven years, the prominent and efficient position which he held in such a body was remarkable, though not surprising to those who had been familiar with his talents and his virtues. His speech upon judicial tenures, a subject which called forth all the

energies and eloquence of the Convention, was far beyond what could justly have been expected from one of his years, and, indeed, placed him in the ranks of the best debaters in that body.

JUSTICE KNOX.

The Honorable John C. Knox, one of the judges of the Supreme Court of Pennsylvania, is a native of Pennsylvania, and was born on the 17th day of February, 1817. His family, on the paternal side, were originally from Scotland, but have been residents in this country for nearly two centuries. But little is known of the course of his early education, the institutions of learning with which he was connected, or the instructions which contributed to form his mind and establish his principles. This is the less important, however, as we have the result of an excellent training presented by his entire life—whether derived from others, or springing from the native energy of his own intellectual frame, it would be useless to inquire.

He, no doubt, had a better education than the most favored judge that ever sat upon the King's Bench—Lord Chief Justice Holt—who commenced an indolent career at a free school, was transferred at sixteen years

of age to Oxford, where, before his first year was expired, he was expelled for his irregularities and licentiousness; and who, in after and prouder days, as history informs us, wrote badly, renounced classical studies, and cared nothing even for the polite literature of his own country.

In the month of June, 1839, in the twenty-third year of his age, after having creditably passed through the necessary preliminary course of legal studies, Mr. Knox was admitted to the bar in Tioga County, Pennsylvania.

In October, 1840, he was appointed deputy Attorney General for that county. In this situation he continued in the faithful discharge of his official duties for three years, at the expiration of which time he resigned. In October, 1845 and 1846, he was elected to the Legislature, and at the session of 1847, received all the Democratic votes in caucus, on the first ballot, for Speaker. He was also voted for by his entire party in the House, but the Whigs having a majority, the Hon. James Cooper was the successful candidate.

On the 10th of April, 1848, Judge Knox was nominated by the late Governor Shunk, President Judge of the Tenth Judicial District, composed of the counties of Westmoreland, Indiana, and Cambria. This appointment was accordingly unanimously confirmed by the Senate.

In October, 1851, the judiciary under the new Constitution having in the meantime been rendered elective,

Judge Knox was chosen President Judge of the Eighteenth Judicial District, composed of the counties of Venango, Clarion, and Jefferson; and this, too, while residing in and presiding over the Tenth District.

In May, 1853, he received the appointment to the Supreme Court from Governor Bigler, to fill the vacancy occasioned by the death of Judge Gibson, and in the October following, he was elected to that post for a term of fifteen years, by a majority of upwards of thirty-seven thousand, and received his commission accordingly for the term of fifteen years, from the 1st of December, 1853.

During Judge Knox's presidency in the Common Pleas, he held courts in the following counties—Westmoreland, Armstrong, Indiana, Bedford, Beaver, Butler, Erie, Venango, Clarion, Jefferson, Crawford, and Potter; about one-fourth of the counties in the entire State, and probably more than any other judge now in commission has ever presided over. But the importance of judicial services consists more in the quality and character of those services, than their local extent; and it may truly be said, in those respects, that the judicial merits of the learned Judge were as commendable as his perseverance and industry.

Judge Knox, in his new position, on the bench of the Supreme Court, maintains fully the character which recommended him to that station. He is mild and bland in his manner, unswerving in his principle,

laborious and patient in the discharge of his high function, and while not unmindful of his own rights, studiously observant of the rights of others.

In person, he is of the middle height, and somewhat corpulent, which, at his time of life, may seem a little inconsistent with the activity of his mind, and the severe toils he necessarily must have encountered in his career. It may partly be accounted for by the evenness of his temper, and a spirit of kindness and good-will which seem to prevail in his intercourse with his fellow men, and which manifests itself as well in the benignity of his countenance, as the urbanity of his demeanor. With such an elective judge, there is everything to hope and nothing to fear, but his loss.

JUSTICE LOWRY.

One of the neatest, pleasantest, and most punctual judges on the bench, is Mr. Justice Lowry. He is well read in the common law; well posted in cases, and a thorough scholar in the civil code, from the fountain of which he not unfrequently draws largely, in his administration of justice. There is certainly not a more conscientious man on the judgment seat, or one who imparts to it greater dignity or decorum; but it is

doubtful whether his mode of conducting trials at Nisi Prius is wisely adapted, either to the habits or necessities of a city like Philadelphia.

The refinements of a metropolitan city would be absurd in an obscure county, while the want of them would be disgraceful to a city. Justice, it is true, is the same in all places, but the modes and forms of justice are not, and should not, be the same in all places.

Justice abhors hurry; it avoids interference between the different departments of duty involved in any cause. A judge has no right, however perspicacious he may be, to presume that he understands a case better than the counsel, and that, too, before he has half heard it. Nor has he any right to restrict counsel to an argument of fifteen or twenty minutes, in an address to a jury of twelve men, and often of twelve different minds, or dispositions, or interests, in the discussion of facts, the mere relation of which would employ twice that time. Judges should bear in mind that a manifestation of impatience, or an opinion hastily thrown out, is very apt to exercise an undue influence over a jury, that nothing can afterwards remove or resist. Its effects are often incurable. A mere intimation of a judge is so potential that, in many cases, it decides a case, and always, as has been said, affects its result.

Justice Lowry does this so smilingly, that no one can exactly take offence; but while judges remind

lawyers that they should not be dissatisfied with the discharge of judicial duty, lawyers may remind judges of correspondent privileges on the part of the bar.

A case is decided promptly,—the judge goes home to his dinner; his appetite is not impaired; he has not been compelled to "eat his mutton cold." He knows nothing, and cares nothing, for the condition of the hapless suitor, whose character has been blasted, or whose fortune has been destroyed, without a regard for the ordinary ceremonials attending upon any decent sacrifice. He does not consider the costs that are the sequel to the verdict; yet "curses not loud but deep," are breathed, under the belief that a fair opportunity for a trial has not been afforded. Thus the doctrine is lost sight of, as inculcated by Blackstone, that "next to the accomplishment of the objects of justice, it is desirable that public satisfaction should be regarded."

It is our duty to say that, while Judge Lowry is a great favorite during sessions in banc, and while his judicial deportment, in other respects, is not only unexceptionable, but deserving of imitation and commendation; as regards the management or control of a Nisi Prius trial, he evinces too great a disposition to direct the cause at the outset, without waiting, as he should, for its gradual development. He throws his impressions of facts too much into the jury box, (when he permits a case to reach a jury,) instead of restricting himself to a charge upon the law; and, after stating

the facts, leaving their interpretation and application to the jury.

In such circumstances, a trial by jury is of no use; for either the jury carry out the views of the court upon the whole subject submitted to them; or if they are refractory and jealous of their own rights, judicial encroachment sooner or later drives them into an opposite extreme, and in the assumption of power beyond what is legitimate, they override law and fact, and substitute their impulses for the decree of justice.

We trust that our commentary, while it discusses, will not be considered as unduly extending, our text, which is one of interest to the community; or at all events, that it will not be ascribed to any want of personal regard for the learned Judge. Upon the contrary, it is founded in the sincerest personal esteem and respect, and is intended to call his attention to what, if overlooked, might hereafter be a matter of regret to himself, as well as to others.

With these remarks, let us proceed to present some of the lineaments of a life, the smooth and gentle current of which, fanned by the popular breath, has at last borne him into one of the highest judicial positions in the State.

On the 1st day of January, 1851, he became, by election, a judge of the Supreme Court, and drew next to the longest term, twelve years. He has now been five years on the bench. His reported decisions have

been marked by great clearness, brevity, and strength, showing that when he chooses to give his mind fully to a subject, it is entirely within his comprehension.

He is an industrious man when the occasion, in his opinion, requires industry; but his mind is of that turn, that it is embarrassed by the minute details of a Nisi Prius trial, or refuses to apply its energies to subordinate points or issues. Nothing that relates to justice is unworthy of regard. The poor have claims as well as the rich; and if the judges of the present day had enjoyed the example of Judge Washington, they would have found that he was not regulated by the amount of the stake, but by the dignity of his position. Nothing to him was a trifle that concerned the due administration of the law. There he sat, pale and abstracted from all the world, an embodiment of justice, his features never changing, his voice never heard. And we remember to have heard it said of him, and also of Justice Patterson, that they respectively sat for days in the trial of cases, and never interrupted counsel or asked a question. As to their interlocutory comments upon the character of the testimony, or the character of the case, we defy any man to give an instance of it! But it is to be feared "we ne'er shall look upon their like again."

Judge Lowry, at the time of his elevation to the Supreme Court, was presiding in the Court of Common Pleas of Alleghany. He bore a high reputation for com-

petent knowledge, great urbanity, and rigid justice. No man that has marked his course while upon the bench, could entertain the slightest doubt of the purity of his intentions, or his extensive legal attainments. His personal demeanor during the trial of a cause is unexceptionable. He is composed, prompt, and dignified. If there is any defect in him, it is attributable, perhaps, to too much impetuosity or immaturity of judgment; that is to say, entertaining or expressing an opinion before he has heard the question fully *discussed*, and sometimes before it is fully *stated*. This is very discouraging to the counsel against whom the opinion operates. Lord Thurlow once said to Mr. John Scott, (afterwards Lord Eldon), that he (Thurlow) never decided in his *favor* without *hearing* him, as his own argument sometimes satisfied him that he was wrong. But it is a much severer habit to decide *against* a lawyer without hearing him at all, or listening to him only after a pre-expressed decision of the case. We do not know what may have been the experience of others, but we have rarely known a judge to retract an opinion upon a point of evidence, which he has once volunteered—it is too great a compromise of judicial infallibility.

Then what is to be done? The only way of avoiding the evil is to resist it in the beginning. Listen; think well before you decide, and you will decide twice as well.

In banc, Judge Lowry has no superior, but at Nisi

Prius, the confusion and perplexity of a jury trial seem not so favorable to the exercise of his excellent judicial qualities. This, however, is too common to be remarkable. The greatest Nisi Prius judges, like the greatest Nisi Prius advocates, are not equally eminent in the Supreme Court. And the converse of the proposition is also true. Lawyers and judges who are most distinguished in the Court in banc, often hold an unequal position at Nisi Prius. There are but rare exceptions to this rule—so rare, indeed, as only to confirm the rule.

Judge Lowry is apparently some forty-five years old, of the middle size, regular and handsome features, placid countenance, and of a most amiable temper and conciliatory manners. But, with all these fascinations, when he once resolves, he is as fixed as Terminus—nothing can move him. This is a great quality in a judge, if he could always be right; and at all events, it is better than, by perpetual doubts and changes, to be always in the wrong.

But, we are bound to say, there is one point of view in which judges from the interior may claim to stand excused, for any slight aberrations from our established usage. They have formed their judicial habits by a different—we do not mean a defective or inferior—standard; and therefore, rightly viewed, it is more extraordinary that we all agree so well, than that we do not agree better. Time, no doubt, will remove all

impediments between us, and mutual indulgence eventually restore and secure harmony.

In concluding this notice, we take leave to observe, that by the anomalous and chance mode of arranging the judiciary, although it was designed that each judge should in his turn hold the office of Chief Justice for three years, death, and unforeseen contingencies have baffled legislative wisdom; and it so turns out that, at the expiration of the chief justiceship of Ellis Lewis, Judge Lowry will become Chief Justice for six years—that is, for the whole residue of his term. There can be no doubt but that he will make an excellent presiding officer, as, in addition to his admitted competency as a lawyer, he is distinguished for his observance of system and punctuality, which are indispensable qualifications for the duties of that high office.

Considering the recent organization of the Court—the difference in the modes of practice—new forms, issues, habits, and associations—to say nothing of the extensive field which the jurisdiction of the Court embraces, it is very questionable whether any five judges in Pennsylvania could have been selected from the community, who would have performed these duties more faithfully, more satisfactorily, or more creditably to themselves and the State, than the present incumbents; and if they remain in their present positions until required to give place to *better men*, notwithstanding legislative limitation, they will virtually still hold by a LIFE TENURE.

CHAPTER VII.

THE DISTRICT COURT FOR THE CITY AND COUNTY OF PHILADELPHIA.

This tribunal, without reviewing its early history, may be said to have been, for the last ten years, one of the most busy and efficient in the State, sitting, as it does, ten months in a year, with a thousand cases on the trial list, and nearly two thousand brought to a term. The Court was organized by Act of 30th of March, 1811. It consisted of a President and two Associate Judges, any one of whom had power to hold the Court, with the same power and authority as was vested in Courts of Common Pleas for the City and County of Philadelphia. The Court was to have no jurisdiction, either originally or by appeal, except where the sum in controversy should exceed one hundred dollars. Under this Act, the Associates were laymen, and so continued until the year 1835. On the 28th of March, 1835, an

Act was passed providing for the continuance of the Court, and also providing for three judges, learned in the law, one of whom to be president, and renewing and continuing in force so much of the preceding Act, as was not inconsistent with the provisions of this Act.

By the sixth section it is provided, that this Court shall hold four terms in the course of a year, to begin on the first Monday of June, September, December, and March, together with adjourned courts, whenever the state of business shall require it. And it further, provides that if the number of suits before the Court require it, the judges shall sit daily, (Sundays only excepted,) during at least nine months in every year. And it provides, also, that the determination of no cause before said Court shall be delayed beyond the fourth term, including that to which the said action was brought, if the parties be prepared for trial at the time appointed by the said Court; and if the judges should wilfully delay any cause, suit, or action, in readiness for trial aforesaid, it shall constitute a misdemeanor in office.*

The first judges appointed under the law of 1811, were Joseph Hemphill, President, and Anthony Simmons, and Jacob Somers, Associates.

* Stroud and Brightly, District Court, p. 242—edition of 1853.

Judge Hemphill was succeeded in his judicial honors by Thomas Sergeant, a profound lawyer, and a scholar of most extensive attainments in general literature; and who subsequently, having passed through this and various other public trusts, occupied a distinguished place for many years on the bench of the Supreme Court.

As has been stated, the District Court was remodelled by the Legislature in 1835, and "three judges learned in the law," were then substituted for the prior incumbents. The names and the order of appointment of those who held their seats from the period referred to, down to the date of the amended Constitution, will be exhibited hereafter.

It is not practicable in a work of this kind, whatever may have been the deserts of the judges, to make them more than subjects of a nominal or cursory notice. Let it then suffice, that those who have passed away with the change and current of time, will, by a grateful public, be remembered, long—long after this transient and imperfect work and its humble author shall have been forgotten.

Many of those illustrious men—Ingersoll, Levy, McKean, Morgan, and others, have gone to their unearthly rewards; and their brethren who survive, and who must shortly follow them, will, at least, during the remnant of their worldly pilgrimage, experience the proud solace which arises from contemplating a temple

of justice, of which they were at one time the ornaments and the pillars, and which is still guarded by their successors with a vigilance and devotion, commensurate with the incalculable importance of the trust. We come now to a brief notice of the Judges of the Court, as it is at present constituted.

GEORGE SHARSWOOD, L.L.D.,

PRESIDENT JUDGE OF THE DISTRICT COURT FOR THE CITY AND COUNTY OF PHILADELPHIA.

The Honorable George Sharswood was born on the 7th of July, 1810, and graduated at the University of Pennsylvania, on the 31st of July, 1828, with the highest honors, delivering the Greek salutatory, and manifesting a scholarship, of which his unceasing industry had given an early earnest. In the month of August, of the same year, he became a student in the office of Mr. Joseph R. Ingersoll, and after severe application to his studies, was admitted to practice on the 5th of September, 1831.

Even after Mr. Sharswood's admission, he still blended his classical with his professional duties, besides giving some attention to the modern languages, and it may be truly observed of him, that it has seldom happened that such young shoulders bore so wise a head.

He was not deficient in genius, but his great quality consisted in rigid and indefatigable labor. He was a model for a student. Always thoughtful, yet always cheerful; modest and retiring in his manners, yet in a moment of exigency not deficient in just reliance upon himself. We do not think he could ever have been an effective advocate. The turn of his mind was too tranquil to enjoy or to endure the tumult, agitation, and excitement of jury trials. But in an argument to the Court in banc, upon a point of law, few men of his years would have been his equal—cool, calm and collected, he had full control of that abundant stock of knowledge which untiring perseverance and industry had enabled him to accumulate.

After remaining at the bar some five years, with about the usual share of professional business, but with bright hopes clustering round him, he was elected to the Legislature on the 10th of October, 1837, where, it is sufficient to say, that he justified the most sanguine hopes and expectations of his constituents. On the 9th of October, 1838, he became one of the select council, and on the 29th of June, 1841, was appointed secretary of the investigating committee of the stockholders of the Bank of the United States. On the 12th of October, 1841, he was elected again to the Legislature, and continued in that body by another election, on the 11th of October, 1842. Scarcely had his legislative services terminated, when, on the 8th of April, in

the year 1845, he received the appointment of Judge of the District Court for the City and County of Philadelphia, and on the 1st of February, in the year eighteen hundred and forty-eight, became its President. On the 14th of October, 1851, under the new constitution, he was elected by a large majority to the same judicial position, which he had previously held from the executive and senate of the State. He was commissioned on the 1st of December, 1851.

In all those varied, and highly honorable and responsible employments, it may be justly said, that he manifested the most abundant capacity and fitness for the duties imposed upon him. But he more especially shone in his judicial qualifications. Take him for all in all, at his time of life, no bench in Pennsylvania has borne a more unblemished, more competent, or more exemplary incumbent. He cannot be said to be a man of refined and fascinating manners; his close studies and constant occupation would forbid that, but he is a man of kind, liberal, and honorable feelings, just such a man as you might suppose was born to be a judge; and if he holds out as he has begun, and Heaven and his constituents continue him to his "three-score years and ten," we are mistaken, or he will furnish the best practical proof of the folly of legislating judges out of office, at the expiration of sixty years.

Since his presidency in the District Court, Judge

Sharswood has been chosen Professor of Law in the Pennsylvania University, where he is an invaluable acquisition. Apart from this duty, he is engaged in delivering a course of elaborate lectures before the Commercial Institute. And when it is remembered that the court in which he presides sits ten months in a year, and is continuously and laboriously occupied during all that time, in every diversity of trials, certainly no better commentary can be required upon his exhaustless patience and energy of character.

But to glance from the *mental* to the *personal*—Judge Sharswood is about five feet ten inches high, with a slight stoop of the shoulders, attributable, probably, to his studious pursuits throughout life. He has a benevolent face, an even temper, great patience, and that—without which everything else is nothing—uncompromising honesty. The honesty of a judge, however, is hardly necessary to be referred to, as without it, no man is to be *considered* a judge. He is only a pageant in the temple of justice.

All this we have said with entire frankness and sincerity, and are prepared to stand by. Nay, it is the voice of the entire bar, and we may be excused, though it partakes of something bordering upon a rebuke, in saying that there is only one defect in Judge Sharswood's judicial manner, and that possibly arises from Judge Washington's having departed from the bench before Judge Sharswood came to the bar. Judge

Washington, never used a mallet or a gavel, or commanded "silence!" or directed the members of the bar or the by-standers to take their seats. In departing from this example, we think Judge Sharswood errs. These errors, however, may be attributable to the nature of the business, or may have been inherited from some of his official predecessors. Be this as it may, they are rather formal than substantial matters of objection—mere motes in a sunbeam, offending the eye, without diminishing the light.

Judge Sharswood may be cited in support of our theory, that judges—all other qualifications being equal—taken from the bar before they have been extensively engaged in practice, generally discharge their duties more satisfactorily than those who are hackneyed in litigation, and therefore take partial or prejudiced views of a case. Unless the opposite sides of the issue exhibit great inequality in merit and strength, we defy any man to perceive, from the deportment of the judge, to what result his mind inclines. This is a great virtue in a judicial officer—nothing is so unbecoming in authority, as to descend from its high calling into the arena of professional degladiation, and advance gratuitous opinions, and join in a conflict between out-posts, before the mind entirely grasps the merits of the controversy. Counsel may be less observant of what they say or do, but a judge should permit no word to escape his lips during the progress of a trial,

that may tend to bias the jury, or throw reproach upon one party or the other. Words, as we have elsewhere said, are things, and judicial words are very operative, if not controlling things, upon the minds of the "sworn twelve," who, having for the most part, but little light in themselves, look anxiously for the least glimmering of it that may be shed from the bench, and sometimes convert that light into darkness.

Judge Sharswood puts his cases, of course, very fairly to a jury; he seldom intrenches upon their rights to determine upon the facts, and when he charges upon the law, he does it with great clearness, precision, and cogency, and so as to be comprehended by any man of the most ordinary intelligence. His thoughts are not only perspicuous, but the language in which they are clothed is so plain and unaffected, as to prevent all equivocation or misapprehension.

GEORGE M. STROUD, L.L.D.,

JUDGE OF THE DISTRICT COURT FOR THE CITY AND COUNTY OF PHILADELPHIA.

It is now our agreeable duty to direct attention to a faint outline of the judicial life of one who, for rectitude of purpose, unquestioned competency, and an

industry that never flags, has no superior, and but few equals, in the judicial history of this State. We refer to the Hon. George M. Stroud, who, on the 30th of March, 1835, was first appointed a Judge of the District Court.

The only objection that has ever been urged against him, (and what judge can escape objections of some sort,) was in the earlier part of his career, when he was considered too rigid, too unbending, too stern, perhaps, in the administration of the law. In addition to this, it was said, he pressed the business through too rapidly to be entirely consistent at all times with the comfort of counsel, or the convenience of suitors. We will not say of him, as was said of Lord Ellenborough, that "he drove directly onward to the just end of a cause, like a mighty elephant in a forest, trampling down the low brushwood under his feet, and tearing away all the minor branches that obstructed his impetuous progress,"—but this we may say, that he manifested an industry, activity, and energy, that was at that time unusual, and at no time has been surpassed. A reason for this, however, is to be found in an overcharged trial list gradually accumulating, and which was likely in a few years to become entirely unmanageable, unless the evil should be forestalled by extraordinary effort. The Judge set out with the notion that every case on the list was entitled to be tried, however young, and that the older cases should

be held to strict rule, and if not *ready*, either be forced on, continued, or nonsuited. This view seemed to coincide with the policy of the legislature, as expressed in the act of assembly constituting the Court, which requires that every suit upon the list shall be heard, if the parties be ready, within four terms, including the term to which it was instituted. This, of course, being a new system, for a time seemed to operate with severity, and led to some complaints. But the moment the bar were accustomed to it, and realized its advantages, they generally became reconciled and satisfied.

After the expiration of ten years, (his first term of service,) Judge Stroud returned to the bar, and resumed practice, in which he continued for about three years, when he was again appointed to the post which he had previously held. And on the first day of December, 1851, having been elected under the Amendment of the Constitution already referred to, his commission was renewed. From that time, the list or calendar having been diminished by the industry of the Court, the progress of business was less impeded, and the judges had an opportunity of affording greater indulgence. And it is doubtful whether there has ever been a court in the City of Philadelphia, the judges of which enjoyed a higher consideration or regard, than the judges of the District Court. So equal are they in the estimation of the profession and

community, that, strange as it may seem, with the variety of cases and laws belonging to a multifarious profession, there seems to be no choice or preference in respect to the judge before whom questions shall be tried. We regret to say, it is not so in many other courts with which we are acquainted.

But passing from this solitary exception, (of running through the issue list,) which was alike applicable to Judge Sharswood, let us proceed with the more immediate duty of this chapter. We may, however, be allowed in passing to say, that as regards Judge Hare, who came upon the bench after the list had been reduced into some order and control, there has been always exhibited a spirit of reasonable indulgence, and a marked courtesy towards the bar. Both of them, as we conceive, entirely compatible with true dignity and just self-respect.

Judge Stroud is a scion of a Quaker stock. He was born in 1793, at Stroudsburg, where his parents had resided for many years. Having received the rudiments of his education at the place of his birth, at the age of fifteen, he entered Princeton college, where, after close application to his collegiate course, he graduated with distinguished honor at the age of nineteen.

In 1816, he became a student in the office of Judge Hallowell, a friend of his father, where he applied himself closely, and having run his course, was admitted to practice on the 28th of June, 1819, and at once,

under very favorable auspices, commenced his professional career.

After his admission, he was united in marriage with the daughter of his preceptor. At that time Judge Hallowell having been appointed to the bench, of course much of his business and his influence passed to his son-in-law. He, therefore, in a few years, had an adequate, though not what would be called an extensive business. Had he declined office, and persevered in his professional career, from his energy, learning, and integrity, he could scarcely have failed to rank with the ablest and most successful members of the bar.

He was not only well-founded in the principles of the law, but he was unusually familiar with decided cases, and his memory was so clear and ready as to enable him to refer to them with the greatest accuracy, and to apply them with the most conclusive effect. His quickness of apprehension was another remarkable quality. But we doubt whether it is the most *desirable* quality in a judge; as it leads to anticipation, to which patiently awaiting the regular development of a cause, is much to be preferred.

Judge Stroud's temper in early life was somewhat quick, but in the progress of years, in the language of Socrates, divine philosophy, or rather religion, had softened and cured this infirmity. And at the time at which we write, few men have more command over

their passions, and no one guards them more watchfully, or repents them more sincerely, than the worthy subject of this brief sketch.

It need hardly be stated, that he is a man of the most kind and generous sympathies and feelings. The charity of his nature is not passive but active, quietly seeking for its object, without waiting to be sought—and not, in the language of the Gospel, "letting his left hand know what his right hand doeth."

Judge Stroud is now in the sixty-third year of his age, five feet ten inches high, of an active and powerful frame, capable of bearing great mental and physical labor, and with an energy that never deserts him in any extremity.

Notwithstanding his close employment upon the bench, he has prepared and published several editions of the Digests of the Laws of Pennsylvania, with copious notes of the judicial decisions relating to them.

He also, before his appointment to the bench, published a work upon slavery, presenting, in a volume of some three hundred pages, a condensed and most perspicuous and systematic analysis of the laws of all the States in the Union, in relation to this most interesting and agitating subject. The work also contained most impressive and judicious views of the entire subject, with appropriate illustrations, derived from judicial decisions, from the adoption of the Constitution down to the time of its issuing from the press.

The elder Mr. Rawle, in speaking of this book, many years ago, shortly after its publication, expressed the highest approbation of its object, and of the masterly manner and excellent system that it displayed.

The first edition of this treatise having been exhausted, the judge, during the present year, has published a new edition, which will be most acceptable and valuable, inasmuch as the increase of States, the change in legislation, and especially the late Fugitive Slave Law, and the course of decisions to which it has given rise, have rendered necessary considerable alteration in, and additions to, the original work.

J. I. CLARK HARE, L.L.D.,

Is, with one or two exceptions, the youngest judge probably in Pennsylvania—certainly in the City of Philadelphia. His ancestry are perfectly well known and universally respected.

Judge Hare was born in the City of Philadelphia, in October, 1816. He is therefore at this time forty years of age. He graduated with distinction at the University of Pennsylvania.

After passing through the usual studies, he was ad-

mitted to practice on the 9th of September, 1841,* having read law with William M. Meredith, one of the ablest lawyers in the Union.

From the influence of an extensive and powerful family, but more especially from his modest and conciliating manners, and admitted and admired abilities, he no doubt would have been entirely successful in his professional career.

Those fruitless days which are passed between the time of admission and that of actual professional employment, were not allowed to pass by unimproved. Mr. Hare devoted himself to editing Smith's Leading Cases, and various other valuable modern publications. By the research thus required, he enlarged his store of legal knowledge, and secured to himself an enviable reputation for learning among his cotemporaries.

Soon after admission, he married a daughter of Horace Binney, and such was the favor he had acquired by his learning, urbanity and courtesy of demeanor, that on the 14th of October, 1851, he was placed in nomination upon the whig ticket for Judge of the District Court, for the City and County of Philadelphia, and elected by a large but not unexpected majority. He is therefore a judge for ten years, from December, 1851.

* For nearly four years after his collegiate course he was engaged in the study of chemistry, under his distinguished father, (Professor Hare,) and in pursuance of that study, was absent about two years in Europe.

Unsolicited advice is seldom welcome;—nay, it may be deemed obtrusive; but we may say, it is at least questionable, whether the prospects he had before him of advancement at the bar, were not too readily relinquished for a position on the bench.

It should be remembered, we have had sad examples that no man can withdraw from the bar for ten years, even for the bench, and ever retrieve the position which he lost.

No man qualified to be distinguished, ever left the bar and returned to it with any rational hope of success. There is no such instance. A coarse man, with little learning and less modesty, may, perhaps, force himself into a position of some notoriety; but notoriety is not fame; and presumption is no evidence of permanent success. Depend upon it, the law is a jealous mistress, claims all your attentions, and will allow no division of favors.

We have spoken of Judge Hare's social manners—his judicial deportment is equally entitled to respect. He is patient, indulgent, and attentive, and possesses one rare quality of a judge, (though not deemed sufficiently important to be generally imitated,) that of fixing his eye and mind upon the case as it progresses. Whether a judge listens or not, he should *seem* to listen—he is the centre figure of the painting, and it is neither consistent with any rule of art or propriety, that while others in the group are looking at him, he should

direct his attention to foreign matters. It was a joke of Judge Gibson, though worthy of remembrance, when he said, in advanced life, that he had reached the acme of his judicial ambition, in being able to fix his eye upon a dull speaker with apparent attention, while his thoughts were employed with something more agreeable.

Judge Hare is a man of very prepossessing personal appearance, with good features, and eyes of great brilliancy and intelligence. He is about five feet seven inches high, of slender frame, a sanguine temperament, and considerable mental and physical activity. From his nice perceptions and capacity, and the companionship which he enjoys on the bench, with two of the most eminent judges of the time, together with his unexceptionable manners, we may confidently expect, that in a few years, he will fairly challenge a comparison with any judge in the State. The character of a gentleman, though not indispensable to the office of a judge, is a very desirable accompaniment, as the lustre of both is increased by reciprocal reflection.

CHAPTER VIII.

THE JUDGES OF THE COURT OF COMMON PLEAS.

The first Judge of the Court of Common Pleas, was Benjamin Chew, who was admitted to the bar in September, 1746, appointed President of Court of Common Pleas, and succeeded by John Coxe. Mr. Coxe was admitted in 1780, and held a highly respectable position as a lawyer and a judge. Upon his resignation, he was succeeded by Jacob Rush, the brother of Dr. Benjamin Rush, a most distinguished physician and writer, and one of the signers of the Declaration of Independence.

Judge Rush was a graduate of Princeton, and of the same class with James Waddell, the blind clergyman, whose eloquence has been so highly eulogized by Attorney General Wirt, in his "British Spy."

He was a man of great ability, and great firmness and decision of character. He was also an eloquent man. Perhaps there are few specimens of judicial elo-

quence more impressive than those which he delivered during his occupation of the bench. An accurate idea of his style may readily be formed from an extract from his charge to the Grand Jury, in 1808, and his sentence pronounced upon Richard Smith, for the murder of Carson, in 1816. We refer as much to the high moral tone of his productions, as to their literary and intellectual power. But his own language will speak better for him than anything that could be said by us. Some of his early literary essays were ascribed to Dr. Franklin, and for their terseness and clearness were worthy of him. Our business, however, relates to his judicial compositions, from which, at random, we take the following abstract from a charge to the Grand Jury, respecting horse-racing, 1808:—

"Horse-racing is attended with many evils, which seem interwoven in its very nature. It always collects a number of idle persons, and idle persons are liable to every temptation. A race-ground is a theatre of dissipation, and the hot-bed of every vice. Many people go there from harmless curiosity, who do not return as innocent as they went. The spirit of gambling is infectious, and often seizes on persons of ardent and impetuous tempers, who being once caught in the toils, are seldom able to extricate themselves from its fascinating chains. In a country where horse-racing is contrary to law, the destruction of private property is the natural consequence. It therefore uniformly happens that the grain, grass, and fences of those who live in the neighborhood are damaged, or

destroyed by an unknown crowd, against whom it is impossible to obtain redress.

"The report of a horse-race spreads far and wide, without the aid of a newspaper, and is the well-known signal for collecting together from all parts of the community, sharpers and gamblers of every character and description. Thither they repair as to their native elements, to practise all the deceptive arts of their profession with greater latitude and success. Here our youth—the growing hope of their country—and unwary old age, are equally a prey to the prowling sharper: here, excess, riot, and debauchery of every kind predominate. Here, too, the sacred name of the Deity is universally profaned, while oaths and execrations rend the very air, and resound from every quarter. In short, it would be difficult, if not impossible, to name a spot upon the face of the earth, which combines so many means of destroying the virtue and morality of a country, as a horse-race."

The sentence in the case of Richard Smith, in 1816, is of a far more solemn and impressive character, and furnishes stronger denotements of the mental and moral qualities of this distinguished judge and most estimable man :—

"As your continuance in this world will be but for a short time, it becomes you seriously to reflect on the world of spirits, into which you will soon be launched. Dream not, I beseech you, of annihilation, or that death is an eternal sleep. The more you indulge in such unfounded speculations, the greater will be your disappointment and horror, when you wake in the eternal world.

"You have received life, not upon your *own* terms, but upon the terms of *Him* who gave it. With the existence of every moral

agent, God has seen fit inseparably to connect both immortality and responsibility.

"It is not in your power, however it may consist both with your wishes and your interest, to *cease to be*, or to divest yourself of responsibility. God is represented in the Scriptures, as an infinitely wise and just being; but we could scarcely conceive of Him in that character, if a wicked man, after committing innumerable crimes and murders, were permitted to escape punishment, by ceasing to exist.

"It is, therefore, both wisdom and duty, to prepare for the *change* in your mode of existence, that is rapidly approaching.

"Life and immortality are brought to light by the gospel. In this precious volume only, is discovered a true account of the fall and depravity of man, and of his elevation to happiness through the atoning blood of the Son of God. Here, and here alone, a soul, lost and bewildered in a maze of guilt, can find a clue to guide him to the day-spring from on high—the Saviour of sinners.

"The principal feature in this astonishing display of infinite wisdom and goodness, is, that it opens a door for the most abandoned sinners to return through the means of repentance.

"Murderers have been pardoned; therefore *you* may be pardoned, in the case of your repentance, and washed from your sins in the blood of Jesus, that cleanseth from all sin. To this blood you must apply, if you wish to escape the regions of perpetual sorrow and despair.

"Though it be true, the gospel has opened a door for a repenting and returning sinner, it is equally true, he has no *right* to expect to be pardoned, unless he uses his best endeavors; which there is reason to believe God will bless with success, as they are the *means* appointed by himself.

"I therefore advise you to strive to enter in at the straight gate. Double diligence, nay, ten-fold diligence, is necessary in your alarming situation. You have but a short time to live, and a great

work to accomplish in the space of a few weeks. It becomes you, therefore, to work out your salvation with fear and trembling, for it is God that works in you, to will and to do, of his own good pleasure.

"You are a young man, cut off by vice in the morning of your days. Your sun has scarcely risen before it will set—not, I hope, under shades of everlasting night, but that in the morning of the resurrection you may shine in robes of innocence, purchased by the blood of the Lamb.

"Now to the grace, mercy, and goodness of God, I commend you; and conclude with this single request, that immediately on your return to prison, you send for some pious divine, to pray with you and for you, and to assist you in preparing for the awful change that soon awaits you.

"The sentence which the law prescribes for murder in the first degree, and the court awards, is this:

"That you be taken from hence, to the jail of the City and County of Philadelphia, from whence you came, and from thence to the place of execution, and to be there hanged by the neck, until you are dead, and may God have mercy upon your soul."

Judge Rush's charges to the jury, generally, and his legal decisions, were marked by soundness of principle and closeness of reason.* Having been a Judge of the Supreme Court and of the High Court of Errors and Appeal, he never appeared to be satisfied with his position in the Common Pleas; yet, his uprightness of conduct and unquestionable abilities, always secured

* Vide charges upon moral and religious subjects. Published in 1803. (Philadelphia Library.)

to him the respect and confidence, if not the attachment, of his Associates, the members of the bar, and the entire community. He was one of the gentlemen of the old school, plain in his attire, unobtrusive in his deportment; but while observant of his duties towards others, never forgetful of the respect to which he himself was justly entitled. He died in the month of January, 1820, and was succeeded in the office of President of the Court of Common Pleas, by JOHN HALLOWELL, a member of the Society of Friends, an eminent lawyer, and for a long time in extensive and profitable business.

It was a matter of great gratification to the bar, that Judge Hallowell should accept of this place, and as long as he retained it he was totally unexceptionable. He was not, however, a man of much activity or industry, and as at the time referred to, his Associates were not learned in the law, the attendance of the President was therefore always required. This imposed upon him the necessity for unremitted attention to business, and rendered his situation rather irksome than agreeable.

On the 22d day of April, 1825, JUDGE HALLOWELL was appointed Judge of the District Court, and was succeeded by Edward King, (who had been admitted to practice in 1816,) as President of the Common Pleas.

Mr. King's political party had for some time been desirous of placing him upon the bench, and upon the

expiration of the term of Judge Morgan, of the District Court, King became an applicant for the vacant situation.

Governor Shultze hesitated about giving him that appointment, though much urged, but he seemed to owe it to his political friends, and there was no other vacancy. It was at last suggested, that Judge Hallowell would probably accept the limited term in the District Court, and resign his life appointment in the Common Pleas. Judge Hallowell was not exactly satisfied, as has been observed, with his position, and he therefore readily concurred in the arrangement. He was transferred accordingly, and thus an opening was made for Judge King, to which he was forthwith elevated.

Judge King was at this time a man of but little note at the bar, of a defective literary education, but a good lawyer, of a strong and energetic mind, and of great application and capacity. His appointment was not generally satisfactory. It was considered as the result of political influence, and was decried by one party, and not very strenuously supported by the other; and yet he proved, take him for all in all, perhaps the best judge that ever occupied that bench since it was first created, so far as regarded its criminal jurisdiction, and at least equal to any in the civil department of his judicial duties. His charges to the jury exhibited great perspicuity and strength, and his

written opinions, during a period of more than twenty years, were indicative of much research, discrimination, and power. If his firmness had been equal to his legal learning, certainly no judge of the Common Pleas in Pennsylvania would have been entitled to a loftier position than he richly merited; indeed, it is doubtful whether there would have been his equal. As a *criminal* lawyer, he had no judicial competitor. The greatest objection to him, however, was his want of gravity on the bench. He never seemed to aim at any. His intercourse with his criers, and tipstaves, and reporters for the papers, was just as unreserved and familiar as with his nearest friends, and his example in these respects, long continued, has in its influence much impaired judicial propriety and dignity. In other words, his mantle has fallen upon some of his successors.

Though not rough, or eccentric, he was often found carelessly lounging in his chair; reading the newspapers; engaged in conversation with his associates, in the midst of an argument, and displaying the imperfections arising from a neglected training in early life. He improved, however, in his official manners, as time progressed, and when he was superseded under the new constitution, rendering the judiciary elective, he bore with him a reputation which great men might envy, and no man could despise or contemn.

His early literary education, as has been said, was defective; but such was his industry and capacity, that,

although a critic might detect blemishes in his style, they were much more than counterbalanced by the clearness, nervousness, learning, and wisdom of his opinions. Of him it may be truly said, he has "done the State some service," and he will be remembered for his abilities long after his trivial faults are forgotten.

We have spoken thus freely, but with entire respect. Not to describe men as they are, is not to describe them at all; and if they should exhibit some few venial imperfections, which is the lot of man, like flaws or specks on the diamond, they are lost in its general brilliancy and lustre.

During Judge King's presidency, for some years, Archibald Randall, whom we have already cursorily glanced at, was one of his associates, and continued so until appointed judge of the District Court of the United States, in place of Judge Hopkinson. Judge Randall was remarkable for this, that, with no great legal proficiency, and with scanty literary attainments, but with very modest deportment, he was always a favorite. It mattered not to what post he was appointed, he was always quite equal to it, and never one jot above it. His education was limited, but his good sense abundant. He never amazed you by his wisdom, nor shocked you by his folly. The just medium was his highest and safest distinction. He enjoyed the confidence of all, without ever having justly forfeited the kind regards of any. Upon Judge

Randall's resignation, his place was filled by James Campbell, the present Post-Master-General of the United States.

J. Richter Jones was the other Associate. To say he was a conscientious judge, is but to say what may be said of perhaps every judge that Pennsylvania has known. His literary education was superior to that of Judge Randall, but not so his scientific accomplishments. He was certainly not deficient in decision of character, or in that industry and integrity, which make decision virtue.

Finally, in the year 1851, under the new constitution, an election took place. Judge Parsons had resigned. Judge King and Judge Campbell were dropped, and Oswald Thompson, William D. Kelly, and Joseph Allison, were then elected, and now constitute the Judges of the Court of Common Pleas.

We are not, as has been shown, in favor of an elective judiciary. Life appointments are more promotive of the objects and character of justice, and the well-being of the citizens. Judges should not only be honest, but free from suspicion. Nay, more—free from temptation. Whoever is liable to temptation in a public office, particularly a judicial office, is subject to suspicion; unjust suspicion, if you please, but still, suspicion. He is approached in a thousand ways, that he is the last to perceive, and which if he did perceive, he would be the last to encourage. Political, national, religious,

personal partiality or prejudice, are all invoked or appealed to. Say the judge never swerves from the law; still there is a vast deal left to judicial discretion, and judicial discretion is subject to be influenced involuntarily by favoritism or antipathy.

There is not a judge now upon the bench, in this State, that we might not be happy if he enjoyed a life tenure. Honest, capable, and upright men, conscientiously faithful to their high trusts, and yet subject, every ten or fifteen years, to the influence of party politics—to be dragged into the popular arena, and compelled, as it were, to fight or to fawn, for a continuance in their posts. Is this creditable? Is it tolerable?

In these conflicts, one judge is assailed because he drinks a glass of wine; another, because he does not; a third, because he is a federalist; a fourth, because he is a democrat; a fifth, because he is of foreign birth; a sixth, because he is a native; a seventh, because he is a Roman Catholic; an eighth, because he is a Protestant; a ninth, because he is for freedom; a tenth, because he is for slavery; an eleventh, because he decided this way, in the case of Den v. Fen; a twelfth, because he decided another way, in Doe v. Roe; and a thirteenth, because he decided *no way*—and having no *opinion* of his own, no one has any *opinion* of him.

Now there is a baker's dozen of objections, and each one is a fair representative of a thousand others. In

their accumulation, "their name is legion." What must be the effect of this state of things, upon the bench, the bar, and the entire community, we all may think, but none may tell.

But notwithstanding these objections, the first experiment made under the new constitution has been strongly recommended to favor by the deportment of the judges, in all the courts, and by none more than by the exemplary gentleman and judge to whom we now invite attention.

OSWALD THOMPSON, L.L.D.

Among the most judicious selections of judges by the people, was that of Judge Thompson, the President Judge of the Common Pleas. He was born in the city of Philadelphia, is now forty-six years of age, of slender and delicate, but active frame, about five feet seven inches high, with an intelligent and amiable face, and highly agreeable personal and judicial manners. He graduated at Nassau Hall, Princeton, in 1828, studied law with Joseph R. Ingersoll, was admitted to the bar in 1832, and was commissioned as President Judge of the First Judicial District in De-

cember, 1851. He is a well-read lawyer, and without ever having enjoyed a very large practice, he had sufficient professional employment to stimulate his energies, and to qualify him better for a judicial station than if he had been habitually engaged, day after day, in taking *ex parte* views of legal subjects, and sometimes in substituting his professional bias for his impartial judgment. We humbly differ from Lord Campbell, as we have previously intimated, in the opinion expressed in in his views of the Chief Justices, that eminent advocates have generally proved to be the most eminent judges. Our impression and experience teach us that judges taken from among the more successful and brilliant members of the bar, carry with them for the most part, forensic rather than judicial qualifications and tendencies, and that they consequently, though unconsciously, often take sides on the bench, as they have been accustomed to do at the bar.

It is not wonderful, that it should therefore so rarely happen, that powerful advocates make distinguished judges. Most of those who have acquired great judicial fame were men who were either placed upon the bench before they had figured long in the practical concerns of the bar, or, in some instances, before they held any prominent position at the bar. Lord Mansfield was, perhaps, an exception. Judges Washington, C. J. Tilghman, Chief Justice M'Kean, Chief Justice Gibson, were never eminent as advo-

cates; nor was Judge King, of the Common Pleas, who finally obtained great respectability on the bench. Judges Wilson, Ingersoll, Levy, were barristers of the highest distinction, but were very unequal as judges; and there are numerous other instances that could be quoted to the same effect.

The reason would seem to be this, that the acuteness of a lawyer, in vindicating his client's cause, and searching out the actual or imaginary defects of his adversary, particularly when the practice is long continued, becomes habitual, and destroys the just equilibrium of the mind, and impairs or perverts the operations of the judgment. This notion is further strengthened by the fact, that it also generally happens, that where a judge, has resigned, or lost his post after long service, he never seems to manifest any available qualities as an advocate. His didactic and judicial manner remain, and he would seem rather to decide than convince—so that neither judges nor advocates improve by a change of place.

No man could preserve the impartial equilibrium of which we have spoken more admirably than Judge Thompson. The manner of delivering his charges and opinions is mild, gentle, and impressive, and his deportment is not only unexceptionable, but most laudable. He has, we think, done more to reconcile the reflecting public to the elective judiciary, than could have been done by a majority of ten thousand votes.

He has one quality, however, said by Burke to be the usual concomitant of greatness, and which no doubt springs from the strict purity of his motives, and the sincerity of his opinions, and that is—obstinacy, or, as it is called in more courtly language, firmness. He generally adheres to his opinions, certainly from no selfishness or want of magnanimity, but because he firmly believes those opinions to be right. And although Lord Mansfield has observed that, "It is much more magnanimous to retract than to persist in error," let us say what we may, a proper tenacity of opinion is assuredly preferable to a vibratory, vacillating judge, who changes his mind as freely and as frequently as his apparel, and with much less regard for appearances. A learned though eccentric judge of our own State, has well said, "That obstinacy and firmness spring from the same root—it is obstinacy when the cause is bad—firmness when it is good;" and with this understanding, in its application to Judge Thompson, let us call it firmness.

WILLIAM D. KELLY,

BORN, APRIL, 1814—ELECTED, 1851.

William D. Kelly was born in the Northern Liberties of Philadelphia, in April, 1814. Having read law

for the usual time, with James Page, a prominent member of the bar, he was admitted to practice on the 17th of April, 1841, and became deputy prosecuting counsel, in connection with Francis I. Wharton, under Attorney General Kane, in 1845. He was commissioned as an Associate Judge of the Court of Common Pleas, in March, 1847; and was subsequently elected by a large majority to the same judicial post, under the new constitution.

Judge Kelly is among the younger judges of the State—we mean in years. His early education was exceedingly limited, but he was endowed with fine natural parts; and possessed of an energy which no ordinary impediment could resist, and an ambition that difficulties only served to strengthen.

He was for some years before he reached maturity, placed at a mechanical trade, which, to his credit be it spoken, in his more elevated position, he never was afraid or ashamed to acknowledge, but rather looked back to as enhancing his subsequently acquired honors; nay, that is not all—as imparting to him those salutary lessons of *sympathy* with those who struggle to carve out their road to distinction through poverty and adversity, and afterwards secure the elevation they attain, by the strength they acquire in its laborious and honorable pursuit.

Judge Kelly, while yet a student of law, became a popular and eloquent political speaker; united in all

public and philanthropic measures for the suppression of vice, and the amelioration of the condition of the poor or neglected, and long before he held any official position, he had effected a lodgment in the hearts of his fellow citizens, which his subsequent exemplary and cordial deportment was calculated to confirm. Upon being placed in nomination as a Judge of the Court of Common Pleas, the overwhelming vote which he received was the best voucher for the favor in which he was held by all classes, and conditions, and parties of his fellow men. He is still a young man, and his honors, though considerable, have not yet reached their maturity. He furnishes the best assurance of future elevation, by his devotion to his present duties.

JOSEPH ALLISON.

Judge Allison is perhaps the youngest judge in Pennsylvania. His parents were highly respectable citizens of Harrisburg, Pennsylvania, where he was born, in the year 1820, and where, at the age of nineteen, he commenced the study of the law, under the direction of John B. Adams, a young, but a promising member of the legal profession. Mr. Allison became a member of the Philadelphia bar, on the twenty-third

of November, 1843. Although he did not enjoy the advantages of a collegiate education, he at least may boast, with William Lewis, David Rittenhouse, Chancellor Walworth, and other great men, that he instructed himself and graduated upon a farm. He was a youth of much energy and ambition, and, of course, of great perseverance. His pursuit of knowledge was unremitted; and although, with all his merits, a modest man, no one who marked his brief and limited career at the bar, could fail to perceive that he was destined to make a highly respectable figure in the legal profession.

Considering the disadvantages encountered by him, he advanced himself rapidly in business, and at the time when he was unexpectedly placed in nomination for a judicial seat, he had succeeded in laying the foundation for a competent, if not lucrative practice. We need not say he was a man of unstained morality, but we may be permitted to state that he was possessed of the kindest and most philanthropic sentiments. He is perhaps sometimes a little testy in his temper, but even this infirmity arises from his nice sense of delicacy and propriety in the administration of justice. Any roughness or unkindness at the bar, obviously jars upon his feelings, and destroys the equilibrium and composure of his mind. No man aims more earnestly at a faithful discharge of his duties, and if he commits any errors, to use the stereotype phrase, which has been in use from time immemorial, "they are errors

of the head, and not of the heart." In further and just commendation of him, it may be observed, that he is a man of untiring industry, and unquestioned fidelity. He has within him materials for a distinguished judge. Neither a lawyer nor a judge is to be made in a year, with the aid of all the advantages and appliances that nature, education, and good fortune can supply; but with the talents and habits of Judge Allison, we may safely venture to predict that, under the ripening influence of time and experience, he will have no occasion to shrink from comparison with any associate judge that has ever occupied his present highly responsible position.

Judge Allison is a delicately formed man, of some five feet six inches in height, of an agreeable face, and of frank and conciliatory manners. He manifests commendable patience upon the bench, and his whole judicial course has been marked by an apparent desire to perform his duty to the best of his ability, and without fear, favor, or affection. It would be most unreasonable to expect from a man of his years and limited opportunities, that proficiency which can alone be attained by prolonged experience. Neither in law nor in agriculture, can we hope to gather our harvest in seed time. *We should remember, that "to every thing there is a season, and a time for every purpose under Heaven."*

List of Judges and Attorneys General since the Revolution.

THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE THIRD DISTRICT.

James Wilson, April 12, 1790.
*William Cushing, Oct. 11, 1792.
*James Iredell, April 11, 1793.
*William Patterson, April 11, 1795.
*Samuel Chase, April 11, 1798.
Bushrod Washington, Dec. 20, 1798.
Henry Baldwin, April 12, 1830.
Robert C. Grier, Sept. 14, 1846.

THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Francis Hopkinson, April 12, 1790.
Richard Peters, April 11, 1792.
Joseph Hopkinson, April 11, 1829.
Archibald Randall, March 8, 1842.
John K. Kane, June 16, 1846.

DISTRICT ATTORNEYS OF THE UNITED STATES FOR THE THIRD DISTRICT.

William Lewis,
William Rawle,
Jared Ingersoll,
Alexander James Dallas,
Charles Jared Ingersoll,
George M. Dallas,
John M. Read,
William M. Meredith,
Henry M. Watts,
Thomas M. Pettit,
John W. Ashmead,
James C. Vandyke.

THE MIDNIGHT JUDGES.

Wm. Tilghman, C. J., March 3, 1801.
Richard Bassett, Feb. 20, 1801.
William Griffith, 1801.

The Court ceased to sit May 26th, 1802.

* These Judges held Circuit Courts at the dates set opposite their names—William Cushing at York, the rest at Philadelphia. As they were Judges of other Circuits, we suppose they were detailed for a special purpose to the Third Circuit.

JUDGES OF THE SUPREME COURT OF PENNSYLVANIA SINCE THE REVOLUTION.

(Chief Justices.)

Thomas M'Kean, July 28, 1777.
Edward Shippen, Dec. 18, 1799.
William Tilghman, Feb. 28, 1806.
J. Bannister Gibson, May 18, 1827.

SINCE AMENDMENTS OF 1850 TO THE CONSTITUTION.

Jeremiah S. Black, Dec. 1, 1851.
Ellis Lewis, Dec. 4, 1854.

PUISNE JUDGES.

Wm. Augustus Atlee, Aug. 16, 1777.
John Evans, Aug. 16, 1777.
George Bryan, April 3, 1780.
Jacob Rush, Feb. 26, 1784.
Edward Shippen, Jan. 31, 1791.
Jasper Yeates, March 21, 1791.
William Bradford, Aug. 20, 1791.
Thomas Smith, Jan. 31, 1794.
Hugh Henry Breckenridge, Dec. 18, 1799.
J. Bannister Gibson, June 27, 1816.
Thomas Duncan, March 14, 1817.
Molton Cropper Rogers, April 15, 1821.
Charles Huston, April 17, 1826.
John Tod, May 25, 1827.
Frederick Smith, Jan. 31, 1828.
John Ross, April 16, 1830.
John Kennedy, Nov. 29, 1830.
Thomas Sergeant, Feb. 3, 1834.
Thomas Burnside, Jan. 2, 1845.
Richard Coulter, Sept. 16, 1846.
Thomas S. Bell, Dec. 18, 1846.
George Chambers, April 16, 1851.

SINCE AMENDMENTS OF 1850 TO THE CONSTITUTION.

Jeremiah S. Black.
Ellis Lewis, Dec. 1, 1851.
J. Bannister Gibson, Dec. 1, 1851.
Walter H. Lowrie, Dec. 1, 1851.
Richard Coulter, Dec. 1, 1851.
George W. Woodward, May 8, 1852.
George W. Woodward, Dec. 6, 1852.
John C. Knox, May 23, 1853.
John C. Knox, Dec. 5, 1853.
Jeremiah S. Black, Dec. 4, 1854.

JUDGES OF THE DISTRICT COURT FOR THE CITY AND COUNTY OF PHILADELPHIA.

Joseph Hemphill, P. J., May 6, 1811.
Anthony Simmons, May 6, 1811.
Jacob Somers, June 3, 1811.
Thomas Sergeant, Nov. 9, 1814.
Joseph Hemphill, P. J., April 5, 1817.
Joseph B. M'Kean, April 5, 1817.
Anthony Simmons, April 5, 1817.
Joseph B. M'Kean, P. J., Oct. 1, 1818.
Joseph Barnes, Oct. 1, 1818.
Jared Ingersoll, P. J., March 30, 1821.
Joseph B. M'Kean, March 30, 1821.
Benjamin R. Morgan, March 30, 1821.
Moses Levy, P. J.
Joseph B. M'Kean, P. J., March 30, 1825.
Joseph Barnes, March 30, 1825.
John Hallowell, April 22, 1825.
Joseph Barnes, P. J., October 24, 1826.
Charles S. Coxe, October 24, 1826.
Thomas M. Pettit, February 16, 1833.
Thomas M. Pettit, P. J., March 30, 1835.
George M. Stroud, March 30, 1835.
Joel Jones, April 22, 1835.
Joel Jones, P. J., March 31, 1845.
John K. Findlay, April 1, 1845.
George Sharswood, April 8, 1845.
George Sharswood, P. J., February 1, 1848.
George M. Stroud, February 5, 1848.

UNDER AMENDED CONSTITUTION OF 1850.

Geo. Sharswood, P. J., December 1, 1851.
Geo. M. Stroud, December 1, 1851.
J. I. Clark Hare, December 1, 1851.

COURT OF COMMON PLEAS OF THE CITY AND COUNTY OF PHILADELPHIA, FROM 1776 TO 1851.

(Presidents.)

Benjamin Chew,
John Coxe,
Jacob Rush,
John Hallowell,
Edward King.

ASSOCIATE LAW JUDGES OF COMMON PLEAS.

Archibald Randall,
James Campbell,
John Richter Jones,
William D. Kelly,
Anson V. Parsons.

PRESENT JUDGES.

Oswald Thompson, P.,
William D. Kelly,
Joseph Allison.

ATTORNEYS GENERAL OF PENNSYLVANIA SINCE THE REVOLUTION.

Jonathan Dickinson Sergeant, July 28, 1777.
William Bradford, Jr., November 23, 1780.
Jared Ingersoll, August 22, 1791.
Joseph B. M'Kean, May 10, 1800.
Walter Franklin, January 9, 1809.
Richard Rush, January 26, 1811.
Jared Ingersoll, December 12, 1811.
Amos Ellmaker, December, 1816.
Thomas Sergeant, July 6, 1819.
Thomas Elder, December 20, 1820.
Frederick Smith, December 18, 1826.
Amos Ellmaker, December 18, 1828.
Philip S. Markley, August 17, 1829.
Samuel Douglass, February, 1830.
Ellis Lewis, February, 1831.
George M. Dallas, October 14, 1833.
James Todd, December, 1835.
William B. Reed, April 2, 1838.
Ovid F. Johnson, January 15, 1839.
John K. Kane, January 1, 1845.
John M. Read, June 23, 1845.
Benjamin F. Champneys, Dec. 18, 1846.
James Cooper, July 31, 1848.
Cornelius Darragh, January 4, 1849.
Thomas E. Franklin, April 28, 1851.
James Campbell, January 21, 1852.
Francis W. Hughes.
Thomas E. Franklin.

CHAPTER IX.

PRESENT RELATIONS OF COURTS AND COUNSEL.

The Law, so long as it is faithful to itself, is always sure, and there can be nothing to fear. A learned and honest bar, and an upright and competent bench—and they are generally to be found together—are essential to the well-being and protection of every civilized community;—property, civil and religious liberty, character, life itself, depend upon the Law and its ministers.

The dignity of the bench, and the independence of the bar, are best maintained by being respectively regarded. They are actually necessary to each other, and should be carefully preserved.

The court that presides over a crowd of obsequious and servile lawyers, neither shines in original nor reflected light. To rule among freemen, is an honor;

to govern serfs, is a disgrace. What is to become of fidelity to clients—of reverence for justice—of regard for human character or human life, if they are all at last to be brought to the standard of "may it please your honors?"

No gentleman of the bar will ever prove deficient in just courtesy towards a judicial tribunal. History hardly records such an instance; it presents many lamentable instances of culpable subserviency. The danger rather is, that members of the bar may sometimes sacrifice their true position, and become subservient to the views of the court, in order to insure favors or increase popularity. The court does not depend upon the bar, but the bar sometimes are benefited by the court. And its references, audits, etc., form the perquisites of a portion of the bar, and rest upon the patronage of the court.

Nay, not only this, but the smile of the court upon a young aspirant for fame, promotes his fortune, and their frown tends to his disgrace. Clients select the favorites of the bench as *their* favorites. The result is, that most men are ambitious of court favor, and thereby, for a time, derive golden opinions from all sorts of people.

It is in these circumstances expecting much, to look for independence on the part of those who are dependent for advancement and support upon their submissiveness to the bench. And even with those established

in business, though they may not desire to increase it, they may fear to diminish it; a result which nothing is more likely to produce than the loss of judicial favor.

There never was a more honorable, and high-minded, and well-informed bar, than that of Pennsylvania; and it was properly said by Judge Washington to be the "model bar of the United States." But it cannot be disguised that, for the last ten years, the efforts of all the courts seem to have been directed, unintentionally we admit, against the interest, the advancement, and the success of the profession. There is no important cause in which a young barrister has any chance of distinguishing himself; and in an *unimportant* case, no man can possibly distinguish himself.

By a rule of the District Court, Common Pleas, Oyer and Terminer, and Quarter Sessions, but one counsel on a side is permitted to argue a cause. If, therefore, a young man happen to be an adjunct, he may merely open the case, and present it, and then his functions cease. Instead of a system of forensic degladiation, by which he is from time to time to derive improvement, he will grow gray without any opportunity to make his mark upon the public. His patience is exhausted. He becomes a mere hanger-on of the courts. His hopes are dissipated. "His dream of fame is out." In the language of Johnson, "he is old, and does not want it."

This is every way pernicious to the bar, and in time it will not only seriously affect its utility, but its general

character; in short, banish all those charms, and blandishments, and lofty hopes, that make life precious. The judges perfectly well know that, for the most part, no member of the bar, however carefully his foundations in the law are laid, commences to build upon them for some years after his admission. He must become known.

There is more liberality at the bar than in all the other sciences. A veteran is desirous of aiding a younger brother, or, if you please, desirous of his aid; the client is advised to employ him; he is employed. Under the present rules of court, what can he do for others, or for himself?—virtually nothing. He literally encumbers the cause, and if he had the talents of Cicero, or Erskine, or Curran, they would avail him nothing. Nothing but accident could save him, by thrusting him into the place of his senior. Hargrave, and Dunning, and many others, were thus rescued from endless obscurity. But this is not all; the elder members of the bar being thus deprived of the assistance of the young, take the whole management of a cause, and in time lose sight of the brotherhood of their juniors; and thus cliques and rivalries will be created, where nothing but liberality and fraternal love should prevail.

We say, this is laying the axe to the root of professional growth and professional eminence; besides, it is an encroachment upon the rights of the community.

For forty years, during the palmy state of the bar, no such rule prevailed. At least *two* counsel upon a side were heard, and occasionally more than two. Certainly, no good reason can be assigned for the change, and it has hitherto produced no beneficial results.

The present rule is bad enough in civil cases; but a similar course is adopted in criminal, and, to a certain extent, even in capital cases. A man is indicted for larceny, bigamy, forgery, etc. He can be heard only by one counsel, when his temporal, and we might almost say, his eternal interests are at stake. Such a rule as this was never heard of until within the last ten years; and if not contrary to our constitutional rights, it is obviously unjust, and opposed to an established practice of half a century. It arises in some measure from judges having been elevated to the bench without ever having been extensively engaged at the bar, or from their forgetting, in their new positions, their former interests and obligations, and the condition of those who occupy their former places. If such rules had prevailed during the time of the Ingersolls, the Rawles, the Dallases, the Sergeants, the Binneys, and the Hopkinsons, where would the bar be now?—where few could find it, or desire to find it. We live now almost entirely in the light of the past, which continues to glimmer even through the darkness of the present. The deterioration is entirely owing to the

courts, and those anomalous and pernicious rules to which we have referred.

It has been said, that there is an exception to the rule complained of, in behalf of prisoners charged with a capital offence. Does it ever enter into the mind of the Court, that there are some punishments worse than death? Why, then, restrict those who best know the value of their own peril, from adopting commensurate means to avoid it? Why alter and diminish privileges which have become rights, and which are adapted to, and inherent in the system of republican government? The next step may be to take up the old habits which even royalty—during the reign of Victoria—has thrown off, and to deny the privilege of advocacy altogether, to all those who shall most require its aid.

But there is still another objection to judicial innovation upon established and salutary practice or usage; and that is, in restricting counsel to one hour of a side, which—as it generally operates—is half an hour each, in the argument of a case in banc, *however important*. This subject has been ably and admirably discussed, in an article in the "Legal Intelligencer," under date of November 15th, 1855, in which all its bearings are exhibited, and from which we cannot do better than present a few extracts, in enforcement of this discussion:—

"And what," says the writer, "is to be the effect of this new

system, upon the bar? Where would have been our great lawyers, if they had practised under the half-hour rule? Where will be the profession, and all that it inherits, if that rule stand for a generation or two? If the judge, who hears no arguments, nor listens to the wholesome voice of free discussion, but feeds on paper-books, must dry up, like men who live within doors, and never breathe fresh air: if paper-books are to arguments, what close apartments and chicken-water are to solid food and invigorating exercise—if belonging, at best, to the 'priesthood of expediency,' and there classing in usefulness and dignity with the warming-pan, they may serve to coddle the judicial extremities, but can never add one jot to the vital energy of the law: if they must, at last, make mummies of the judges, they will, at the same time, change the free and animated bar from sentinels of the law, the cheerful friends and faithful allies of the Court, the protectors and champions of the suitor, into a poor, pitiful, heartless guild. We are, by these rules, we have already said, reduced to the reluctant consciousness that we have little influence on the issue of the suits we bring. Instead of carrying on a public struggle in the presence and under the eye and ear of the Court, we put our mutual miserable complaints into the lion's mouth, where they lie in darkness and mystery until the oracle speaks, and we witness, in the distribution of rewards and punishments, how poor a thing the voiceless advocate is become. There he stands, armed, ready and prepared for his client's cause, but at the same time as useless and helpless as a baby; to all practical purposes—

'As skilless as unpractised infancy;'

his predicament, that of an army in the field, full of courage and discipline, and waiting only to be led against the enemy; but under some strange infatuation in those in command, ordered to stand idle and inactive, while everything which they were organ-

ized to defend, is wasted and destroyed before their eyes. The curtain rises—he presents his A. B. case to the Court—and then the curtain falls. He is disrated from a person of the drama to a scene-shifter! He has his life in minutes, like summer insects on the surface of a pool. When our office shall be finally settled to be to write memorials, let us present them on our knees! Let us, when we are born again, be re-baptized, and put on our window-shutters, that we are paper-book makers to the Supreme Court of Pennsylvania.

"But will it last—this attempt to sustain the law on pamphlets, and have Courts without lawyers? this case of hypochondria, resembling that where the man had no confidence in his own legs, and would not stand on them. How will this effort to put down public speaking, end?"

But even this rule, regulating the length of arguments in banc, is not so objectionable as the effort often made by the Nisi Prius, (with no rule to countenance it,) to restrict not only the number of counsel, but the duration of speeches. "Thus bad begins, and worse remains behind."

It is not an unusual thing for the Court, after the evidence is closed, in a case of eight or ten days, to turn to the counsel and say, "Cannot only one counsel speak on a side?" Now, we may properly ask, what has the Court to do with this? If the counsel, to secure favor, agree to the suggestion, the rights of the client are sacrificed. If the counsel refuse, as they ought to, they either speak to unprosperous cases, or they encounter the prejudices of an exhausted jury,

who are taught to believe that the case is of but little importance and involves no difficulty, and that it is a mere question in a debating society—not before a sacred tribunal of justice—in which nobody gains, and nobody loses, but the disputants. Well, the counsel maintain their rights, and the speaking is to proceed. What next? why, the judge—it being near three o'clock—reminds them of time, and suggests the propriety of taking fifteen minutes each—one hour divided between them. Thus the lawyer is first to be *drawn*, and then to be *quartered*. Let any member of the community, who is interested in an important cause, say whether this is what justice or policy requires. It may be sport to the spectators, but often death to the parties.

To show you that this is not a fancy sketch of the dispatch of justice, let us present one or two, out of many instances of this and a similar kind.

In a case in the Nisi Prius, in which forty witnesses were examined, and two days occupied by the evidence; at the close of the testimony, the learned and excellent judge, desirous, no doubt, to save time, told the counsel, that he would hear one counsel on a side argue the cause. The senior counsel for the plaintiff respectfully told the Court that he was sorry he could not submit to any such restriction; that by the rule of the Supreme Court, two counsel were permitted to address the jury —and that this case required it. "Very well," said his honor, "then you can all speak, but each one only

for fifteen minutes." The senior counsel still objected, denying the authority to prescribe, by anticipation, the limits of the case. "If," said he, "the Court can limit counsel to fifteen minutes, the restriction may be reduced to five minutes—and if to five minutes, counsel may be prohibited from speaking at all. For myself," said the counsel, "I care but little; but I should be unwilling to compromise the rights of others by an acquiescence in what appears to me to be an encroachment upon the immunities of the members of the bar." The case, however, proceeded upon the judge's order, and when it became the turn of the senior to speak, he asked the Court whether the order was to be enforced; and upon being answered in the affirmative, he declined addressing the jury, and the case was *lost*, although the referees to whom it had previously been submitted, had awarded to the plaintiff, upon a full hearing, the sum of one thousand dollars.

Another case resulted differently—it was before Chief Justice Black. He directed a similar course, in a case that occupied ten days. The same counsel was concerned, and the same objection made; and the learned judge, with a frankness for which he is remarkable, at once admitted that he had no authority to prescribe the rule—and the cause proceeded upon the ordinary footing.

But a more remarkable instance of an attempt to control counsel, was exhibited in the case of Farkin,

tried in the Court of Oyer and Terminer, in the year 1843. It was a case of murder, and "NECK OR NOTHING" was involved in the issue. The prisoner, who was an humble man, was without funds or friends—and the Court appointed counsel for him. It was a most perilous case, and fought throughout with great desperation. The evidence was finished, and the summing-up concluded at 12 o'clock on Saturday night, when the counsel concerned were informed that the case might be adjourned over until Monday morning, upon an agreement on their part, not to occupy more than an hour. The defendant's counsel replied that he could enter into no such agreement; that he was there by the appointment of the Court, but he could not, in obsequiousness to the views of the Court, omit the performance of his duty, or sacrifice the rights of the defendant; that he should speak no longer than the importance of the case seemed to require—but he should speak just so long, if it took him till the cock crew. The case was not finished until after 4 o'clock in the morning, and the verdict, acquitting the defendant of the capital part of the charge, was rendered at 9 o'clock on the morning of the Sabbath.

Now, no doubt, the learned judge acted from the best motives, but he was certainly wrong; and if the course proposed had been adopted, it might have resulted in the loss of human life. A judge, especially in such a case, has no more to do with the length of a

counsel's speech, than the counsel has to do with the length of his honor's charge, or the measurement of his foot. A want of mutual respect produces mutual encroachment, which results in mutual injury, to say nothing of its effect on the rights of the community.

These, or similar occurrences, are not unfrequent. To those who do not understand, or justly appreciate, the perfect system of jurisprudence, they may appear to be unobjectionable; but, assuredly, every intelligent man, who justly estimates the sanctity of the laws, and the rights of society, must look upon them with alarm, if not with abhorrence. It is useless to attempt meeting these objections by suggesting that regard for time requires expedition. So it does; but certainly not at such a sacrifice. You might as well abolish courts of justice altogether, because her administration employs half the year. This would save time, and save salaries—AND ONLY RUIN THE COUNTRY.

There is a single additional suggestion which we take leave to make, in conclusion of this chapter. The Courts should not only approve, but promote, as far as possible, mutual liberality at the bar. They should set their faces against every attempt at sharp practice; it may be very shrewd, but it leads to mischief and discredit. We remember a distinguished judge having observed, upon an application by Mr. W. to release his antagonist from a nonsuit: "You had better hold the advantage gained, as counsel owe it to clients to

look mainly to their interest and benefit." A member of the bar, who was present, remarked that, "if that were the case, and adopted as a principle, no honorable or honest man could be a member of the legal profession. Lawyers would be no better than sharpers, and they would merit the reproach that in times passed had been cast upon them by the community. In performing our duty to our clients, we must not forget that we owe a duty to ourselves, and to a power above us. If the client, does not approve the counsel who adopts this view, let him get others more congenial to his purpose. Proper indulgence is not only required by honesty, but it is entirely consistent with personal and professional policy. No man can be ready at all times, and he should not be illiberal to others, as he thereby teaches others illiberality towards him." "But," said the judge, "if you let the delinquent off, he may never get ready." "That is to say," was the reply, "you take him for a knave—and I consider him, as I am bound to do, an honest man. And you sometimes convert him into what you take him for, by condemning him to resort to craft or illiberality, in order to protect himself. Whereas, in a profession like the law, no man loses by fairness and generosity."

CHAPTER X.

JOHN SERGEANT, L.L.D.

BORN, 1779—DIED, NOVEMBER 25th, 1852.

About the year 1810, a new legal era arose, embracing members of the bar admitted between the years 1790 and 1800, inclusive; most of whom were students in the offices of those to whom we have already referred. There were Hopkinson, Binney, Chauncey and Sergeant; William Meredith, Charles W. Hare, John B. Wallace, Hallowell, and Condy. These gentlemen did not, for some years from the time of their admission, establish themselves in any extensive practice. The heavier business of the profession was almost monopolized by their seniors; but laboring on and biding their time, of which their talents assured them, like good

soldiers, they were prepared to take their post, and fill up the forensic ranks, whenever death or accident might furnish an opening.*

Mr. Sergeant for some years held the situation of Deputy Prosecuting Counsel. Mr. Hopkinson officiated in the Circuit Court of the United States as an assistant of the District Attorney. Mr. Binney took up the business of Reporter for the Supreme Court, and Mr. Meredith, Mr. Wallace, Mr. Chauncey, Mr. Condy, and Mr. Hallowell, like young lawyers of the present day, but not with comparable facilities, betook themselves to the inferior courts as a preparatory step to a higher destiny, which they were entitled to anticipate, and which they eventually reached. All these were men of extraordinary talents—worthy to be the successors of the fathers of the bar. They gradually but slowly gained ground, and as they ad-

* The only surviving members of the bar admitted before the year 1792, are Anthony Morris and James Gibson; the former admitted on the 27th of July, 1787, and the latter on the 28th of September, 1791. Mr. Morris is now ninety-one years old, and Mr. Gibson eighty-seven—men of mark in their day—both of them still retaining unusual vigor of body and mind for their period of life, and losing nothing, from the lapse of years, of that reputation which they bore in earlier life, of accomplished general scholars, sound lawyers, and finished gentlemen. We had written thus much, when, before the ink was dry in the pen, we received the information of the death of Mr. Gibson, whom we had seen but a few hours before. Mr. Morris is now the only survivor of the Philadelphia lawyers of the last century.—(Tuesday, July 8, 1856).

vanced their seniors receded; popular favor carved out for itself new channels, and finally the new dynasty almost entirely superseded the old.

Hopkinson held a high post for oratory from the time of his speech in behalf of Judge Chase before the Senate. Sergeant, Binney, and Chauncey, very soon gave proof of lofty legal attainments—built upon integrity that was never questioned, and an industry never exhausted. There probably never were three men who in every respect were more united, or better entitled to be considered the models and the ornaments of the bar. Nor was their influence limited to this sphere. They shone wherever they moved, and were equally distinguished in social, political, and professional life. Their education was the most thorough and complete in literature and science. Their minds had been carefully disciplined to business, and to all these accomplishments was added the quality of distinguished and powerful orators. With such claims upon public regard, their advance to the proudest posts of the profession was not to be resisted. There they stood for more than thirty years, until the retirement of one, and the death of the others, closed their glorious career—leaving a grateful memory of their excellence to all that knew them.

We cannot, perhaps, present a better summary of the professional character of Mr. Sergeant, than that which his great rival himself furnishes, in his speech

before the bar meeting, upon the melancholy occasion of his death, in the year 1852.

How interesting and impressive are the lessons which we derive from the survivor, in depicting those great powers of his lamented cotemporary, the exercise of which he had so often witnessed, so often felt, and so warmly admired :—

"John Sergeant," says Mr. Binney, in describing his earlier career, "was a faithful student, addicted to little pleasure, social, cheerful, and gay with the friends whom he preferred. * * * He had at that time what all have since observed, an extraordinary quickness of thought, and an equally extraordinary grasp or comprehension of the thought or argument that was opposed to him. Whatever he studied he knew well, and when he left the office, was as accomplished a student as ever was admitted to the bar. I have seen his great powers in its bud—you have seen it in its bloom. It was the same flower more fully developed, but having from the strength of my first impression, no more freshness or beauty to me, at any hour, than when I saw it in its opening."

But in bestowing attention upon this just and eloquent reference to the character of the departed, we have somewhat anticipated the duty which we have humbly assumed, and to the imperfect performance of which we now cheerfully return, observing, as we have more than once done, that in sketching some of the features of the venerable dead, we do not profess to write their history, but simply to recall and gratefully embalm their memory.

John Sergeant was the son of Jonathan Dickinson Sergeant, who was, as has been observed, an eminent lawyer, and shortly after the Revolution, the Attorney General of the State of Pennsylvania.

The subject of this notice entered Princeton College in the year 1792, and graduated with honor in the year 1795. He subsequently became a student in the office of Jared Ingersoll, and in the year 1799, was admitted to the practice of the law under very favorable auspices, which improved daily during the whole course of his professional career, than which there never was a higher or more honorable career, in this or any other country.

At the time of his death he was in the seventy-third year of his age, and had been for more than forty years of that time, exclusive of his political or national employment, in the most extensive and lucrative practice.* He enjoyed the fullest confidence of the entire community to the last—and he merited it all. His learning was profound, and his piety sincere, though without any ostentation; and there has rarely been a man who more sedulously observed the two commandments of our Saviour, upon which, we are divinely taught, "hang all the law and the Prophets."

For a year or two before his death his health became obviously impaired; and on the 25th of Novem-

* It was currently said, that Mr. Sergeant paid for his costly house out of his professional income during the time it was being built.

ber, 1852, he bowed to man's inevitable doom—"The path of glory leads but to the grave."

Mr. Sergeant was never reserved, diffiding, or suspicious. If he gave you his heart, he gave you his whole heart with the frankness of a child. In my last conversation with him, while speaking of my intention to relinquish office business, and limit myself to the mere duty of public advocacy, he replied, that with my constitution I "might probably continue ten years longer in active professional pursuits, and that at all events, employment of some sort was necessary to happiness. But for my part," continued he, "I should not have gone beyond *seventy*. My last speech at Washington was made after that age, and it was a failure—I broke down." Judgment is generally impaired with the decay of the other faculties, but with him it remained in pristine vigor, and calmly witnessed, without sharing in, the deterioration of all the other functions.

It would be a delightful task to invite attention to his private virtues; but this would be beyond our prescribed limits, and might rouse sympathies that are in repose, or open wounds that time has partially cicatrized. Even his public life requires no eulogy or memorial, for he was *known*, and will long be affectionately and gratefully remembered. We must be permitted, however, as a double tribute, here to introduce another brief extract from a memoir, which is the production of one of his most devoted friends and inseparable

companions, and who is the last survivor of the distintinguished forensic triumvirate. We allude to Horace Binney—the last lone star of that bright constellation, which for fifty years shed its benign influence over the profession and practice of the law.

Mr. Binney, with emotions that may be more readily conceived than described, thus speaks of his departed companion—his lamented friend:—

"I knew him well. I respected him truly. I honored him faithfully. I honored and respected him to the end of his life. I shall honor and respect his memory to the end of my own. * * * * In addition to great quickness, grasp of thought, and power of comprehension, he derived through an excellent education, the art of arranging his argument with perfect skill, according to the rules of the most finished and effective logic; and he was able to penetrate the want of it in any body that was opposed to him. He never confused his premises and conclusions by blending them together or involving in any way—and he never permitted any one to do it against him. He marched to his conclusions by a path or paths that he was willing to let every body trace and examine, after he had completed the passage—and it was not safe for any man to do otherwise with him.

"His mind was of a suggestive character. He did not like to read for the purpose of thinking; he thought for the purpose of reading, to corroborate or to rectify his thoughts. It was his striking way; and while sometimes it exposed him to inconvenience, at other times it gave him a sort of electric power, that was altogether marvellous."

Such are the sentiments of one who knew Mr. Ser-

geant best and loved him most. And probably there is no man in the Union who ever enjoyed the pleasure of *political*, professional, or personal intercourse with him, who would not have subscribed to his character as thus drawn.

Mr. Sergeant was in stature rather below the middle height, delicately formed, with dark hair, which remained unchanged up to the time of his death. He had fine large, dark, lustrous eyes, a prominent nose, large mouth, and a forehead expansive and indicative of great intellectual power—causality and order were its prominent indications, but in all respects it was a perfect study for a phrenologist.* He always dressed with the greatest neatness and precision. His temper was mild and equable; his manners cordial and unsophisticated. He was one of the first lawyers of his day, and certainly, if equalled, not surpassed by any of his cotemporaries, as an eloquent and effective advocate. His voice was not musical, but at times it was powerful, and always most persuasive. In addressing a jury, he seemed rather to argue his case *with* them than *to* them, and in the language of one of his competitors, he virtually got into the jury-box, and took part, as it were, in the decision of his own case. His high

* In the Law Library of Philadelphia may be seen an exquisite portrait of Mr. Sergeant, painted, at the instance of the bar, by Mr. Thomas Sully, whose name as an artist is historical, and only requires to be mentioned.

character for honesty and candor always secured to him an attentive hearing; and the freshness and warmth of his feelings, and the energy of his appeals, readily led to favorable results. He was a good general scholar, but on that score not equal to his brother, Judge Sergeant, or to Mr. Binney. Too much of his time was devoted to legal and political science, to admit of his bestowing much attention upon Belle Lettre studies. We remember well some ten years before his death, when engaged in the case of Dyott, a question involving an important water-right, with J. R. Ingersoll, Chauncey, and Binney, all those gentlemen, among the best speakers at the bar, occasionally mounted upon the poetic wing, and produced great effect by the beauty of their literary quotation. Before Mr. S. rose to reply, and while he was walking up and down the room, we observed to him that there was a passage from Shakspeare exceedingly appropriate in reply, and repeated to him those lines from Othello:

> "Like to the Pontic sea,
> Whose icy current and compulsive course
> Ne'er feels retiring ebb, but keeps due on
> To the Propontic and the Hellespont."

His fine face brightened with pleasure, as he said, "Do write it down for me; for, do you know, I never could repeat two lines of poetry in my life from mere memory."

Cicero, in the case of the prosecution of *Verres*, after great self-laudation, exclaimed, "So may the gods be merciful to me! that whenever I think of the moment when I shall have to rise and speak in defence of a client, I am not only disturbed in my mind, but tremble in every limb of my body." This was also remarkably the case with Mr. Sergeant. For some minutes after he rose to open his argument in any important cause, he appeared to be oppressed, his hand shook, his lips quivered, and his whole frame seemed to be disturbed; but gradually a reaction took place, and *when* that result arrived, he was every inch an advocate—self-possessed, eloquent, confident, and generally successful. Indeed, it was observed once by Mr. Chauncey, in speaking of Mr. Binney, the friend and rival of Mr. Sergeant, "That he never *lost* a case that he ought to have *gained*, except when Mr. Sergeant *gained* a case, that he ought to have *lost*."

Mr. Sergeant, in arguing a cause, however dry and barren, always united or intertwined so much feeling with it, as to secure the understanding through the influence of the heart. He seemed to be on the bench and in the jury-box at the same time. His position, legal, political, social, and moral, rendered him almost invincible. He had a warm and affectionate heart, with a cool and meditative head. He was a man of great system, great delicacy, and consequently, great propriety.

The apparent modesty, not to say timidity, with which, as has been said, Mr. Sergeant approached an argument, had not only the example of Cicero, but it has been characteristic of many great men, indeed some of the greatest men in Parliament and at the bar. Charles James Fox, Townsend, Burke, and even Mansfield, manifested at least considerable hesitation in opening their speeches. A gentleman who was present when Fox made his famous speech upon the East India Bill, describes him as holding an old white hat in his hand when he commenced his speech, which, for more than fifteen minutes he so twisted, and turned, and pulled, that by the time he entered fairly upon the discussion, there was nothing in the shape of a hat left.

This peculiarity leads us to consider its cause; and we think it is attributable to the intensity of thought, drawing or driving the blood from the surface of the body to the heart. When nature recovers her tone, and reaction takes place, then it is that those great efforts are produced that strike the world with wonder, and carry the speaker, as it were, even beyond himself. So much does the mind affect, and so much is it affected by, the condition of the body.

We have even high classical authority in support of our views on this subject, derived from Homer's description of a speech of Ulysses :—

"But when Ulysses rose in thought profound,
His modest eyes he fixed upon the ground;
As one unskilled or dumb, he seemed to stand,
Nor raised his head, nor stretched his sceptered hand;
But when he speaks, what elocution flows!
Soft as the fleeces of descending snows
The copious accents fall, with easy art,
Melting they fall, and sink into the heart!"

In the case of youthful aspirants at the bar, it has been remarked, "that hesitation is a presage of future eminence;" and it is undoubtedly true, that no man ever made a bold and confident first speech, with entire self-possession, whose last speech was worth hearing. He gradually gets worse instead of better, and no reaction being produced, and no difficulty surmounted, his stimulus to great efforts is diminished, instead of being increased, and mediocrity at most is his final reward. Remember, we say, "a confident speech, with entire self-possession." There have no doubt been many magnificent first efforts of young men, but they were always attended in the outset with great diffidence and trepidation; and that very modesty imparts grace to intellectual strength, and renders it more effective.

There was one feature in the life of Mr. Sergeant, which, as indicative of the high moral tone evinced throughout his whole life, we must not omit to notice, though it cannot be considered strictly as a professional

incident. Mr. Serjeant was a stockholder and officer in the Schuylkill Navigation Company. Having great confidence in the success of his enterprise, he invested therein a large portion of his fortune. Matters proceeded for a long time prosperously; the stock advanced rapidly, and nearly doubled its original cost; but soon after the Schuylkill and Pottsville Railroad Company went into full operation, those who were best acquainted with these matters, saw that there must be an inevitable, rapid, and ruinous decline in the value of the canal stock—a panic was the consequence. Many persons who were holders sold out their shares, and not only avoided loss, but secured no inconsiderable profit. It was timely proposed to Mr. Serjeant that he should follow their example. How little did those who made this suggestion appreciate the moral grandeur of his character. "No!" was his prompt and indignant reply. "I have launched my fortune in the same boat with others, many of whom have relied upon my opinion and my example, as to the probable safety of the investment. There are many that can bear the loss less than I can; but whether or not, I will not shrink from the common peril, and save my money at the expense of others, as well as of my own character. If they lose, I will lose; and then no man can question the honesty and sincerity of my motive. Not a share of mine shall be sold." One such practical denotement of the principles of a man is worth a volume of ordinary

theoretic benevolence—"*Opum contemptor, recti pervicax, constans adversus metus.*"

It is doubtful whether any man at the bar, or that ever was at the bar of Philadelphia, enjoyed higher or more deserved favor with his fellow citizens than John Sergeant. While he was the pride of his profession, he secured to himself the entire confidence of all to whom he was known, and particularly those to whom he bore the relation of counsel. He was kind and conciliating with all, but the charms that more especially recommended him to popular regard, were his frankness, simplicity, and warmth of feeling.*

* In order to preserve the series of judicial pictures or outlines, we reserved our notice of Mr. Sergeant for this chapter. He does not depend upon place for his honors, but imparts honor to *any place*. He was not omitted because he was forgotten—but because he could not well be introduced among the ANCIENTS of the law, as *his* sun did not rise, until *their's* was declining.

CHAPTER XI.

FORENSIC MEDICINE, OR MEDICAL JURISPRUDENCE—ITS IMPORTANCE TO LAWYERS AND DOCTORS.

Theology, Medicine, and Law, are the three great sciences of life. The first is directed to our eternal welfare, the salvation of the soul. The second, to the preservation of our decaying bodies, in which the seeds of dissolution are planted with those of existence. And the third, to the safeguards of our lives, our liberty, our property, our health, and our reputation. As these sciences embellish, improve, and sustain each other, they should always be found together; to separate, is to destroy or impair them. Theology teaches us our duty to God. Medicine is designed to preserve our physical faculties, by which the mind is more or less affected in its actions, development and tendency.

And the law, which is founded on the principles of theology, as applied to human and temporal exigency, also necessarily embraces in its administration the diseases of the body, their effects upon the mind, and of course, their influence upon the question of mental competency, and civil and criminal responsibility. No one of these sciences is complete apart from its relations to the others. God, the source and object of theology, is the great Law-giver, and the great Physician. It is our immediate purpose, however, to direct our attention to LAW and MEDICINE, so far as *they* are connected with each other; and thereby to present, as the result of that union, a derivative branch of science, which may be properly denominated "Medical Jurisprudence, or Forensic Medicine."

Medical jurisprudence, then, is the law, as applied to medicine. Men may be doctors, after a fashion, with no knowledge of the law. Men may be lawyers, without any other knowledge of medicine, than their own stomachs or experience may supply; but it is to neither of these classes of the respective professions that we address ourselves. A science is so called, because it is never fully acquired. We go on learning, learning, learning, until at last we reach the highest style of knowledge—"knowing ourselves"—in other words, knowing how little we *do*, or *can* know. To succeed in a little, however, we must aspire to much—"in great attempts, 'tis glorious e'en to fail." And we shall then be tested,

not by our perfections, for that is not the lot of man, but by our success in overcoming our imperfections. Our merits are relative. He who is the first of his class, is at least looked up to, however vast the regions above or before him that remain unimproved or unexplored. The hill of science is difficult of ascent—the course of instruction is a thorny one—it is no primrose path of dalliance! but fix your eye upon the glorious summit, redolent with amaranthine flowers, and exhibiting on its time-honored brow all the colors of the rainbow, to light, and lead, and lure you on—and who then will fail or falter in the great attempt? Remember, always, that "wisdom is better than rubies, and all things that are to be desired, are not to be compared to it."

But to proceed to our duty:—

1. What, then, are the necessities for this branch of knowledge?

2. What are its objects?

3. What its probable results to the profession and mankind?

To ascertain the necessity for this branch of science, visit the lecture-room or the forum—there you will find the disciples of the one, for the most part totally unacquainted with the mysteries of the other; in short, often *boasting* that they know nothing about them. We have heard a lawyer thank Heaven that he knew nothing about medical science; and a doctor equally pious in de-

claring his utter ignorance of the law. It is, to be sure, gratifying that such men, in the language of Franklin, should have grace enough to "thank Heaven for any thing;" but, nevertheless, it exhibits a most wanton and unpardonable stupidity and folly. The confession might at all events be spared, since the fact is generally so obvious. What does a humdrum lawyer know of the brain, of the nervous, osseous, muscular, or sanguineous system, of the membranes, or coats of the stomach, of the heart, pericardium, tissues, liver, lungs, viscera, etc.?—comparatively nothing, either in their separate or joint structure, to say nothing of their influence upon each other or the entire system. Why, we have seen a lawyer in raptures, in trying an indictment for murder—the blow having been laid as struck on the right side of the head—to find that the important fracture of the skull was on the left side. What did he know of the action of the counter stroke, which exhibits the effect in another and opposite direction from that which presents the cause. He knows no difference between strangury and strangulation—hydrocele and hydrocephalus. Nay, more, he knows nothing of the influence of bodily infirmity upon the mind, or of the influence of the mind upon the state of the body. How, then, can he try questions of murder, involving life—or questions of insanity, fatuity, senility, or idiocy?—as sometimes affecting life, and oftener controlling the disposition of property by will,

or the validity of contracts, the most solemn and important. When ignorance is exercised upon such lofty and complicated subjects, a fool becomes worse than a madman, and both often perish together.

In these deficiencies, we have not referred to metaphysics. When physics are incomprehensible, metaphysics are unapproachable. In this state of things, what can you expect from an examination of witnesses, the sources of light upon most inquiries? Absolutely nothing. The witness does not know what the lawyer desires to prove, and the lawyer does not know what he requires to prove himself. Truth and justice may sometimes prevail, notwithstanding, but instead of this being a trial, it is a mere game of chance, in which folly throws the dice, and the gallows attends the sequel. In France and Italy, no man is permitted to practise in the criminal courts, without undergoing an examination, and establishing a familiar acquaintance with the principles of forensic medicine. Now what is to be said of the doctors? We don't mean them all—Heaven forbid!—but the masses. They are generally the witnesses most relied on, in those matters to which we have referred. Their ostensible skill entitles them to great weight; their general character, and freedom from prejudice, adds much to that weight; and their responsibility therefore is proportioned to their power—to their pretensions. How is it met? In cases of insanity, epilepsy, apoplexy,

mania-a-potu, anatomy, surgery, etc., etc., pregnancy, palsy, toxicology, botany, and chemistry.

They come into court standing upon their guard against what they erroneously believe to be the tricks of a sister profession; and instead of relying upon their fulness of knowledge and light, they are distracted by the desire to avoid an appearance of ignorance upon any matters of inquiry. We never knew but one physician that replied, "he did not know." They all prefer speculating, though life and property may often depend upon their speculations. There are two miracles never yet witnessed—a physician that knows everything, and one who will confess he does *not* know everything.

We have asked a doctor, whether a slight cut of a finger was dangerous? Well, he must first know what we mean by "*danger*," as if the words did not convey their own meaning; and finally, he will tell us of the apparent disproportion between cause and effect, gangrene and lockjaw, and the whole tissue of evils that *may* possibly arise, and thus override all probabilities by an imaginary possibility. He is so careful that he adopts Hotspur's doctrine, that it may be dangerous "to eat, to drink, to sleep," and the question and the answer both go for nothing. Where is the difficulty in saying a slight cut of the finger is not dangerous? The whole difficulty arises in considering what use is to be made of the answer, rather than what plainly should be the answer. Time is thus occupied unpro-

fitably by the suspicious and useless anxiety of the witness.

"Is it possible, doctor, for an unsound mind to reside in a body that is undoubtedly sound?" His answer was, he could conceive of such a thing. What a conception! Why not answer, he didn't know. He did not dare to confess ignorance, and he therefore, to shield himself, conceived of that which no other man in his senses could have conceived; as it appears to be well settled among the truly scientific physicians and metaphysicians, that the mind is never impaired in its action, except through the disordered functions of the body. If the mind in itself could be diseased, it could die—a supposition directly opposed to the sublime doctrines of the immortality of the soul, and therefore utterly to be rejected. A distinguished physician in New York, upon being asked how fevers were divided, replied, "there are many kinds of fevers." He had to be reminded that they were classed under the heads of idiopathic and symptomatic; and upon being further inquired of, to what class typhus fever belonged, assigned it to the symptomatic class. "What," asked the counsel, "is it symptomatic of?" "Of the *climate*," was the reply.* Much more commendable was the testimony of a very learned surgeon of this city, who, in a case of murder, in which the defence rested upon the allegation that the deceased had com-

* Frost's Case.

mitted suicide. There the counsel, absurdly enough, it is true, asked the doctor, what were the general indications of death from violence? to which he replied, "my knowledge will not enable me to answer so broad a question." Shakspeare has furnished the best answer that I know of in his description of the death of Glo'ster, where the question was, whether the deceased died from natural causes, or from violence. (*Henry* 6, act 3, scene II.)—

"See how the blood is settled in his face.
Oft have I seen a timely-parted ghost
Of ashy semblance,—meagre, pale, and bloodless,—
Being all descended to the laboring heart,
Who, in the conflict that it holds with death,
Attracts the same for ordnance 'gainst the enemy,
Which, with the heart, there cools, and ne'er returns
To blush and beautify the cheek again.
But see! *his* face is black and *full* of blood;
His eyeballs further out than when he lived,
Staring full ghastly, like a strangled man;
His hair upturned, his nostrils stretched with struggling;
His well-proportioned beard made rough and rugged,
Like to the summer's corn by tempest lodg'd.
It cannot be, but he was *murdered* here!
The least of all these signs were *probable*."

From these brief remarks, the necessity for a knowledge of medical jurisprudence will be entirely obvious to every intelligent mind. Separated entirely from each other, medicine and law leave a gap "for ruin's

wasteful entrance." A doctor who knows nothing of law, and a lawyer who knows nothing of medicine, are deficient in essential requisites of their respective professions.

Now, what are its objects? We answer, in the general, to meet these necessities; to promote practical skill in medicine and in law; to render both more certain, and to magnify both, instead of permitting them to remain a by-word and reproach. To engraft so much law upon medicine as may improve the stock, and to infuse so much medicine into the law as may purify, strengthen, and improve its administration. Both the sciences shall thus grow brighter in reflected light, and both shall conduce, to the mutual support of each other, to the lasting benefit of mankind.

It is not to be expected that the medical faculty should desert their appropriate sphere, for the purpose of attending courts of justice, and ascertaining, in the diversities of litigation, the application of those legal rules by which medical testimony is to be governed. Nor is it to be supposed, that in their exclusive devotion to their own practice, they can be fully aware of the various and multifarious occasions that present themselves for the exercise of the highest departments of their knowledge, in the civil and criminal issues submitted to judicial tribunals. Perhaps it is still less to be imagined that lawyers in full practice, or even in the expectation of full practice, should aban-

don the forum to attend daily upon the learned and instructive lectures, which the various and distinguished medical schools so abundantly afford. A course or two on Chemistry, Surgery, and Anatomy, assisted by a little incidental reading, would, at the most, be all to which they could apply themselves. Indeed, it would rarely happen, that even these opportunities could present themselves, or be enjoyed. Hence it becomes apparent that lectures upon Medical Jurisprudence, "the zone of both sciences," which will embrace all that is necessary of the law as well as medicine, in order to the improvement of the professors of both, will furnish facilities for the acquisition of practical knowledge, which, independent of such a professorship, must be utterly unattainable. Ten lectures in a course, one every fortnight, continuing through four or five months, would make a very inconsiderable draught upon the time and attention of the busiest man; and especially if the evening be selected for the time of lecturing. The advantages of a single course of such instruction, with moderate experience and competency in the preceptor, would be of incalculable value. It would form a connecting link between the students of both professions, that would exercise great influence upon the prosperity and harmony of both—mutual good understanding would be promoted—mutual confidence secured—and mutual and individual duties much more satisfactorily performed. The effects

of such an example would be to stimulate the indifferent or supine into emulation, and the sciences would then become what they were designed to be, the most precious earthly blessings enjoyed by man. We can understand why doctors should not always live in entire harmony with each other; why those of different schools should rarely shake hands, unless in consultation. But we can see no possible reason why physicians and barristers should not agree. There can be no jealousies, or heart-burnings, or slanders between them. They move along *pari passu*, in parallel lines towards eminence in their respective professions. They never come into conflict, except with a joint object, and that object should reconcile slight differences.

But, in opposition to some of these views, drones and sciolists will tell you, that no man can be a lawyer, a doctor, and a divine! That study must have an especial and exclusive destination. This is a great mistake. No one branch can secure eminence, still less can it do so when it is singular in its application. It may secure distinction; but distinction is not eminence. It is in their union that the powers of the mind are wrought up to their highest excellence, and that human nature would seem to entrench upon the dignity of angels. The mind can embrace almost any thing it inclines to. Instead of being exhausted by its labors, it is invigorated; instead of being encumbered by diversity, it is often relieved; instead of being diminished in its

capacity, it is enlarged. Like charity, the more it gives away, the more it has:

> "For no man is the lord of anything,
> Though in and of him there be much consisting,
> Till he communicate his parts to others;
> Nor doth he of himself know them for aught,
> Till he behold them formed in the applause
> Where they are extended, which like an arch reverberates
> The voice again, or, like a gate of steel,
> Fronting the sun, receives and renders back
> His figure and his heat."

Now, what would be the result of the course suggested to the profession and the country? First, the college in which such a professorship should be established, would enlarge its sphere of usefulness, attract scientific and public attention, and secure, in proportion to its fame, an increase of its emoluments; for, in this money-loving country, this would seem to be the butt end of every blessing—the great motive power to all physical and intellectual effort.

But this is not all. To look to it individually, it would have a tendency to enlarge practice. Proficiency in every additional branch of science, secures new adherents, new patients, and new claims upon public patronage. As one science is important to another, so each branch of the same science imparts its aid to the other branches, and in their perfect and luminous com-

bination, like heavenly constellations, they borrow and shed lustre upon each other and the world.

These advantages are equally important to the lawyer. His profession is elevated and magnified by them —his practice increased. The drones of the law are either lost sight of in the splendor of his achievements, or serve merely, like a cloud margining the sun, to render his effulgence more striking and more glorious.

A defendant is accused of murder by violence. The great question is, whether the death resulted from disease, or from the dagger? or, whether the defendant was *non compos mentis*, or poison is alleged to be the agent resorted to to produce death? Arsenic, antimony, mercury, or laudanum is imputed to the case. The stomach, the liver, the heart, the brain, the entire tissues are to be examined. How is this to be done? No bungler can do it. A bungling physician, and a bungling lawyer, mixed up together, are more dangerous than the assassin's dagger, or the poisoned bowl.

With competency in medical jurisprudence, the mere business of a lawyer, relating to matters connected with the subjects we have referred to, would furnish him with a sufficient, nay, an abundant income, exclusive of all other practice. But if in itself it be attended with these benefits, what shall be its results when united with general scientific accomplishments? What competition would such a man apprehend? Prepared at all points, he takes the field ready to encounter

difficulty, disease, and death, in all their various and hideous shapes. His armor is the armor of Achilles—nay, he is not even vulnerable in the heel; and if he were, he has no cause for fear, for he never turns his back upon his adversaries, but confronts and fights the battle to the last. What a glorious spectacle!—the immortal part of man struggling to subdue mortality; struggling not to destroy, but to preserve; standing between the grave and its victim, and summoning to his aid the vast resources which days, and nights, and years of devotion—of toil—have accumulated and strengthened. But this is not all. Look to the reverse of the picture, if you would consider it in all its glory; look at the ignorant and careless, or indifferent practitioner—frightened at the patient, frightened at the disease, frightened at everything but his own folly. In such circumstances can it be wondered at, that the patient often dies of the doctor, or that the lawyer twists the halter for his own client, and that, too, without remorse or shame. Yet is not this the worst of murder?—murder in cold blood; murder with malice prepense; murder not only against unoffending men, but against those who have relied upon your friendship—who have trusted to your skill—who have confided in your sympathy—who have thrown themselves into your opened arms for promised protection. The man who would betray such a reliance as this, should abjure his name, as he has abjured his nature. He

should abandon his profession, of which he is an ill-deserving member, and turn to the trade of an undertaker or a hangman, which, requiring less skill, would imply greater competency, and certainly much more congeniality with his studies and his tastes.

But what are we to say for the results to the community? What are they to think upon this interesting —this vital subject? Is their liberty, property, health, or reputation, of any regard? Who is the warder of that castle, wherein all their hopes in these respects are deposited? Who holds the key of the great citadel?— "where either they must live, or have no life." Is it one who sleeps upon his post, or who does not know the watchword, or who opens the portals to every enemy? one whose vigilance and fidelity have never been tried, or never been vouched? one who cannot guard his own poverty, and therefore cannot guard their treasures? one who is blind, and deaf, and dumb, to all the requisites of his post? If such is to be your choice, inevitable destruction must await the sequel— not only destruction to you, but yours; not only to them, but theirs—so broad, and general, and complicated, is the mischief that often—too often—ensues upon the first false step. Let the public look well to this. No one can guard them against these consequences *without* their will; no one can redeem them, even *with* their will. Quackery may be cheaper— lighten the purse less—but it makes the heart heavy;

yet there is still this consolation, that, while it affords no relief to the disease, it affords speedy relief to the patient or client, by conveying him to a premature grave, or a solitary cell, in which his suffering and folly are alike forgotten.

But let us turn to things as they should be, not as they generally are. It is appointed for all men to die, but not by the lawyer or physician; that is no part of the sentence of the Almighty Judge. Still, men are to DIE. The late distinguished Dr. Rush seemed to consider it a reproach to medicine, that human life should not be prolonged to the scriptural limit, except in those cases of accident and casualty incident to mortal concerns, among which, professional neglect or unskilfulness has modestly been omitted.

There is another subject alike important to lawyers and physicians, and we regret to say, too much neglected by both. We mean eloquence—vital to one, and most useful to the other.

Forensic medicine may appropriately embrace incidental instruction upon the advantages of an agreeable elocution. Eloquence is certainly not to be disregarded by a physician, when it is recollected that a composed mind exercises great influence over the diseases of the body. By eloquence, a physician may sweeten his physic, and render palatable the nauseous draught. You may have all heard it said of the venerable physician just referred to, that his manners and address were

so soothing and so bland, that his cures were sometimes as much attributable to his eloquence as to his prescriptions. This by some may be called womanish and weak, particularly by the disciples of Radcliff, Bell, and Sir Astley Cooper, nevertheless, it is deserving of imitation. Dr. Parrish was another example in this respect; and indeed, we are most happy to say, that a departure from it is rather the exception than the rule with the medical profession generally. What we contend for, however, is, that it should be universal. It is not merely a duty, but a privilege, to smooth the pillow of pain; to console the afflicted mind; to strip death of his terrors; and to slope the way to the last, narrow, silent house, prepared for all living.

It is exceedingly important to a physician, in his character of a witness, to bear in mind that his obligations are in proportion to his skill and character. Upon his single voice, not unfrequently, everything valuable in life, and, indeed, life itself, may depend. He must not allow the general circumstances of the case, or what is called its moral or legal bearing, to influence or affect his medical determination. He has no right to give any opinion upon any other portion of the case than that which is strictly within his own scientific limits. And yet we have heard a most intelligent and honest physician, and withal a humane man, state to a jury, that "not from the stomach alone, the symp-

toms alone, but from those *combined* with the general state of the facts, he came reluctantly to the opinion that the deceased was poisoned." This he had no right to say, for it was the exclusive and peculiar province of the jury; and any invasion of it is not only a violation of the principles of the constitution and laws, but exercises too often a controlling influence over the destiny of the accused.

The jurymen shelter themselves under the opinion of the doctor, ignorant of their own privileges and duties, and not observant of the defendant's rights; and the doctor thus being supreme in matters of science, forgets his limits, and often spreads a ruin around.

Whenever there is doubt or equivocation in experiments, the defendant should enjoy the benefit of the doubt, and it should be yielded to him not grudgingly but freely—*bis dat qui cito dat.*

The condition of a scientific witness must be most awful, who gives any other opinion than that which is infallible. Opinions in cases of poisons we have always considered highly questionable, and requiring the utmost possible care, and especially in the application of new systems, that even have not undergone the test of time and experience. No doubt, Branch's test will reduce arsenic to the metal; but the metal may be in the copper, in the muriatic acid, in the porcelain, in the glass tube, or in the nitrate of silver, or the sulphate of copper. There is a vast difference between what

may serve for mere chemical purposes, and what is required as the basis of a judicial opinion directly involving life. There is also a great difference between reducing the arsenic where you have deposited arsenic, and of course know its existence, and reducing the arsenic where you are embarrassed by animal, and vegetable, and mineral substances, all combined together, and attended by the phosphates, alkalies, etc. Science does enable you to say that arsenic *may* be present, but it does not enable you to say that what you take for arsenic is nothing else. There are more things in heaven and earth "than are dreamt of in your philosophy;" and new combinations or new substances may so simulate poison, in the application of your dry and liquid tests, as to confound one substance or metal with another. As far as you go, you may distinguish, by means of the tests; in other words, you can show what it will detect, but you cannot show what it will not; and the one is just as necessary as the other, in many of the questions that arise.*

Another matter is to be regarded. Remember that the prosperity of your testimony lies in the ears of the Court and jury. That if *they* do not understand the views you intend to convey, then either no idea is conveyed, or the idea is subject to be perverted to some unjust and unreasonable result. How is this to

* Vide Chapman's case, in which mercury was mistaken for arsenic.

be avoided? Only by the most explicit communication of your views. By explaining the Latin and technical terms which you may use; call water—*water*, salt—*salt*, potash—*potash;* or give them chemical names, and then interpret them. So in all terms of anatomy and surgery, physiology and pathology. Thus you will be fully comprehended, and avoid the misinterpretation by ignorant counsel, or the misapplication by a stupid jury. Of all things earthly, the affected jargon of the schools is to be avoided in all matters of popular consideration, and especially in all matters of judicial inquiry. It was intended partly, as Shakspeare says, "to guard the fruit that priests and wise men taste," and not to enlighten the unsophisticated or uninformed.

Physicians and lawyers should always remember that they are men. And they should, of course, remember those sympathies which bind them to the great family of man. We differ with those who maintain, that rigid duty requires a stern and rigorous deportment in the exercise of the functions of counsel or witness. Prosecutions should be conducted firmly, but with great moderation, forbearance, and humanity. So far from this being incompatible with justice, it is calculated to dignify and embellish it. Doctors, instead of giving an opinion that poison or wounds produce death, might pronounce, if the case required it, that they were *sufficient* to produce death; but they should not be un-

mindful that more than one cause of death may exist at the same time, and that it is not the cause of death, but the actual *result* of that cause, that constitutes the offence of homicide. A case, for instance, is reported, upon unquestionable authority, of the detection of arsenic in the stomach of a deceased man—sufficient to produce death; but upon a careful post mortem examination, it was found that the individual had actually died of apoplexy—a result totally disconnected with the imputed crime. Now, although the administering poison with intent to kill was undoubtedly a high misdemeanor, it was no homicide, inasmuch as it was not productive of the death of the intended victim.

Where, in cases of metallic arsenic, the metal is alleged to be produced, it should, after being tried by the liquid tests, be reproduced, and then exhibited upon the trial, for the purpose of abiding by such other tests as may be necessary in the judicial determination of the subject. The Court might appoint medical commissioners for the purpose of testing the *tester*, and thereby many lives might be saved, or at least the decisions of courts of justice rendered much more secure and satisfactory. Life cannot be surrounded with too many safeguards. The ghost of one man is not to be appeased by the unjust sacrifice of a score who are innocent. A physician should be particularly careful not to rely upon new-fangled systems or experiments. They require the tests of time, and experience. There is no diffi-

culty in saying, for mere chemical purposes, that Marsh or Branch's process will produce arsenic when it exists; but we doubt much whether they can be judicially relied upon, even with the aid of the liquid tests, in determining the question whether the human stomach contained arsenic. Before this can be done, it should be clearly shown that no other substance could simulate the arsenic in the result of the tests. The evidence should be exclusive. Chemical science is, in some cases, very far from being certain, and is liable to be affected by what is called the collateral evidence of the case.

We have thus, in a hurried and an imperfect way, presented to the view the necessity for the study of forensic medicine—the objects to which it should be directed, and the probable beneficial advantages by which it will be attended. We have not attempted to enter into details, nor to point out the legal duties of a physician, in his attendance upon the insane, the sick, and the dying; his duties in regard to donations *mortis causa*, in other words, oral gifts, made by patients in their anticipation of death; the subject of nuncupative wills, or those directions which are given in regard to property, where the suddenness and extremity of the peril of death are such as to forbid the patient to make a formal and regular disposition of his estate. We have not dwelt upon the mode of drawing wills, and upon their essential requisites, as

regards the testator, the nature of the devises or legacies, and legal execution of the documents; nor upon post mortem examinations, in cases of violence, or supposed unnatural death—the organization and duties of the coroner's inquest—the character of the proceeding —the nature of the evidence to be submitted to them —the testimony of the examining physician—the verdict and finding of the inquest, and the operation of all upon the subsequent trial of the accused; yet, all these are matters of deep and dangerous concernment.

Lawyers are often compelled to carry the cases referred to through the courts—examine into the doctrine of dying declarations—discuss the question, how far the physician can be compelled to relate the confidential communications of his patients—in what cases he has the right to give his opinion upon his own knowledge of facts connected with the supposed homicide, and how far he may give his judgment as to the cause of death, as related by others. All these, therefore, require attention. But they would require a volume, instead of an essay, to do them full justice.

CHAPTER XII.

GOOD FELLOWSHIP OF THE BAR.

A MORE united, liberal, and harmonious body of men, than those who compose the legal profession—in which we embrace judges, as well as barristers—has never been known. We speak, of course, of those who legitimately belong to the bar, and who are attached to the law as a *science*, and not as a *trade;* who, in short, form, as it were, the forensic family. During nearly half a century of general and diversified experience, at home and abroad, we have no recollection of any serious or irreconcilable difference—to say nothing of hostilities—at the bar. When it is considered that there are more than twenty thousand lawyers in the United States—that they represent different and opposite interests—that they are educated in different schools—are of different temperaments—different breeding, and different passions, it is truly remarkable, if

not wonderful, that the relations among them should be so invariably *amicable*, and we may say, *cordial*. This is, perhaps, more than can be truly said of any other equally extensive body of scientific or literary men.

The medical faculty present the very reverse of this picture. Their bickerings, jealousies, and hostilities, have become proverbial, and are acknowledged even among themselves; and we have heard it not unaptly said, that they have rarely been known to shake hands together, except in consultation. And it is far from certain—we say it with regret—that even the members of our holy religion agree half so well, or seem to appreciate each other half so generously and highly, as the disciples of jurisprudence.

Before we proceed to inquire what is the reason of this unity among the members of the bar, let us ascertain to what the want of it is to be attributed, among the sister sciences. Doctors of medicine and of divinity, agree well enough with each other, and both agree with the legal profession; but neither of them agrees within itself. The cause of this deplorable effect would seem to be this:—The members of the medical profession have no common tie—no bond of union. They don't meet together daily; and therefore are not equally social. Their intercourse with each other, is often through their patients; whereas, the intercourse of clients, is mostly through their counsel. Doctors belong to different and conflict-

ing schools in their own State, or rival schools, in different States or quarters of the country. Each class maintains its own infallibility and supremacy. The law has but one school, and in that justice presides; she hears, and she determines controversies, which, otherwise would result in endless and cureless feuds.

Again, medical men mingle less in general society, while they have but little society among themselves. Their labors are more secluded and contingent—they are not brought so much into public life, into that popular intercourse, that by attrition removes those asperities that keep men asunder. Their knowledge is not so general or so available for the ordinary purposes of life; they know more of disease, but less of men. They are rarely found in the halls of legislation—in political or philanthropic assemblies—in high official stations; all of which are important schools for instruction, and cause men to know each other better, and mutually to admire each other's virtue, or excuse their faults. The more a man knows of the world, the more easily and agreeably he passes through it—plucking its flowers and avoiding its thorns. A doctor goes to a party as if he were visiting a patient, or as if he anticipated one. There is, in short, a solitariness in his pursuits, that would seem in its influence to confine him within himself. He is cautious; he is punctilious: his colloquial powers have been confined to the narrow and gloomy limits of sick chambers—agony and death.

Unlike lawyers—doctors never change sides—they are for the most part alone. They may be misrepresented or slandered by ungenerous rivals, or reproached by ungrateful patients; and as their services are rendered in private, there is no public to redress their wrongs or vindicate their rights. They are more dependent upon patronage and family influence; they have but few opportunities of forcing themselves upon public notice; and if we may say it reverentially, the world neither "seeth in *secret*, nor does it reward them *openly*." In all these respects, without individual notice, it may be said, the members of the legal profession enjoy a decided advantage over their medical brethren.

Then, as to ministers of the gospel—the great healers of the spirit—to whom we are indebted for instruction in the means of eternal salvation. They are men—good men, undoubtedly—but still impaired in their pure and sacred offices by human infirmities. Their holy zeal is distributed into different sects—they adopt different creeds—adverse forms—modes of faith. They are, of course, not men of the world. Their religion is undoubted, but they sometimes require practical philosophy, not to secure their own salvation, but to allure the wayward sinner to redemption. Philosophy, it is true, is no substitute for piety, but it may sometimes aid her divine influence, and assist her in her blessed work. Though not men of the world—and certainly not to

borrow "the livery of Satan to serve Heaven in"—they might so much adapt themselves to the innocent agreamens of life, as to take from their profession its fancied ascetic character, and thereby overcome the resistance of the recusant. Heaven forbid, that one jot of clerical sanctity should be waived; but if a minister of salvation is not cheerful and hopeful in his divine work, who should be? Many of our clergymen have experienced the benefit of the social virtues, and that, too, without abating one jot of the dignity that properly appertains to their high calling.

We would not, as has been said, have a worldly minister; but there is a vast disparity between a worldly man, and a man with full knowledge of the world. A worldly man does not know the world, and a man who *does* know it most, likes it least. Clergymen are subjected to many of the disadvantages of physicians; they mingle but comparatively little with their fellow men upon an equal social footing; they are under obvious constraint; they engage in no public employment, and hold no worldly office; they have no political position or influence; they hold and hear no discussions; they issue their decrees *ex cathedra;* their conversations are didactic; they perhaps keep themselves in too much reserve "for ministers of grace to guilty men;" they should relax their rigidity; add the example of humility to its precept, and neither stand too far off from their penitents or each other. This

would be much more compatible with their heavenly vocation, than to divide and split their holy mission upon questions of unessential forms, or the mere outward trappings of religion.

One of the greatest mistakes that Christian professors make is, in appearing to suppose that acerbity is essential to the performance of their divine office. That is not the lesson taught by their Great Exemplar. Although described as a "man of sorrows, and acquainted with grief," his earthly career exhibited no moroseness, no asperity, nothing but the most consummate gentleness, tenderness, and humility.

> "He held it more humane, more heavenly far,
> By winning words to conquer willing hearts,
> And make persuasion do the work of fear—
> At least to try and *teach the erring soul*,
> Not wilfully misdoing, but unaware misled—
> The stubborn only to subdue."—*Milton.*

So should it ever be with his followers. That man who secureth Heaven, who has God on his side, should certainly be beyond the reach of the paltry annoyances, anxieties, and animosities of sublunary life. His consolation is in the communion with the realms above; and he should look upon this world as a passing pageant, every advance and change of which brings him one stage nearer to his eternal HOME.

But to come to the members of the bar, and their

good fellowship—the chief cause of their harmony consists in their being constantly before the public, and subject, in all they do, to the influence of public approval or reproval. They intermingle with and are necessary to men, in almost all the relations of life. Their deportment, as well as their talents and bearing, form a part of their professional capital. They have constant and various opportunities for the display of their abilities. They live with, as they live by, the community. Their clients are their friends, and their friends are their clients. One day they are professionally opposed to a legal brother; the next day they are engaged with him. They consult together, they reason together; they enter into an honorable professional competition or opposition; they become acquainted with their respective powers. It is almost impossible to continue long in a state of actual personal hostility to each other. Their clients and their business, necessarily bring them into amicable relations; and in addition to all this, the true interests of the entire bar are adverse to feuds and resentments. We shall be told that there is among them often great keenness and excitement in debate, and sometimes great severity of remark; but from the mutual liability of counsel thus to be betrayed into temporary passion, they are taught mutual forbearance and forgiveness. The judge pronounces the charge, the jury give their verdict, the battle is lost and won, and the irritation

of counsel is passed and forgotten. This is as it should be—the profession could not otherwise exist.

It is a vulgar error to suppose that the excitement and animation of an argument and zeal on the part of opposing interests, indicate anger or hostility. Speech may be said to be the safety-valve that relieves the bosom of its pent up passions, and prevents the rankling of enmity and revenge. Who has ever seen a lawyer utterly lose his temper upon the trial of a cause? The loss of self-control is the precursor of defeat. We should allow no one to be the master of our temper but ourselves. One thing is very certain, and that is, that an irritable, passionate man, will get but little business after he is known, and soon lose the little he gets. But that is not the worst of it; he renders *himself* unhappy, as well as *others*. Others will soon avoid him, but he cannot get rid of himself, so that, in the end, he is the chief sufferer.

No client would be safe in trusting the management of his cause to a lawyer who is incapable of self-government. By a shrewd adversary, who is familiar with his failing, he is constantly thrown into confusion, and finally, his intellects are only restored to their harmony and equilibrium, to witness the wreck which his folly or frenzy may have made.

Further than this, an irascible lawyer not only is shunned by the profession, but he quarrels perpetually with his best clients; and finally, to introduce a marine

figure, having neglected his chart, his compass, and his helm, he lies stranded on a lee shore.

It is a conviction of the truth of this doctrine, that has largely contributed to that decorum and affability, by which the bar is generally characterized. It is to their profit and credit, and their comfort at the same time. And it makes them what we trust they may always remain—the example and the pride of the community.

The result of this professional harmony is the greatest mutual confidence. They rely upon each other's word as an infallible bond. As between themselves they rarely require any writing as an assurance. They neither doubt nor are doubted. This, among the other lofty principles of the profession, has secured them here and everywhere a position which neither envy or calumny can ever destroy or impair.

There is one other matter to which, in closing, we may properly advert, and that is the benefit arising from their daily congregating or assembling at court, cheerfully greeting one another—condolence upon losses, or congratulations upon forensic victories. The young cheered and stimulated by the example of the old—the old aided and assisted, and reverenced by the young. Mutual dependence upon the kindness and favor of each other. The spotless retrospect of a well-spent life imparting cheerfulness to the aged, and the bright vista of foreshadowed success opening upon the youthful, while Hope bedecks their brows with the choicest garlands of professional honors.

CHAPTER XIII.

A BRIEF VIEW OF ENGLISH AND AMERICAN PRACTICE.

The Roman law, or the *Jus Civile*, consisted of the oral or written opinions of lawyers, who expounded the doctrines of the law, and informed their fellow citizens of their rights and liabilities. From this information, imparted either at their study, or, as more usually happened, while walking up and down the forum, or assembled in the atrium, the youthful advocates obtained their legal knowledge by listening to, and treasuring up, the advice or instruction which was given to those who were in consultation with their lawyers. In this way, we are told, Cicero attached himself to Scævola, the greatest lawyer of his day, and as he tells us, never quitted his side until he acquired a sufficient amount of legal instruction. The word sufficient, can hardly imply much, for even with the talents of Cicero, the means, or opportunity of acquirement, must have been

too limited to have been attended with any great scientific advantage. It must have been rather a system of cramming for the immediate occasion.

It was upon oratory or advocacy, that their chief efforts, and labors, and hopes were bestowed. This was the grand desideratum. The famous orators of the time were selected by the youthful aspirants for their models, and having respectively selected their favorites, they assiduously attended his speeches, in order that they might become familiar with the proper style of forensic oratory.

Admission to the forum was, with the Romans, a most important epoch of life. The student then assumed the *toga virilis*, was brought forward by some dignified and influential citizen, and formally introduced as a practitioner of law. From this period he might at once undertake the management of causes.

In regard to chamber counsel, or *juris consults*, there was no law against taking fees—this applied only to advocates. The lawyer composed speeches, but did not deliver them for litigant parties; and although inferior in influence to the advocates, derived large profits from their employment; and as there were but few adepts among them, valued themselves highly upon their acquirements. During the Republic, however, no body of men exercised such control over the destinies of Rome —not even the military—as her orators. Nor is it to be understood that their efforts were attended only

by fame—they also accumulated large fortunes, high political posts, and unrivalled power. It is true, they were prohibited by law, as has been said, from exacting fees for their advice or services; but even this redounded to their advantage, not only on the score of profit or favor, but even in a pecuniary point of view—it elevated the profession without impairing its means of support. Cicero is said to have received gifts and bequests exceeding one hundred and fifty thousand pounds sterling from his profession, besides deriving from it offices and dignities, that were beyond all estimation. Hortensius accumulated great wealth; and although he was not to be ranked with Cicero as an orator, as an advocate, simply, he had no superiors.

Now let us, condensing our views, look at the subject with regard to the countries to which we have heretofore referred. In Athens, where oratory first prevailed, there were no lawyers. In Rome, the lawyers were not orators or advocates, but corresponded to mere chamber counsel; and the orators were not lawyers, but depended upon the *juris consults* for a meagre supply of legal lore. In England, the profession is divided into attorneys, special pleaders, barristers, and sergeants. The two former classes supplying the briefs and pleading, and the latter two discharging the duties of advocates before the court. In the United States, all these different departments of legal and forensic duties are combined and discharged by the members of the

bar. No counsel would be employed with us in a suit, or his advice sought for, unless upon the presumption that he would be able, if necessary, to vindicate that advice before the court. And no attorney, strictly so called, would be essential to the trial of any action, or its preparation. If, from the importance, and difficulties, and labors of a case, more than one counsel should be required, all these duties are discharged by the counsel, or by their students under their direction. They are in no wise dependent for their employment, or the discharge of their functions, upon any other class of the profession. There is no division of labor—no attorneys to give caste or influence to the advocates—no briefs with fees indorsed—no consultations, except directly with themselves. They not only argue their cases, but they perform the duties as a matter of popularity or political ambition, as did the Roman orators. In all affairs of deep public interest—all national festivals, or anniversaries—all philanthropic and benevolent, or patriotic occasions—in State or Federal councils—wherever their talents are required, they are freely and promptly rendered; and although those services are gratuitous, they indirectly contribute largely to the enjoyment of public favor, and the promotion of professional eminence—and fortune.

The difference between the lawyers and orators of Rome and the attorneys and counsel of England, is this: That in Rome, the orators were supplied with the law

bearing upon their case, by the *juris consults*, and with few exceptions, (as in the case of Crassus, Cicero, Gracchus, and others, who had devoted their attention expressly to eloquence, and some of whom studied in the Greek schools,) depended almost entirely upon the occasional supplies which they from time to time derived from the legal labors and resources of others. It is not so and never has been in England. There, it is true, the professions are different, though connected. The attorneys are the persons originally consulted, and who attend to all preliminary details—the evidence—the pleadings—the briefs—the fees—and generally even select the counsel. So that an attorney of great celebrity, and of course, coextensive practice, has great control over the success and fortunes of those to whom he allies himself in professional relations. In Rome, the orators contributed largely to the eminence of the lawyers. In England, the attorneys exercised great power over the counsel. Both of these systems were undoubtedly less onerous, and more agreeable than ours, but neither of them was as beneficial or so economical as that which is almost invariably adopted in the American courts, and especially in Pennsylvania. Here the attorney is the counsel, and the counsel the attorney; he manages and controls the entire progress of the suit—his intercourse with his client is not intermediate, but direct—he conducts all the pleadings—prepares his own brief—examines the witnesses

in his office or in court—digests and arranges his own authorities, and finally argues the cause. The labor incident to these duties is very great, but its advantages are commensurate. A man can never perform any work so satisfactorily as when he is acting upon his *own* knowledge; nor can any facts procured by an attorney be as satisfactory to counsel, as those which he himself might obtain by personal examination. Every man has his own views in regard to the points of a case, and the nature of the evidence required to elicit them, and he can, therefore, best "minister to himself." This course secures counsel against confusion and surprise; it furnishes him with a knowledge of the weakness, as well as the strength of his case, and that of his adversary; it brings him into timely contact with his witnesses; he becomes acquainted with their manner, their temper, their bias; all of which enter largely into the estimate of their testimony. It has been suggested, that this would be impracticable in England. It might be inexpedient to make any radical change in their deeply-rooted system, but it certainly would not be impracticable, nor, perhaps, injudicious. It is true, we cannot argue against a system, merely because it is subject, in some respects, to casualties or exception; but those who have attended legal proceedings at Westminster Hall or Lincoln's-Inn, could not fail to have perceived—and not unfrequently—great embarrassment of the counsel, from a want of

that familiarity with facts, and their application to the legal points of a case, which would have been avoided, or lessened, by pursuing the system adopted in this country. No lawyer can examine a witness satisfactorily, from the notes or brief prepared by any other hand than his own—he is often rather benighted than enlightened. And of all briefs, the brief of an attorney would be the most objectionable, or least available. They save time to counsel, but they place him in a state of dependence, from which, it in some cases happens, no genius or talent can relieve him. A man who always depends upon another, naturally and necessarily impairs his own powers.

We remember a rather amusing instance of this, in the argument of an injunction in the case of The Queen *v.* Strange, before Sir Knight Bruce, in 1848. The attorney, or solicitor, having, of course, prepared the pleadings, which were voluminous—bill, answer, etc.—the learned judge, during the argument, inquired of Mr. Talfourd as to the averment of a certain fact, which was deemed vital to the proceeding. The learned Sergeant (who had probably never read any thing more than an abstract of the bill,) could not find it—none of the attorneys could find it. The crown affirmed its existence, the defendant denied it; and after an hour's confusion, it turned out, that although contained in the original bill, it had been omitted from the transcript.

Before admission, the young counsel is condemned

to the drudgery of the office of special pleaders—men who practise under the bar. They thereby obscure their genius—obliterate their learning—and of course become as flat, and as dry, and as verbose, and as incomprehensible as the vocation in which they have been employed. It is much to be doubted, whether a thorough-paced special pleader can ever become an eloquent advocate. His life is a life of constant and almost unmeaning forms; he becomes as dry and as stiff as the parchment with which he is familiar. There is a time of life that exercises a most powerful influence upon past accomplishments and future hopes. It is that period between the completion of our collegiate and professional course and entering upon the practice of the bar. The interval, therefore, that is bestowed upon special pleading, is not only thrown away, but worse than thrown away, inasmuch as it retards future advancement and buries past acquirement. The study of special pleading is not condemned, but adequate knowledge of it can be obtained from the valuable books penned by such men as Chitty and Stephens, without wasting time upon its practical details, sham pleas, subtle pleas, and other absurd technicalities.

It must be a matter of rejoicing among the English bar, that recently (these forms having accumulated to such an extent as to embarrass, and almost to defeat justice,) the courts have somewhat set their faces against all dilatory pleas, and by breaking through

the meshes of over-refined niceties in pleading, have turned their attention to the substantial merits of the issues which are submitted to their decision.

The two legal departments of counsel and attorney relieve each other, it is true, but our own practice has shown that they are not necessary; and it is far from being certain, that the relief of the profession does not contribute to the injury and incumbrance of the public.

There is an admirable Essay upon the Bar of England, published in Blackwood's Magazine, for the month of June, 1856, page 61. We must content ourselves by quoting from it, a passage in relation to legal studies and admission in this country, which, although it is said to have been derived from a member of the Pennsylvania Bar, is, we think, in some respects inaccurate. Still the article contains valuable instruction:—

"In the United States of America, the facility of admission into the legal profession is great, and those distinctions which are in this country observed, are disregarded. The same person practises as attorney and counsellor, (the word 'barrister' seems not used in America,) either alone, or in partnership; and takes pupils—sometimes a considerable number—who pay about twenty pounds a-year. These he is expected to teach their profession, making use of their services the while, as attorneys in England those of their clerks. After having spent in the office a period of from two to three years, dependent on being twenty-one years of age, or under, the youth gives public notice of his intention to apply for liberty to practise. After having passed a private, desultory, brief, and exclusively professional *vivâ voce* examination of half an hour,

or an hour, which may be extended, if it appear necessary, to several hours—but generally speaking 'pretty well testing the student's knowledge,' and having brought a certificate of moral character from his master,—a motion is made in court by the latter, or any other member of the bar, for the admission of the candidate. He is then formally permitted to practise, the only fee payable being one dollar to the crier. When asked whether there was any appeal from a rejection by the board of examiners, the witness answered—'I am not aware of any appeal having ever been made. I think that, in general, a rejection is softened with the advice to withdraw the application, and to study longer. The examination not being very strict, I think it would be a hopeless thing to appeal, for I do not think that any student was ever rejected, who could, with any propriety, have been admitted.' All legal duties are discharged by the Attorney-Counsellor of the United States. '*We feel no hesitation*,' said a witness, a member of the American bar, '*at all, in going through the routine of serving processes ourselves. Even distinguished members of the bar, in full practice, would serve a rule to plead, or serve a subpœna on a witness, and make an affidavit of having done so!*'* They also see and examine the witnesses privately before going into court, the very notion of which is repulsive to the English bar. 'In the United States,' says this gentleman, 'the turn of things is rather to enable everybody to do everything. This results from the character and habit of our people. That division of labor which is characteristic of England, is not so of us. Here, you obtain a great precision in everything by the division of labor. In our country, we do not to the same

* Even this—though its truth is not admitted—is better than the practice of the English attorneys' clerks, one of whom in an answer to a question said, "I have been a month in the office. I now only swear to service, but in a short time I shall be competent to swear to *merits*."

extent. In other departments, such as that of manufactures, the principle of the division of labor prevails, but such is not generally the case with respect to the labor of the bar.' There were only two American witnesses examined by the commissioners, one of them styled 'General,' and who stated that he had been only eight years in the legal profession, having been up to middle age in the army. The former, when asked 'the general course of proceeding for admission to the bar in America,' commenced by saying, 'I can only speak as a Pennsylvania lawyer. I am inclined to think that our condition, as a federation of independent States, is scarcely sufficiently appreciated out of the United States. Everywhere abroad, inquiries are made of me, constantly, with regard to the condition of things in remote States, of which I am nearly as ignorant as a stranger to America can be, owing to the vast extent of the United States. The system of proceedings for admission to the bar differs considerably in different States. As to Philadelphia I can speak, and partially as to New York, and also as to the practice in the courts of the United States, properly so termed.' Notwithstanding, however, this facility of access to the American bar, and the blending, by the advocate, of functions deemed here so incompatible, derogatory, and inconsistent with the interests of the public, no one who reads the law reports of the United States, and the text-books of its Kents and Storys, will fail to think of the transatlantic bench and bar with the utmost respect. It may be added, that four-fifths of the lawyers in America were educated in their universities.

"Onerous, diversified, and honorable as are the duties devolving on the English bar, heavily taxing alike their integrity, talent, and learning—what will the non-professional reader suppose to be required in order to be admitted into its ranks,—to become a competitor for its prizes and honors, from the Great Seal downwards? If, by means of a legacy or otherwise, a waiter at a tavern, an errand boy in an attorney's office, a ticket porter, a sweep, or, as

was very recently the case, a policeman!* found himself in possession of three or four hundred pounds, and had a fancy to become a barrister,—if he could get a couple of barristers or a bencher to say simply that he was a respectable person, and proper to be admitted a member of an Inn of Court, in order to be called to the bar, (and God forbid that such a certificate should be withheld from the humblest member of society, if nothing were known really discreditable to him in respect to character and conduct,) he would, on paying about forty pounds, be enrolled a member of any of the Four Inns; and if he only partook twelve times a year of a very comfortable and inexpensive dinner provided by the Inn, in its hall, at the end of three years he would be entitled to be called to the bar, and figure thenceforth as 'A. B., Esq., barrister-at-law.' A chance and curious inquiry might perhaps elicit the fact that, in our fledgling friend's opinion, *Corpus Juris* was the name of a place that he had somewhere heard of—but never mind, he was a counsel, learned in the law, and might hold up his head with the best of those so mysteriously denominated; and one or two hard hits at starting, might, if he had sense and spirit, send him, on the sly, to the Sunday school which he had so shamefully neglected in his youth. Not many years ago, one of these bold aspirants to fame and fortune, having to address a judge on the last day of term, and being forced

* *Report*, p. 137. The following extract is so remarkable that we give it *in extenso*, in the words of the witness, a member of the Oxford Circuit: "I know a case where a man is positively an inspector of police, and is a barrister! He was in the police force when called, and is so still! The Sessions mess of the county in which he was stationed, sent up a requisition to the benchers of Gray's Inn, begging them not to call him, and stating as a reason that they did not believe he was going to practise as a barrister, and they thought it was a degradation to them, for a man to be able to call them his learned friends, who was absolutely in a blue coat and bright buttons. The benchers never sent any answer to the requisition, but they called him to the bar notwithstanding!"

to use the words '*nolle prosequi*,' pronounced the latter word '*prosēqui*:' on which he was considerately reminded, though without seeing what was meant by the sarcastic judge, that on the last day of term, (when there was usually a press of business), it was not right 'unnecessarily to *lengthen* proceedings.' "

Ornamenta Rationalia,

OR

GERMS AND GEMS OF GENIUS.

ORNAMENTA RATIONALIA,

OR

GERMS AND GEMS OF GENIUS.

CHAPTER XIV.

Diana's lip
Is not more smooth and rubious.—*Twelfth Night.*

NATIVE CHARMS.

'Tis beauty truly blent, whose red and white,
Nature's own sweet and cunning hand laid on.—*Dr. Donne.*

TRANSIENT BEAUTY.

For women are as roses, whose fair flower,
Being once displayed, doth fall that very hour.—*Shakspeare.*

GRIEF.

A cypress, not a bosom,
Hides my poor heart.

If one should be a prey, how much the better
To fall before the lion than the wolf?—*Shakspeare.*

Westward the star of Empire leads the way.—*Berkley.*

There lies your way due West—
Then westward, ho!—*Shakspeare.*

O what a deal of scorn looks beautiful
In the contempt and anger of his lip.—*Ib.*

A murderous guilt shews not itself more soon,
Than love, that would seem hid.—*Ib.*

A poor heart-broken thing—
A mother—yet no wife.—*Motherwell.*

THE GRAVE.

And O, think on the cold, cold mools
That fill my yellow hair,
That kiss the cheek, and kiss the chin,
Ye never shall kiss mair.—*Ib.*

Familiar matter of to-day,
Which has been, and will be again.—*Ib.*

CAPRICE.

The smile of a maiden's eye,
Soon may depart,
And light is the faith of
Fair woman's heart;
Changeful as light clouds,
And wayward as wind,
Are the passions that govern
Weak woman's mind.—*Ib.*

Dull builders of houses,
  Base tillers of earth,
Gaping, ask me, what lordships
  I own'd at my birth.
But the pale fools wax mute,
  When I point with my sword—
East, west, north, and south—
  Shouting, there am I lord!—*Motherwell.*

When the arm wields Death's sickle,
And garners the grave.—*Ib.*

Not swifter from the well bent bow,
  Can feathered shaft be sped,
Than o'er the ocean's flood of snow,
  Their snorting gallies tread.—*Ib.*

His fearless soul was churning up,
  The death-rune of the brave.—*Ib.*

IDLENESS.

The Sloth perishes on the tree he climbs, after having eaten all its leaves.

The Bishop of Durham, Chancellor and High Treasurer of England, in 1341, purchased thirty volumes of the Abbot of St. Albans for fifty pounds weight of silver.

In 1364, the Royal Library of France did not exceed twenty volumes.

Fleta, (a law book,) derives its name from having been written in Fleet (prison).

The bloom of young desire—the purple light of love.—*Gray.*

ELOQUENCE.

With winning words to conquer willing hearts.—*Milton.*

AGE.

His head—where every silver hair complained of time.—*Hayne.*

A wilderness of sweets.—*Milton.*

Patient as midnight sleep.—*Shakspeare.*

Upon his eyelids did conjecture hang.—*Ib.*

Pale "as the lids of Cytherea's eyes."—*Ib.*

INNOCENCE.

The harvest of a quiet eye,
That broods and sleeps on its own heart.

SEA LIFE.

The shouting and the jolly cheers,
The bustle of the mariners
In stillness and in storm.—*Motherwell.*

The ancient spirit is not dead,
Old times, we say, are breathing there.—*Ib.*

Beautiful, uncertain weather,
When storm and sunshine meet together.—*Ib.*

JEALOUSY.

Oh, it comes o'er the memory
As does the raven o'er the infected house;
Boding to all.—*Othello.*

Woo'd, won, and wed, and murdered by the Moor.—*Ib.*

Simplest strains do soonest sound
The deep founts of the heart.—*Motherwell.*

MAN.

A holy mystery,
A part of earth—a part of heaven—
A part, great God, of thee.

LOVE.

All thoughts—all passions—all delights—
Whatever stirs this mortal frame;
All are but ministers of love,
And feed his sacred flame.—*Coleridge.*

CHEERFULNESS.

With earth it seems brave holiday—
In heaven it looks high jubilee.—*Motherwell.*

They lack all heart, who cannot feel
The voice of Heaven within them thrill.—*Ib.*

SEVERED AFFECTIONS.

Heart bankrupts both are made.—*Ib.*

From pride we both may borrow,
To part, we both may dare;
But the heart-break of to-morrow,
Nor you, nor I can bear.—*Motherwell.*

Such eyes as may have looked from heaven,
But ne'er were raised to it before.—*Moore.*

Have I lived to stand the taunt of one that makes fritters of English.—*Shakspeare.*

Here will be an odd abusing of God's patience, and the King's English.—*Ib.*

ABUSE.

The bitter clamor of too eager tongues.—*Ib.*

LIAR, HIS OWN DUPE.

Like one
Who having, unto truth, by telling it—
Made such a sinner of his memory,
To credit his own *lie*.—*Ib.*

GRANDILOQUENCE.

He speaks holiday.—*Shakspeare.*

Cambyses' vein.—*Ib.*

These new tuners of accents.—*Ib.*

Phœbus, what a name!—*Byron.*

HUMILITY.

Often to our comfort shall we find
The sharded beetle in a safer hold
Than is the full-winged eagle."—*Shakspeare.*

To progress.—*Richard III., and King John.*

WOLSEY.

The Devil speed him! No man's pie is freed
From his ambitious finger.—*Henry VIII.*

SILENT PIETY.

Felt, but voiceless prayer.—*Motherwell.*

I bend me towards the tiny flower,
That underneath this tree,
Opens its little breast of sweets,
In meekest modesty;
And breathes the eloquence of love,
In muteness, Lord, to thee.—*Ib.*

Glittering in meridial beams.—*Ib.*

Dear Lord! thy shadow is forth spread
On all mine eye can see;
And filled at the pure fountain head
Of deepest piety.
My heart loves all created things,
And travels home to thee.—*Ib.*

EVENING.

Parting day
Dies like a dolphin, whom each pang imbues
With a new color, as it gasps away;
The last still loveliest, till 'tis gone,—and all is gray.—*Byron.*

The golden day
Gilds yon sky-helmed mount with purple hues,
Like fabled dolphins, varying as it dies.—*B.*

Paint, till a horse may mire upon your face.—
Timon of Athens.

Be as a planetary plague, when Jove
Will o'er some high-viced city hang his poison
In the sick air.—*Ib.*

Put armor on thine ears, and on thine eyes.—*Ib.*

AVARICE.

O, cursed lust of gold! when for thy sake
The fool throws up his interest in both worlds,—
First starved in *this*, then damned in that to come.—*Blair*

There's more gold!
Do you damn others, and let this damn you;
And ditches grave you all.—*Shakspeare.*

The learned pate
Ducks to the golden fool.—*Ib.*

POPULAR FAVOR.

Where are the people—the Sertorian band
Who cling around him with unwavering love,
Like the fond ivy twining round the oak,
Or life's warm eddies circling through the heart—
In conquest and defeat!—*B.*

AUTHORITY.

That which he decides, fate's awful fiat
Stamps as irrevocable—It is done.—*B.*

Let ambition,
Pointing the way to fortune and renown,
Allure thee to those proud, supernal heights,
Which only Gods, and men like Gods attain.—*Ib.*

What, shall the pillars,
Howe'er magnificent and richly wrought,
Degrade the temple that their strength sustains?
Or shall they, as in sacred Grecian domes,
Unite in mutual grandeur,—and when time,
With his unsparing, fell, and ravening maw,
Disrobes them of the ornament of youth,
Dissolving and prostrating all their glory,
Sink in one common ruin, and become
More fam'd and cherish'd than in pristine pride?—*Ib.*

TRAITOR.

The felon, that purloins his country's glory,
To prostitute it to his country's shame!—*Ib.*

PATRIOTISM.

The brave man never should outlive his country:
As clings the infant to its mother's arms,
Blessing and blest—so cleaves the patriot's heart
To the embraces of his native soil,
At once deriving, and imparting life.—*Ib.*

FEAR OF WRONG.

But when you ask, that to destroy that country
I should shake hands with her inveterate foe,
And sell myself to shame—immortal shame,
I tremble, and profess myself a coward:
I cannot do it—shuddering nature dare not!—*B.*

TRUE COURAGE.

Talk not of hazard! I dare hazard all
But that, without which all is penury;
The cherish'd, priceless, peerless jewel—Honor.—*Ib.*

CONTEMPT.

—What! are ye a hireling tribe,
To be bought out by him that bids the highest?
If the design be noble, grasp it nobly;
And do not, like a band of sordid slaves,
Embrace your bondage, for the golden fetters.—*Ib.*

Patience, ye Gods!—and thou, great Æolus,
That with thy sovereign wand, curb'st and direct'st
The ever changing and rebellious winds,
And gather'st them within thy stormy bosom,—
Teach man fidelity!—*Ib.*

AMBITION.

His eagle-wing'd ambition soars so high,
That we are only left to gaze and wonder
At the proud pinnacle on which he revels,
While grovelling in our lowly sphere beneath him.—*Ib.*

Thus rendering opposition to his will
Like vain resistance of the cataract,
Making it rage the more.—*Ib.*

GENEROUS RIVALRY.

Despite of all the rooted hate I bear him,
I almost grow enamored of his virtues,
When I behold him, like the baited lion,
With all his hopes reposing on himself,
Surrounded by his hunters and their toils,
Still firm and fearless, ever-facing dangers.—*B.*

Reserve thy praises for his monument—
They will improve in MARBLE, and endure;
While he yet lives, they're fulsome flattery:
To give them currency, and weight, and value,
They need the stamp of death.—*Ib.*

When to immortal Jove we sacrifice,
Who mingles poison with his pure oblations,
We kill, but curse not—nay, the song of joy,
Chaplets of flowers, and temples fill'd with incense,
Surround and soothe the bleeding victim's anguish.
A patriot is the sacrifice you offer—
Shall we do less for him!—*Ib.*

Mine is the hand should strike the deadly blow,
And mine the eye should look unwavering on.—*Ib.*

Hopes destroy'd, endear those which remain.—*Ib.*

What more precious
Than deeds heroic from the lips we love!—*Ib.*

The citadel, that yielded to a smile,
And pour'd its treasures at the conqueror's feet.—*Ib.*

Nay, nay! thou art a traitor—come, confess;
And still so guileless, artless, and so fair,
We almost love the treason—for the traitor.—*B.*

GLORY.

How evanescent and how vain is glory;
A sparkling bubble on life's stormy ocean;
A meteor, that delights—deludes—destroys;
A lamp sepulchral in a charnel house,
Gilding, with flickering ray, the shades of death.
—This idol, who engross'd the hearts of all,
Who reigns in thine with sway so absolute,
And almost shares devotion with the Gods—
Has done a deed to-day, should shake his fame,
Though rooted in earth's centre!—*Ib.*

The spring of peace
Shall pluck the lily from that faded brow,
And plant its roses there.—*Ib.*

Unlike the miser's wealth, this little jewel
Improves in lustre each succeeding hour,
And lights you on to joy.—*Ib.*

Happy pair!
Crown them with joys perennial, ye blest powers,
And guard their hearts 'gainst agonies like mine,
Too grave to bear, too poignant to conceal.—*Ib.*

Think'st thou I would transplant that fragile flower
From the gay parterre which it now adorns,
Exhaling odors on the vernal gale,
To pine and perish on this wintry bed?—*Ib.*

But yesterday she was the world to me:
For yesterday—Ambition's mountain wave,
The wildest, proudest, loftiest of the main,
Rich, radiant, sparkling, foaming with delight,
And redolent with hope, its suppliant bosom
Bow'd at my feet, and woo'd me on to glory.
To-day—I am degraded by the state,
Despoil'd of outward honor, and despis'd,
Torn from repose, condemn'd in shame to roam
Through foreign climes, to seek myself a grave!—
Childless, and parentless, and friendless too.—*B.*

Ye would be leaders—shame upon ye!
Leaders, who yet have never learn'd to follow
Where glory mark'd the way! Hence to your homes!
Is this a fit occasion, when Spain's fortunes
Stand nicely equipois'd in Fate's dread balance,
And heaven and earth pause on her destiny,
Thus, by inglorious faction, to provoke
The special vengeance of superior powers?
—But what care you for life's vicissitudes?
The mighty storm drives harmless o'er your heads—
None but the great, the good, the godlike, feel it,
You are below its fury.—*Ib.*

Ye Gods! how abject is the tyranny of slaves,
Who forge a sceptre from their servile chains,
And lord it o'er the aristocracy
Which nature form'd—inverting her great laws,
That power should govern, and the weak obey.—*Ib.*

Disperse, ye knaves—hence to your several homes,
And vent your spleen on those who court your favor!
I do despise the one, abhor the other.—*Ib.*

I found you slaves, in bodies as in mind;
I burst the chains of both and set you free,
And this is my requital: you would fain return
To your old bondage; freedom has grown irksome.
Or would you, disobedient as you are,
Presume to rule the state? First learn to serve;
So shall ye best acquire the power to govern:
First overcome yourselves, before ye seek
To supervise and sway your fellow men.
Think not that honors dignify the wearer;
They have no several value—but reflect
Lustre reciprocal, or combine disgrace.
Say I throw down these trappings of my office;
These envied symbols of authority,
Which, while th'y allure with splendor, crush with weight;
On whom will you confer them, mighty Sirs?—*B.*

Traitors are often made
As felons are, by the foul accusation,
The pride of virtue, being virtue's shield.
By Hercules! 'twere worth a little treason
To purge the country of this rank disease;
It grows plethoric, and its bursting veins
Require the lancet.—*Ib.*

SYMPATHY LIGHTENS GRIEF.

The weight that all men share, from sympathy
Is lighten'd; but the thunderbolt, that falls
On one poor heart, scathes, scatters, and destroys it.—*Ib.*

Despair should win, then, what vain hope has lost!—*Ib.*

IRONY.

The love I bear the State, the blood I've shed,
The days of labor and the nights of pain
I've borne for you; I pray forgive them all;
I do deplore them deeply, and repent
All such transgressions, and will sin no more.—*B.*

Disaster and defeat! and all the evils
That throng the train of unsuccessful war.—*Ib.*

Redeem the time!
Reflection cannot shun the shaft of fate,
Endure it as she may. Thought is too slow,
Resting on past, to meet approaching woe.—*Ib.*

O my mother!—in that sacred name
How many hours of guileless happiness,
Of sportive and unchequer'd innocence,
Roll back upon the ocean of past years,
And burst upon the view!—*Ib.*

DEATH AND VIRTUE.

Death—the destroyer, from thy potent spell,
Nor sex, nor age, nor strength, nor weakness 'scapes.
Time's hoary locks—the ringlets of gay youth—
The hero's laurel, and the poet's wreath—
Love, honor, health, and beauty, are thy spoil:—
The mitred, and the sceptred yield to thee,—
In deferential horror, all—all submit,
Save virtue, who in radiant smiles beholds
Thy dread approach, and, arm'd in Heaven's proof,

Contemns thee and thy retinue of ills,
Alike triumphant o'er the tomb and thee.
Thou canst not rob thy victim—thou mayst slay him,
Tear him from those dear arms that cling around him,
And teach survivors to deplore thy power:—
But, for this temp'ral life—this life of sorrow—
This life of death—thou giv'st him life eternal,
Unfading joy, and everlasting love!—*B.*

That thus the crimson tide of bold invasion
Pollutes the very sacristy of Spain,
And bears her household Gods from their own altars.—*Ib.*

Hear this, ye Gods! Where sleep your thunderbolts,
That thus the guilty triumph in their guilt,
And bold impiety outfaces Heaven!—*Ib.*

In the decrees of fate, if there remain
Though but one blessing for the wretched Quintus,
Bestow it now, ye Gods! when most I need it,
And ever after pour your quiver on me!—*Ib.*

COURAGE OF INNOCENCE.

Why should the innocent
Tremble and quake with fear?—the guilty fear,
For cowardice, and guilt, appal each other;
But virtue ever wears a lion's heart,
Beneath the downy plumage of the dove.—*Ib.*

The husband's, brother's, son's, and father's arm
Shall guard the wife, the sister, parent, child—
Their *only* guard—who would depute another?—*Ib.*

What more noble,
Than to redeem the fortunes of a State,
And, seizing fearlessly the wayward helm,
While the whole crew stand trembling and appall'd,
With blanchless cheek, and an undaunted eye,
And the nerv'd arm, fram'd as to rule the trident,
To steer the shatter'd vessel into port,
And, like a rock amid the troubled ocean,
Laugh at the billows, and defy the storm.—*B.*

FATE.

No more, I pray thee: What the Gods ordain,
Is circumvolv'd in rayless mystery,
Dark and inscrutable to human eye,
Still ever just—why should the just despair?—*Ib.*

RESOLUTION.

Courage, my friends—remember that this hour
Shall make your fame eternal as the Stars,
Should fortune smile upon ye: should she frown,
Why let her frown—at worst, we can but die,
And dying in defence of virtuous freedom,
Is to subdue the unpropitious Gods,
And win those honors, which stern fate denies.—*Ib.*

In every blow, let thoughts like these inspire you,
And Lusitania's free.—*Ib.*

Lo! where, upon the shoulders of one man,
A *nation* rests, and scorns the rage of war!—*Ib.*

The gates of Janus open but in war.—*Ib.*

Said I not so? See how this Proteus changes—
Threat'ning—inviting—fawning to betray!—*Ib.*

When traitors shall grow weary of their lives,
Fate has supplied them other means of death,
Than staining with their blood an *honest* sword.—*Ib.*

IRRATIONAL FEARS.

Our doubts are traitors
To heaven and us, and antedate our doom.
The craven heart, that shuns impending peril,
Expires on its own spear, while dauntless courage
Grapples with death, and rends his terrors from him.
Had I a thousand lives, and each immortal,
I'd jeopard all for the last hour of honor.—*Ib.*

MODERATION IN SUCCESS.

Be wary of success, and bear it wisely,
As best becomes the changing tides of life:
Let not the syren and seductive wiles
Of proud prosperity ensnare your hearts—
Self-conquest is the best and proudest triumph,
And victory, without it, is defeat.—*Ib.*

LOVE.

In crowns, or chains, I still divide with thee:
—No, not divide, but rather still unite,
Remaining ever, one—inseparable.—*Ib.*

Expel the Pythian priestess from her tripod,
Or in prophetic travail strangle her,
And shun the lightnings of the Delphic god—
Then hope to 'scape the vengeful populace.—*Ib.*

HAPPINESS.

Blest recompense of toils and dangers past!
Come to this heart, and there forever reign:
Thou art the victor, Marcia—let me crown thee
With thy own works—chains best become the captive.—*B.*

Fair artlessness! how worthless is the pomp
Of the world's flattery, when compared with thee,
All chaste and tintless, as the virgin snow.
Come, take me with thee, wheresoe'er thou wilt:
Like the bright cynosure, by thee I steer,
And shun the rocks and shoals of treachery.—*Ib.*

Now hanging round his neck in sportive smiles,
And now reclining on his rugged bosom—
Spring's not more lovely, when with gentle hand,
And golden tresses deck'd with diamond dew,
And diadem of new-blown violets,
She throws aside the hoary locks of winter,
And melts him, in her glance, to life and love!—*Ib.*

This boding bosom throbs with anxious fear—
Fear undefin'd—but not less terrible:
There is a weight that loads my anxious thoughts,
Which, causeless in the past, precedes its cause.—*Ib.*

He ever is assur'd,
Whose heart is open to the eye of day—
Who wears no lurking danger in his smiles,
Nor dreams of tigers' hearts beneath the fleece
Of inoffensive flocks. What should I fear?

Shall I imbitter all the joys of life,
To shrink from death, and die in my own fears—
While nought but poison'd bowls, and air-drawn daggers,
And treach'rous friends—or enemies disguis'd,
And snares, and lures, and dark conspiracies,
Flit through the fever'd brain in endless terror—
Beset th' affrighted soul—and prey upon it,
Till nought remains of life, but dread of death,
And all of death is suffer'd, but the *name?*—*B.*

I pause no longer: flood, or ebb, in fortune,
He rides the waves triumphant: th' ills of life,
The tests and touchstones of external glory,
By which alone its currency is tried,
And sterling coin distinguish'd from the false,
Increase his weight, and stamp new value on him.—*Ib.*

UNCERTAINTY.

What should I dread? I dread uncertainty,
Through whose vast maze and labyrinths of doubt
The anxious soul, in never-ending grief,
Explores its fate—and, in its devious course,
Ofttimes creates the perils it would shun.—*Ib.*

Thou then canst fear, without *my cause* of fear!
The harmless revels of triumphant friends,
Thy timid fancy conjures into evil;
Yet when I tell thee that my o'erfraught soul
Predicts—foresees—would shun, impending peril,
Thou cant'st as sadly of the closing night,
As though the sun should never rise again.
—What is, or night, or day, to those who love,
Without love's object!—*Ib.*

His parting words sink like a funeral knell
Into my soul, and freeze my blood with horror.
The fading day—the deathlike sleep of nature—
The treach'rous calm that rests upon creation—
And the deep torpor that invests my brain,
Are the precursors of calamity!—*B.*

Does it befit the daughter of Marcellus,
While her dear husband's fate is poised before her,
To watch the wavering scales, nor rush to save him?
To save, or die with him!—*Ib.*

Thou, a camp-bred soldier,
With tongue untutor'd in the Tyrian school,
Hast thrown aside thy candor with the sword,
And wrapp'd thy sinewy frame in silken folds,
To play the courtier, and the flatterer.—*Ib.*

Why should we talk of war, when wine inspires
Our buoyant hearts with thrilling ecstasy?
Let frigid cynics scoff at Cupid's chains—
No valued trophy that the hero wears,
Clings half so closely to the heart, as love.—*Ib.*

Peace, parasites!
The outraged Gods frown on your lewd desires,
To earth disgusting—and a crime to heaven.—*Ib.*

Bear up, my soul—and, worthy of thyself,
Endure approaching peril, as the past—
Dying as all should die, who hope to live
In the proud pages of futurity.—*Ib.*

Quote not the vices of philosophy,
To justify indulgence of your own;
But emulate her virtues, if you can.
The love which twines most closely round the heart,
Disdains the use of words, and shuns the eye
Like truth, despising outward ornament,
In native worth: the God you worship, bends
A feeble bow, and dips his shaft in wine—
The wound soon heals.—*B.*

'Twere easier to unite thy downward soul,
With elevated and aspiring thoughts!—*Ib.*

I know ye all, and I despise ye all,
And the black purpose of your ribald crew.—*Ib.*

Ha! valiant traitors! how your weapons blush,
While wielded thus 'gainst a defenceless man,
But dauntless as defenceless! Death to me—
To me, alone, is but repose from toil,
'Tis only for the living that I fear.—*Ib.*

Come—let me note you for posterity,
Who is the first to strike—I stand alone?
He who is first, shall be the last remember'd—
Immortalized in shame.—*Ib.*

Look here, revenge, and sate thyself with blood!
See where the patriot and the hero lies,
Clasped in the fond embrace of virtuous love!—
If this be death, who would desire to live?
If what I feel be life, who fear to die?—*Ib.*

Why shouldst thou hate men?
They never flattered thee: What hast thou given?
If thou wilt curse—thy father, that poor rag,
Must be thy subject; who, in spite, put stuff
To some she beggar, and compounded thee,
Poor rogue, hereditary.—*Shakspeare.*

GOLD.

Thou bright defiler
Of hymen's purest bed—thou valiant Mars!
Thou ever young, fresh-lov'd and delicate wooer,
Whose blush doth thaw the consecrated snow,
That lies on Dian's lap.—*Ib.*

OLD MEN.

These old fellows, have their ingratitude in them hereditary,
Their blood is cak'd—'tis cold—it seldom flows:
'Tis lack of kindly warmth—they are not kind,
And nature, as it grows again towards earth,
Is fashion'd for the journey, dull and heavy.—*Ib.*

Raise me that beggar, and denude this lord—
The senator shall bear contempt hereditary,
The beggar native honor.—*Ib.*

The gnats that in my evening glory play.—*Lee's Gloriana.*

Plots are the dark and back way to a throne,
Miss but one step, we roll with ruin down.—*Ib.*

As a May morning rising from the East,
Or day dismounting in the golden West.—*Ib.*

Power circling wit, and pleasure pressing pride.—*Lee's Gloriana.*

SEPARATION—(*Ship.*)

And calm and smooth it seemed to win,
Its moonlight way before the wind,
As if it bore all peace within,
Nor left one breaking heart behind.—*Moore.*

—That lingering press
Of hands, that for the last time sever—
Of hearts, whose pulse of happiness,
When that hold breaks—is dead for ever.—*Ib.*

Full of fresh verdure and unnumbered flowers—
The negligence of nature.

Shall we to roost,
Before we rouse the night owl with a catch.—*Shakspeare.*

O, they love least, that let men know they love.—*Ib.*

But neither bended knees—pure hands held up—
Sad sighs—deep groans, nor silver shedding tears,
Could penetrate her uncompassionate sire.—*Ib.*

No vice is so bad
As virtue run mad.—*B.*

He paused, indeed, in the work of destruction—but he paused like the Pythian Apollo, while balancing his body, fixing his eye, adjusting his bow, and deliberately directing the unerring shaft to the heart of his victim.—*Ib.*

Base and unlustrous as the smoky light
That's fed with stinking tallow.

Honesty coupled with beauty, is to have
Honey sauce to sugar.—*Shakspeare.*

It is the bright day that brings forth
The adder.—*Ib.*

Why should a man whose blood is warm within,
Sit like his grandsire, cut in alabaster;
Sleep when he wakes, and creep into the jaundice
By being peevish?—*Merchant of Venice.*

They are abhorred further than seen;
And one infects the other against the wind a mile.—
Shakspeare.

The card and calendar of gentry.—*Ib.*

Farewell to thee for ever;
We part to meet no more.
A *word* those hearts may sever,
Which worlds cannot restore.—*B.*

POPULARITY.

This common body,
Like a vagabond flag upon a stream,
Goes to and back, lackeying the varying tide,
To rot itself with motion.—*Shakspeare.*

To roll with pleasure in a sensual sty.—*Milton.*

Orient liquor in a crystal glass.—*Milton.*

I should be loath
To meet the rudeness and swill'd insolence
Of such late wassailers.—*Ib.*

Beauty, like the fair Hesperian tree,
Laden with blooming gold, had need the guard
Of dragon watch with unenchanted eye.—*Ib.*

A sable cloud
Turns forth her silver lining on the night.—*Ib.*

Virtue,
Which oft is sooner found in lowly sheds,
With smoky rafters, than in tap'stried halls
And courts of princes.—*Ib.*

And thou shalt be our star of Arcady,
Or Tyrian cynosure.—*Ib.*

The silver-shafted queen.—*Ib.*

ELOQUENCE.

Youth, beauty, pomp, what are they to a woman's heart, compared with eloquence? The magic of the tongue is the most dangerous of all spells.—*B.*

No man was ever improved by prosperity, but thousands have been benefited by adversity. It is a rough but an excellent teacher, whose lessons are rarely forgotten.—*Ib.*

BEAUTY.

Bright eyes; lips like rubies; teeth like pearls, and a quiet tongue within them.—*B.*

But midst his mirth, 'twas often strange
How suddenly his cheer would change,
His look o'ercast and lower,—
If, in a sudden turn, he felt
The pressure of his iron belt,
That bound his breast in penance pain,
In memory of his father slain.—*Scott.*

When the Product of Catalina, by Crebillon, was seized or attached, in 1749, a decree of the Council of Louis the Fifteenth issued, declaring the productions of the mind not among seizable effects.

The popes prohibited the publication and use of the Bible among the vulgar, and forbade absolution of the sins of those who had it in their possession. So, also, did Henry the Eighth, except to a privileged order.

Good springs from evil—strength out of weakness. The pen that governs, guards, adorns, and sustains empires, was plucked from the wing of a goose.—*B.*

We think more of ourselves than of others; but we think more *for* others than ourselves.—*Bacon.*

Like two sweet instruments ne'er out of tune.
That played their several parts.—*Blair.*

In adversity,
The mind grows tough by buffeting the tempest;
But in success, dissolving, sinks to ease
And loses all her firmness.—*Rowe.*

When ranting round in pleasure's way,
Religion may be blinded;
Or, if she give a random sting,
It may be little minded:
But, when on life we're tempest-driven,
A conscience but a canker,
A correspondence fixed with heav'n,
Is sure a noble anchor.—*Burns.*

Doggerel poetry and bad English are intolerable, except in epitaphs, and letters from parents to children, and children to parents. The reason of the exception is, that in those cases affection triumphs over mere intellect.—*Pope.*

Summer suns
Show not more smooth, when kissed by southern winds,
Just ready to expire.—*Blair.*

Those powers that are most terrible in action, are always the most tranquil in repose. Look at the glassy surface of the smiling ocean, "when kissed by the southern breeze just ready to expire," and then imagine the terrors of the storm! Look at the sleeping lion, and fancy, if you can, the same animal roaring, and rampant for his prey! Look at Samson slumbering in the lap of Delilah, and who shudders for the fate of the Philistines? The tranquillity is increased by the unconscious comparison, or rather contrast, between the opposite extremes as presented by the same object.—*B.*

She was—
Words are wanting to say what;
Think what a friend should be,—
She was that.—*Potter's Field, over Schuylkill.*—(*Pope.*)

"The heart of a statesman," says Bonaparte, "should be in his head."

The head of an *advocate* should be in his heart.—*B.*

Steal the livery of Heaven, to serve the Devil in.

ECSTATIC LOVE.

O! thou day of the world,
Chain my arméd neck, leap thou, attire and all,
Through proof of armour to my heart, and there
Ride on the pants triumphing.—*Antony and Cleopatra.*

He wielded neither the keen scimitar of Saladin, nor the ponderous battle-axe of Richard,—but the dull cleaver of a cold-blooded butcher.—*B.*

He that is rich, or he that is poor, knows but half of his own nature. The experience furnished by both is the best of knowledge.—*Ib.*

MIND.

The mind is never impaired, except through the disordered functions of the body. If the mind could in itself be diseased, it could die; a supposition which would be opposed to the doctrine of the immortality of the soul, and is, therefore, to be utterly rejected.—*Ib.*

Care still delves his deepest furrows,
In the fairest, softest brow;
Brightest eyes are dimm'd with sorrows,
Ruby lip shall cease to glow.—*B.*

SPEECH.

Speech is the morning to the soul.
It spreads its beauteous images abroad,
Which else lie furl'd and clouded in the brain.

RULING PASSION.

It is our hope, or our despair. It often secures success,—and in success enjoys the chief happiness, as, in cases of failure, it suffers the chief misery.

If thou dost any beautiful thing with toil, the toil passeth away, but the beautiful remains. If thou dost a vile thing with pleasure, the pleasure passeth, but the vileness remaineth.—*Musonius*, or *Jeremy Taylor.*

It is said, that in every situation, pecuniary competency is necessary to happiness. This is a great error. This would be to degrade and destroy the lofty character of man; who, in truth, depends upon nothing for his happiness, but a virtuous life, and unlimited faith in his Creator. That a dollar more or less, should exercise any influence upon his position, as rightly understood, is to make him the meanest, instead of the noblest, of God's creatures.—*B.*

I don't know how it is with others, but I am never so much disposed to be proud, as when my worldly hopes are humblest.—*Ib.*

INTOLERANCE IN RELIGION.

A war against Catholics, would involve a war against natives—and not only a religious, but a social and domestic war, of neighbor against neighbor—brother against brother—husband against wife—parent against child, and child against parent.—*B.*

My greatest difficulties in life have sprung from my greatest successes—and the greatest enjoyments of life, from what have been considered the greatest privations.—*Ib.*

Most men would be greater in the close of life, if they were not so great in its beginning.—*Ib.*

Test the gratitude of men, when you can do without it—never rely upon it in an emergency. Friendship then, or love, is the only dependence. Religion is the consolation where all other resources fail—*that* never fails.—*Ib.*

If we cannot derive support from religion, it is not that religion cannot furnish it, but because we want faith in its efficacy.—*Ib.*

God elects *all*—who *elect* him.—*Ib.*

The thoughts passing through an ordinary mind, would, in the course of a long life, if they could be collected, furnish more instruction to mankind, than the works of Bacon or Newton. Shakspeare, of all mortals, has exhibited most of his mind—yet he concealed more than he displayed.—*Ib.*

It resembles the eagle, that discovered upon the shaft on which he perished, a feather from his own wing.—*Waller.* (*Borrowed by Byron.*)

SHAKSPEARE A LAWYER.

Falstaff's Legal Precisian. Chief Justice Gibson. *Riddle* v. *Welden*, 5 *Wharton's Rep.*, 15.

Lear—*Act* 1, *scene* 4; cited by Lord Eldon on a question of Insanity.—*Lives of the Chancellors*, vol. vii. p. 249. London edition.

Action of battery.—*Twelfth Night, Act* 4*th, scene* 1*st.*

Action of battery.—*Measure for Measure, Act* 2*nd, scene* 1*st.*

Have your action of slander, too.—*Ib.*

I'll bring my action.—*Taming of the Shrew, Act* 3*rd, scene* 2*nd.*

Master *Fang*, have you entered the action?—2 *H. IV., Act* 2*nd, scene* 1*st.*

My Lord, let's see the Devil's writ.—2 *H. VI., Act* 1*st, scene* 4*th.*

The windy side of the law.—*Twelfth Night, Act* 3*rd, scene* 4*th.*

Against the *Law* and *Statutes.*—*Comedy of Errors, Act* 4*th, scene* 1*st.*

By the law of Nature and of Nations.—*Henry V., Act* 3*d, scene* 4*th.*

Before I be convict by course of law.—*Richard III., Act* 1*st, scene* 4*th.*

The law's delay, the insolence, etc.—*Hamlet, Act* 3*rd, scene* 1*st.*

The whole scene in Hamlet, *Act 5th, scene 1st.* "Crowner's Quest Law." And see the note to Reed's edition, vol. X., and Dame Hale's case.—*Plowden's Reports.**

Constable.—*Much-Ado About Nothing, Act 3rd, scene 3rd—throughout.*

Whose suit is he arrested at?—*Comedy of Errors, Act 4th, scene 4th.*

He is arrested at my suit.—*2 H. IV., Act 2nd, scene 1st. Twelfth Night, Act 3rd, scene 4th.*

Under our arrest procure your sureties.—*Richard II., Act 4th, scene 1st.*

* In the first volume of Plowden's Reports, first published in 1578, when Shakspeare was fourteen years old, will be found the case of *Hales* v. *Pettit*, argued upon a demurrer. We shall divest it as much as possible, of what may be called its artificial or technical character, in order that it may be more intelligible to the uninitiated. It was an action of trespass, which involved a question of title, to the property claimed by the widow of Sir John Hales. Sir John Hales leased the property by a lease from the Archbishop of Canterbury, as a joint-tenant with his wife. During the lease Sir John drowned himself—the land was claimed by the crown, and granted to Pettit. Sir John's widow entered upon the land, claiming it as successor to her husband. She was expelled from the possession, and for that expulsion brought her action of trespass. The question was, whether the property vested in the crown—Sir John being *felo de se*—or in his widow.

The ablest lawyers of the time were employed, and the argument involved all the legal matters contained in the scene of the grave-digger in Hamlet, in relation to the death of Ophelia. The inquiry turning upon the question, whether Sir John came to the water, or the water came to him. Shakspeare understood the point perfectly, and turned the pleadings and decision into ridicule, in the dialogue between Hamlet and the grave-digger, to which the curious are referred.—*Act V.*

To stay the judgment.—*H. VIII., Act 3rd, scene 2nd.*

And I will have no attorney but myself.

Attorneys are denied me, and therefore, personally, I lay my claim to my inheritance of free descent.

I could be well content to be mine own attorney in this case.

Doctor Drake introduces a variety of instances in which legal terms are used in their technical sense; as thus, in *King Henry IV., part* 2d.:

"For what in me was purchased,
Falls upon thee in a much fairer sort."

And purchase, it is here said, is used in a legal sense, and in contradistinction to an acquisition by descent. And again, in the *Merry Wives of Windsor:*

"He lets the Devil have him in fee simple, with fine and recovery."

Then in the *Comedy of Errors:*

"He's rested on the case."

And again in the *Merchant of Venice:*

"Go with me to a notary, and seal me there a bond."

In *Much Ado About Nothing*, Dogberry charges the watch to keep their fellow's counsel, and their own. This is part of the oath of a Grand Jury—Then, in *Othello* this passage occurs:

"Where is that Palace whereinto foul things
Sometimes intrude not? who has a breast so pure,
But some uncleanly apprehension
Keeps leets and law days; and in sessions sits
With meditations lawful."

Again in *Macbeth*:

"In these cases
We still have judgment here, that we but teach
Bloody instruction;—which, being taught, returns
To plague the inventor. Thus, even-handed justice
Commends the ingredients of our poison'd chalice
To our own lips.

"Tell me what state, what dignity, what honor,
Cans't thou *demise* to any son of mine?"

DYING DECLARATIONS.

The tongues of dying men enforce attention—
Where words are scarce they're seldom spent in vain;
For they breathe truth, that breathe their words in pain.

Have I not hideous death within my view,
Retaining but a quantity of life,
Which bleeds away, even as a form of wax
Resolveth from his figure gaunt the fire?
What in the world should make me now deceive,
Since I must lose the use of all deceit?—*Richard II. Act* 2.

Why should I then be false, since it is true,
That I must die here, and live hence by truth?

There is more sublimity in Milton, but more close thinking in Young.—*B.*

Like a fair house built upon another man's ground; so I have lost my edifice, by mistaking the place where I have erected it.—*Shakspeare.*

There were many men equal to Lord Chatham as a thinker, many superior to him in erudition, but no one excelled him in the power of speech. A man who cannot speak, or who speaks unintelligibly, thinks for himself: a speaker thinks for thousands, by making thousands think as he does.—*B.*

An eloquent writer is better for the future,—an eloquent speaker better for the present. The laurels of the former cluster about his grave,—those of the latter encircle his brows. *One* is a draft on time,—the other at sight.—*Ib.*

GENIUS.

"Genius, not only lights its own fire," as Foster says; "but supplies its own fuel," as I say.—*Ib.*

Life is divided into three periods—youth, the *imaginative;* middle age, the *passionate;* old age, the *reflective.*

CONTEMPT OF POSTHUMOUS FAME.

When Anacreon, towards the close of his life, was shown by his friends the vines and grapes with which his urn was to be festooned, he begged them to convert the grapes into wine, that he might enjoy them while living.

REVERSES OF FORTUNE.

People think much more about them than they merit; it is the world itself that makes them so difficult to bear; one can think and act as freely beneath the thatch of a cabin, as the gilded roof of a palace. It is the mock sympathy, the affected condolence for your fallen estate, that tortures you; the never-ending recurrence to what you once were, contrasted with what you are; the cruelty of that friendship which is never content, save when reminding you of a station lost forever, and seeking to unfit you for your humble path in the valley, because your step was once proudly on the mountain top. I hate pity,—it is like a recommendation to mercy after the sentence of an unjust judge.—*Lever.*

AFFECTED PITY.

There is a cant condolence
That gives more pain to the afflicted mind
Than open scorn. I have been so bepitied
By rascals, at the moment measuring
Their height above me. With an eye as bold
As frost—if frost could feel the cold it scatters,—
By Heav'n! I rather would endure the taunts
Of my worst enemy.—*Hayne.*

It is a mistake to suppose, that a transition from prosperity to adversity is more insupportable than one continuous course of adversity. A man who never saw a valley, knows nothing of the grandeur of a mountain. A man who never saw a mountain, is exhausted with the sameness of a vale. In plain English, the ups and downs of life support each other. The memory of the past, or the anticipations of the future, chiefly make up all our present happiness or misery.—*B.*

I've search'd with care the page of Life,
And learn'd of man the common lot:
He *lives*—his days are toil and strife,—
He *dies*—and is forgot!—*Anonymous.*

I have seen men in tempests of passion,—in the greatest depth of grief,—the former I have always found easily subdued,—the latter, readily consoled. All that is required is to know the spring of the heart. The grave is the only grief that has no temporal hope;—there, the only cure is to look beyond it.—*B.*

Poverty in itself is nothing, even to a generous spirit. It is the thousand meannesses to which it subjects you,—the thousand insolences to which you are exposed,—the chilling influence upon practical charity,—that constitute its chief misery.—*Ib.*

A man is prouder in adversity than prosperity. In the former he builds upon himself,—in the latter, upon his fortune.—*Ib.*

Suffering is best endured, by reflecting upon greater sufferings of yourself or others. If this cannot be, it must be endured by gratefully meditating upon the great blessings you have enjoyed at the hands of a bountiful Creator,—which leave you largely a debtor on the score of happiness. If neither will answer, the only cure is silence or submission.—*Ib.*

RULING PASSION.

The gratification of a ruling passion, is our chief pleasure,—its disappointment, our chief earthly penalty. Virtue has its enjoyments in any result, and is often more benefited by defeat than success.—*Ib.*

The miser suffers more in parting with his money, to procure the slightest indulgence, than a poor man suffers in being deprived of such indulgence.—*B.*

POWER.

Whose smile was fortune, and whose will was power.

Fortune attends his smile, ere she turns her wheel, and Fate awaits his nod, ere she signs her *fiat.*

I love—I am devoted to my profession, but at times I almost loathe it, when I see children struggling in hostility over a parent's grave; or, when I behold Mammon thrusting his guilty gilded hand between hearts that were made for each other—between "brethren who should dwell together in unity."

Climbing to the nest of the vulture, and finding a trembling dove within.—*Moore.*

Nothing tranquillizes excited and angry passions more, or conveys a more salutary lesson to the mind, in soothing or composing it, than the sight of a sleeping infant.—*B.*

BEAUTIFUL THOUGHT.—YOUNG WOMAN.

The sweet moon on the horizon's verge—a thought matured, but not uttered—a conception warm and glowing, not yet embodied—the rich halo which precedes the rising sun—the rosy down upon the ripening peach.

A flower—which is not quite a flower,
Yet is no more a bud.

Romantic love is like the cataract,
Which foams and rages, while impediments
Obstruct its swelling surge: give it full sway,
And lo! its silv'ry sheen glides gently on,
And lulls itself to sleep with its own music.—*B.*

VIRTUE.

'Tis virtue alone true enjoyment can give,
The enjoyment that springs from on high;
'Tis virtue that teaches the way we should live,
And points out the way we should die.—*Ib.*

Silent they sit,
All faculties absorb'd by black despair;
The world has vanish'd, and the soul is dead,
To earthly sympathies—to earthly care;
Brooding alone on its eternal fate,
And prostrate in the presence of its God.—*Ib.*

SILENCE.

Silence, the watchful sentinel of night,
With noiseless step and undiverted ear,
Challeng'd each sound.—*Ib.*

Prayer was not invented for man—man was born to pray.

Man was not made for the Sabbath, but the Sabbath was made for man.

Like a man who walks backward to destruction, and looks at the stars or sun to the last.

A lily lolling on a rose.

The argument resembles a peacock's tail—filled with beautiful plumage, but supported upon deformed and odious legs.

ELOQUENCE.

Men, it is said, are won through the eyes—women through the ears.

ATHEISM.

The doctrine of an Atheist is not more horrible than it is pitiable. "Who, in the world," says an incomparable divine,* "is a verier fool, a more ignorant, wretched person, than he that is an Atheist? A man may better believe there is no such man as himself—that *he* is not in being—than that there is no God; for himself can cease to be, and once was not, and shall be changed from what he is; and in very many periods of his life, knows not that he is; and so it is every night with him when he sleeps. But none of these can happen to God, and if he knows it not, he is a fool. Can any thing in this world be more foolish, than to think that all this rare fabric of heaven and earth can come by chance, when all the skill of art is not able to make an oyster? To see rare effects, and no cause; an excellent government, and no prince; a motion, without an immovable; a circle, without a centre; a second, without a first; a thing that begins not from itself, and therefore not to perceive there is something whence it does begin, which must be without beginning. These things are so against philosophy and natural reason—to say nothing of the lights of revelation—that he must needs be a beast in his understanding, that does not assent to them. This is the Atheist: 'the fool hath said in his heart, there is no God:' that is his character. The thing framed says, that nothing framed it; the tongue never made itself to speak, and yet

* Bishop Jeremy Taylor.

talks against him that did; saying, that which is made, is; and that which made it, is not. But this folly is as infinite as hell, as much without light or bound, as the chaos, or the primitive nothing. But in this the Devil never prevailed very far; his schools were always thin at these lectures. Some few people have been witty against God, that taught them to speak before they knew to spell a syllable; but either they are monsters in their manners, or mad in their understandings, or ever find themselves confuted by a thunder or a plague, by danger or death."

The French philosophers having assembled, their conversation turned on the question, "What is the soul?" After various silly suggestions by others, Helvetius directed the windows to be closed: "Now," said he, "you see we are in the dark—let them bring me a light." They gave him a red-hot coal, and blowing it, he lit a wax taper. "There," said he, "I have the soul! I have the life of the first man; the fire which I have used is everywhere—in the stone, in the woods, and in the atmosphere. The soul is fire." And saying this, he lit another taper. "Now you see," said he, "my first man has transmuted life without the original Creator." "Ah!" said Diderot, who was present, "observe, then, that you have proved the existence of God, by attempting to deny it. I grant that life may be in the fire, but it is necessary that there be one who has lit the fire. It will not be lighted by itself."

The man who has suffered the greatest evil in life, can suffer no more. Like Death, it cures everything HERE.—*B.*

As there is morning, noon, evening, and night in each day, so is there in the seasons,—spring, summer, autumn, and winter;—and to those do the seasons and changes in the life of man correspond.—*Ib.*

RULING PASSION.

A poor man stating his inability to purchase some small article, and referring, with something like envy, to the superfluous wealth of a miser, B. said to him: "My good friend, your condition is at least as good as his: you suffer in not getting what you want—he suffers either in *not* getting, or *in* getting what he wants.—*B.*

> Is this well done, my Lord?
> Have you put off all sense of human nature?
> Keep a little, a little pity, to distinguish manhood,
> Lest other men, though cruel, should disclaim you,
> And judge you to be numbered with the brutes.—*Rowe.*

Being asked, why I was so firm a believer in the Saviour, I replied, "Both from reason and faith." Reason itself shows that, without faith in the doctrine of Christianity, no man could be saved.—*B.*

A well provided breast hopes in adversity, and fears in prosperity.—*Horace.*

TIME.

The man that takes twice as much time to accomplish an object as is necessary, abridges his life one-half, and nearly destroys the other half by an acquired sluggishness and supineness.—*B.*

Why is it, that you trim your plants, and your trees? To remove what is decayed and offensive to the sight, and to promote the growth of that which remains. The very storms that visit the forest, remove the rotten or useless portion of the limbs and branches, and thereby increase their general growth and beauty;—such are the benefits of adversity.

SLANDER.

A slave, whose gall coins slander like a mint.—
Troilus and Cressida.

A fellow, with his *wit* in his belly, and his *guts* in his *head.*—*Ib.*

ROGUES.

Men who do not watch and pray—but watch *to prey.*

She died,—but not alone; she held within
A second principle of life, which might
Have dawn'd a fair and sinless child of sin;
But clos'd its little being without light,
And went down to the grave unborn—wherein
Blossom and bough lie wither'd with one blight.—*Byron.*

In vain, the dews of Heaven descend above
The bleeding flower, and blasted fruit of love.—*Ib.*

A pebble, in the streamlet scant,
Has turned the course of many a river;—
A dew-drop, on the baby plant,
Has warp'd the giant oak forever.

Bring me a constant woman to her husband—
One that ne'er dream'd a joy beyond his pleasure;
And to that woman, when she has done most,
Yet will I add an honor,—*a great patience.*—*Henry VIII.*

Ten thousand fools, knaves, cowards, lump'd together,
Become all-wise, all-righteous, and all-mighty.—*Young.*

The ruling passion, is a substitute for courage. If a man be a coward, only offend his ruling passion, and he becomes brave in its defence. Look at the miser defending his gold, &c.!

EPITAPHS.

Torn from us in the spring tide of the heart,
Sunder'd from those dear arms that clung around thee
In all thy loveliness, what now remains
With the survivors to allay their griefs,
But the rich memory of thy spotless life,
Radiant with hope and redolent with virtue,
Pointing to those bright realms of endless joy,
Whose earthly portal is the peaceful grave?—*B.*

Exalted virtue, and undying faith
In the atoning blood of Calvary,
An earnest of beatitude to come.
Why should survivors mourn the pious dead,
Who, having shaken off life's weary load,
Mount to the regions of eternal bliss,
And rest upon the bosom of their God?—*Ib.*

Earth has no rage like love to hatred turn'd,
Nor hell a fury, like a woman scorn'd.—*Congreve's Mourning Bride, end of 3rd Act.*

Music has charms to soothe the savage breast,
To soften rocks, or bend the knotted oak.
I've read that things inanimate have mov'd,
And, as with living souls, have been inform'd
By magic numbers and persuasive sound.—*Ib., 1st Act.*

Then chafed
Thy temples till reviving blood arose,
And like the morn, vermilioned o'er thy face;
O Heaven! how did my heart rejoice and ache,
When I beheld the day-break of thy eyes,
And felt the balm of thy respiring lips.—*Congreve's Mourning Bride, 2nd Act.*

How reverend is the face of this tall pile!
Whose ancient pillars rear their marble heads
To bear aloft its arch'd and pond'rous roof,
By its own weight made steadfast and immovable,
Looking tranquillity.—*Ib., Scene 3rd.*

[*Said to be one of the most poetical passages in the English language.*]

ELOQUENCE.

Whene'er he speaks, Heav'n! how the list'ning throng
Dwell on the swelling music of his tongue:
And when the power of eloquence he'd try,
Here lightning strikes you—*there* soft breezes sigh.—*Garth.*

TEMPERANCE.

The Lacedemonians, who were at one time a very licentious and drunken people, were cured of their love of strong drink, in this manner:—The slaves were forced to drink until they became intoxicated, and then placed in the amphitheatre during the games. This double degradation disgusted every one.—*Plutarch.*

Noah's drunkenness has been accounted for, upon the supposition that he was not aware of the influence of wine.

SLEEPING FLOWERS.

Almost all flowers sleep during the night. The marigold goes to bed with the sun, and with him rises weeping. Many plants are so sensitive that their leaves close during the passage of a cloud. The dandelion opens at five or six in the morning, and shuts at nine in the evening. The "goat beard" wakes at three in the morning, and shuts at five or six in the afternoon. The common daisy shuts its blossom in the evening, and opens its "day's eye" to meet the early beams of the morning sun. The crocus, tulip, and many others, close their blossoms at different hours towards evening. The ivy-leaved lettuce opens at eight in the morning, and closes forever at four in the afternoon. The night-flowering cereus turns night into day. It begins to expand its magnificent sweet-scented blossoms in the twilight; it is full-blown at midnight, and closes never to open again with the dawn of day. In a clover field not a leaf opens until after sunrise! So says a celebrated English author, who has devoted much time to the study of plants, and often watched them during their quiet slumbers. Those plants which seem to be awake all night, he styles "the bats and owls of the vegetable kindom."—*Extract.*

OBSTINACY.

An obstinate man does not hold opinions, but they hold him; for when he is once possessed of an error, it is like a devil, only cast out with great difficulty. Whatsoever he lays hold on, like a drunken man, he never loses, though it do but help to sink him the sooner. His ignorance is abrupt and inaccessible, impregnable both by art and nature, and will hold out till the last, though it has nothing but rubbish to defend. It is as dark as pitch, and sticks as fast to anything it lays hold on. His skull is so thick, that it is proof against reason, and never cracks but on the wrong side, just opposite to that on which the impression is made, which

surgeons say does not happen very frequently. The slighter and more inconsistent his opinions are, the faster he holds them, otherwise they would fall asunder of themselves; for opinions that are false ought to be held with more strictness and assurance than those that are true, otherwise they will be apt to betray their owners before they are aware. He delights most of all to differ in things indifferent: no matter how frivolous they are, they are weighty enough in his weak judgment; and he will rather suffer self-martyrdom than part with the least scruple of his freehold, for it is impossible to dye his dark ignorance into any lighter color. He is resolved to understand no man's reason but his own, because he finds no man can understand his but himself. His wits are like a sack, which the French proverb says is tied faster before it is full than when it is; and his opinions are like plants that grow upon rocks, that stick fast though they have no footing. His understanding is hardened, like Pharaoh's heart, and is proof against all sorts of judgments whatsoever.—*Extract.*

The iron entered into his soul.—*Sterne.*—(*Bible.*)

There is nothing earthly that is not dependent upon something else earthly, while *all* depend upon the Creator.—*B.*

His tongue took an oath,
But his heart was unsworn.—*Euripides.*

SPIRITUALISM AND INFIDELITY.

One of the most remarkable things with the Spiritualists is, that while they believe every thing that few other persons can believe, they deny every thing that almost all reasonable men fully believe —the truths of Christianity—all the mysteries of which are nothing to Spiritualism, and have gospel authority.

BEAUTIFUL PHRASE.

On my eyelids shall conjecture hang.—*Measure for Measure.*

What reinforcement we shall gain from hope,
If not, what resolution from despair.—*Milton.*

LEGAL LIABILITY OF A PHYSICIAN.

The responsibility of a physician is rarely understood—though it ought to be distinctly and clearly understood. Death happening under his hands, when he is engaged with intent to cure or prevent disease, in the eye of the law, is no felonious homicide, though greater skill might have saved the patient. And the like of a surgeon. And the law goes further: for, if men be not licensed according to the statute, though liable to the penalties of the statute, a mere mischance would not make them liable for murder, or even manslaughter. Gross negligence, however, or culpable neglect, or inexcusable ignorance, would materially alter the case.

POISONS.

Arsenic, which of all poisons most readily produces death, is most readily administered without detection—but most readily detected, having been administered.—*B.*

The grave closes all accounts with this world, and opens them with the next.—*Ib.*

PRUDENCE IN TAKING VOUCHERS.

The man who, in his business transactions in life, relies upon the honesty of all men, necessarily relies upon their memory and accuracy. They may be honest, and still he may suffer from his confidence.—*Ib.*

MORAL INSANITY.

If it mean anything, it means *that* insanity which arises from one of two causes, and, perhaps, at times, from both. In some cases, it may result from the physical structure or condition of the man—great fulness of habit—peculiar tendency of the blood, contributing to the creation of inordinate animal passions, &c. Or where, by bad example and long habit of any animal excess, the mind loses its control, and the will its power, and the beast conquers the man, —this results in insanity or fatuity.

> O, she doth teach the torches to burn bright!
> Her beauty hangs upon the cheek of night,
> Like a rich jewel in an Ethiop's ear—
> Beauty too rich for use—for earth too dear.—*Skakspeare.*

GRAVITATION.*

> Time, force, and death,
> Do to this body what extremes you can;
> But the strong base and building of my love
> Is, as the very centre of the earth,
> Drawing all things to it.—*Ib.*

If a man is under the influence of any passion more powerful than the love of truth, he swerves from the truth.—*Bacon.*

Agnus was the only combination which the wolf, learning to spell, could make out of the twenty-four letters of the Alphabet.—*b.*

* Written long before Newton's discovery.

METAPHYSICS.

The souls of idiots are of the same piece as those of statesmen, but now and then nature is at fault, and this good guest of ours takes soil in an imperfect body, and so is slackened in showing her wonders; like an excellent musician, that cannot utter himself upon a defective instrument.—*Bacon.*

There is this wonderful benignity in the providence and economy of God, that our very sufferings produce our relief, from their excess. Great pain renders us insensible to pain. Great heat produces, naturally, refreshing showers.—*B.*

Never despair—and, when you are in the right, never surrender. —*Ib.*

God only, can cure the wounds that He inflicts.—*Scott.*

SLAVERY.

I wonder if his appetite was good,
Or if it were, if also his digestion.
Methinks, at meals, some odd thoughts might intrude,
And conscience ask a curious sort of question
About the right divine, how far we should
Sell flesh and blood.—*Byron.*

MAJESTY,

Dies not alone, but like a gulf doth draw
What 's near it—with it. It is a massy wheel,
Fixed on the summit of the highest mount,
To whose huge spokes ten thousand lesser things
Are mortised, and adjoin'd, which, when it falls,
Each small annexment, petty consequence,
Attends the boisterous ruin.—*Hamlet.*

ARISTOCRACY AND DEMOCRACY.

The aristocracy pull off their hats to those whom they *hate*. The Democracy will not do it to those whom they *love*. There is more policy in one—more honesty in the other.—*B.*

PRIESTCRAFT.

Thy priestly craft
Is so engrafted on thy loyal stock,
That, like the ivy, it o'ershadows it,
And eats the heart out. What dost thou mean?
Equivocate no longer—speak thy fears.—*Ib.*

Pardon, my liege!
My thoughts, being dedicate to things above,
Chastised by penance and austere reproof,
Consort not with the play of youthful blood,
And look, perchance, too sternly on those faults
Which nature unreformed shall justify.—*Ib.*

If every knave build on his own construction,
Death's decrees shall lose their bloody impress,
And become a passport to a regal entertainment.—*Ib.*

Princes, like the stars,
Were made to gaze at, by vulgar eyes,
With awe and reverence—to worship not to wed.—*Ib.*

What change can prove unwelcome to the heart
That groans beneath the heaviest penalties
That disappointed and perverted love
Can heap upon it?—*Ib.*

Talk not of hearts—leave those to brainsick boys
And wild romance.—*B.*

O hard condition!
That makes the princely state in wretchedness
Supreme, as well as pride. The humble hind,
Who toils and sweats from morn till eventide,
Still sits supreme upon his bosom's throne,
In native majesty, and sways the heart
To his own purpose, loves and is belov'd,
And in the dear delights of mutual joy
Looks down upon the worldly pageantry,
The pride, the pomp, the tumult and parade
That hide the anguish'd soul, and drown its groans.—*Ib.*

CANDOR.

It wears the livery of Truth, fair Madam!
The vesture of the starry court above,
Where virtue reigns supreme, and the free soul
Owes fealty only to the KING OF KINGS.—*Ib.*

I nor dispute, nor doubt your Highness' will;
That is omnipotent, and, as a subject,
A loyal and a true one, I submit.
But when your Grace holds parley with my thoughts,
My thoughts must speak, and say it is *not well.*—*Ib.*

The withered heart that throbs in this lone breast,
And, like a captive bird, assails its bars,
In frail and fruitless hopes of liberty,
Attests the fervor of my love for thee.—*Ib.*

Remember, thou art escort to a *queen*—
That the blue waves, which sever adverse shores,
Are Lethe's waves—oblivious of the past!—*B.*

I'll be her escort; and with winkless eye
I'll play the Dragon to the Hesperian fruit,
And guard it, night and day.—*Ib.*

How times are changed! now Priam plays the lover,
And England's Helen rushes to his arms,
While all the pride and pomp of chivalry
Smile on the triumph of threescore and ten—
The Rose of Spring clasped in the arms of Winter!
The Aloe would befit his highness better—
It blooms but once in every sixty years.—*Ib.*

I've borne these ribald jests
Beyond that point where patience is a virtue.
Provoke my rage no longer.—'Tis not meet
That we should prattle of our inmost griefs:
But there are depths within this wounded heart,
Which, prob'd unskilfully, result in death
To patient or physician.—*Ib.*

We'll talk no more of women;
The winds and waves shall now our topics be;
They're not more changeful, and less perilous.—*Ib.*

Oh, Alexander! what a soul was thine!
That in the prime of manhood and of love—
Deck'd with a thousand triumphs—could resist
The matchless Persian beauty—bright Statira.—*Ib.*

The heart can never learn
To throb by rule, or shun what it adores.
Friendship may swell to love, and fill the soul,
But love ne'er shrinks to friendship, till it dies.
Extremes beget extremes, and sometimes hate
Usurps the throne of tenderness and joy,
And riots in their ruin.—But true love
Shudders at diminution, as at death.
Nay, it is death—the glowing heart is cold,
Is cheerless, all its charms are lost,
And from its former height it sinks, at once,
To the low level of instinctive brutes.—*B.*

LOVE.

Why cease to love—or cease to be beloved?
The Great Creator taught the breast to glow
With generous emotion, and to cling,
Close as to life, to sympathetic arms.
What is the world without it, what the glare
Of pride and pomp—of wealth and pageantry?—
They cannot buy, vain-glorious as they are,
The least emotion that I feel for thee.
Who is the richer, then? The wretch that hugs
His golden store and nightly gloats upon 't,
Or the warm spirit that shakes off its chains?—*Ib.*

BEAUTY.

Would you have stars or liquid diamonds? gaze
On her bright eyes—which light the way to joy.
Pearl? call to mind the treasure of that mouth;
Coral? behold her lip—but, oh! beware
You linger not amidst the sweet enchantment—
This labyrinth of love!—No clue can save you.—*Ib.*

How should it be
When Youth's consigned to the embrace of Time,
When life is fettered in the arms of Death?
Canst read the human face, and not perceive
How fate lies lurking in the wreathed smile?
Decrepit age, corruption and decay
Prey on the vernal cheek, and blight its bloom.
The temple, where this union is confirmed,
Should be a sepulchre—a charnel house—
And bridal robes, and jewels, and parade,
Give place to sackcloth, shrouds, and tears of blood.—*B.*

The feeblest impulse that affection prompts,
Is worth a kingdom.—Kingdoms cannot buy it.
It springs spontaneous in the human heart,
Unbrib'd—unfetter'd—precious as the blood
That thrills in circling eddies through the veins?—
Offspring and guardian of life's citadel—
Millions of tribute which the unwilling hand
Pays, while the soul withholds its sympathy,
Or shrinks from the exaction; what are they
But dull and slavish homage from a slave,
Giving what fear forbids him to refuse,
Or power resistless ever may enforce?
What mutuality can this bespeak
Beyond external seeming?—the base traffic
Of sordid worldlings—wedded to themselves—
Giving to take—or yielding to receive!—*Ib.*

The whole globe,
Outstretched between the soul and its desires,
Were shorter than the tiresome, tedious league,
That turns the back on joy.—*Ib.*

Who dares to love, yet dares not show his love
To the dear object that inspires it?
Say she's a queen—in *love* she is a subject;
The crown begirts her head, but not her heart—
The heart's a woman's throne—'t's there she reigns—
'T is there she rules—is ruled, and must be won.—*B.*

He who sins for woman,
Builds upon Adam and prescriptive right.—*Ib.*

Amazed—confounded—blinded with the blaze
Of concentrated beauty.—'T is gone, and all is gloom.—*Ib.*

LOVE AGAINST HONOR.

Her youth—her charms—
Enough to warm an anchorite to love,
Opposed to knightly honor and renown,
Fade like the phantom of distempered minds
At the return of reason. Valiant sir,
Pause not to weigh your princely dignity
Against a woman's smile—or both are lost.—*Ib.*

My gallant friend,
If royalty derived its stamp from nature,
Or worth inherent challenged for itself
The rev'rence and submission which we pay
To worth presumptive—or if regal power,—
The right to sway the destiny of others,—
Sprung only from a conquest o'er ourselves,
Thou wert a native monarch.—*Ib.*

Faults self-reproved are more than half atoned,
And prompt repentance does the work of mercy.—*Ib.*

This is a bond of hands, and not of hearts.
Is it then generous—nay, is it just,
That doting age, forgetful of the tomb,
Should thus stretch forth its sickly, palsied hand,
To crop the bloom of youth and blight her joys
Beyond all hope of a reviving spring?—*B.*

I place a crown of thorns upon her head,
And like a flower upon the blasted heath,
She withers, pines, and dies.—*Ib.*

The glare of day—the grosser glare of pomp
Are past, and now the noon of night prevails.
Distracted and excursive thoughts return,
Freighted with good or ill, and cast their load
Of joy or grief on the expectant heart;
And still how sweet—how beautiful is night!
How mild, yet how luxuriant are the rays
Which beam from yon cerulean monarchy—
Pale Cynthia and all her starry train,
O'er a tempestuous world, lull'd to repose—
Transient, short-liv'd repose! To-morrow's dawn
Shall wake the slumberers and renew their toil.—*Ib.*

Bid me be dumb: but let me gaze upon thee,
Till the fraught soul shall surfeit on thy charms.—*Ib.*

ANCESTRY.

What lineage has yon fair and radiant star,
That bears the stamp of an immortal hand?
What orbit does it move in but its own?
shines in its own pure and pristine light:—
Not like your fav'rite moon, in borrow'd beams!—*Ib.*

Where and who am I?
Are these the sacred precincts of the palace;
Or has my fancy, straying from the truth,
Led me into some desert drear and wild—
Some lawless haunt, where ruffian robbers lurk
To prey on the defenceless?—*B.*

VALOR.

Put up your weapon till the time shall serve.
This is no scene for blood. Valor that needs
The tongue's loud flourish, and a lady's eye,
May well be doubted, though I doubt not yours;
Your courage, sir, will keep.—So let us part.
How we again shall meet—how part when met,
Let time and fate determine.—*Ib.*

What, *then*, fair Madam, but a forfeit life
Which none will take more freely than I give—
What is it, but a burthen to be borne,
From day to day, till death removes the load?
I would not wound thy ear with my fell thoughts;
But still, that hand were dearest, next thine own,
That cuts the tenure of my weary hours,
And soothes me to a long and last repose.—*Ib.*

The honors that I wear were dearly won,
By nights of toil—by days of peril past;
And he that tears the garland from *my* brow,
To deck his *own*, shall leave these temples cold,
And rend his trophies from the grasp of death.—*Ib.*

Tinsel and trappings still have virtue in them,—
A cloak of frieze would cover twenty lords.—*B.*

FRIENDSHIP.

For weary—anxious years,
In camps—in courts—in grief and merriment,
We have been more than brothers: tell me, then,
What good or evil has befallen thee,
That I may share the one—redress the other!—*Ib.*

Shame never dared to sit upon that brow;
'T is honor's throne.—Didst mark amid the throng
Of Lords and Nobles, how supreme he stood—
Blanchless and dauntless, while his eagle eye
Surveyed, undazzled, all the glare of pomp,
As matters most familiar.—What to him
Who wears great nature's patent in his breast,
Are all the tinsell'd trappings of a Court?—*Ib.*

NATURE'S NOBLEMAN.

The lower his descent,
The higher his desert.—Thus to emerge
From the dark, struggling, adverse clouds of fate,
Like the bright sun from a tempestuous sky,
Or the dark bosom of the stormy main,
All radiant and majestic in his glory,
How much more godlike, than when rosy hours
And gentle fanning zephyrs cling around
His golden chariot, and enamor'd shed
Their fragrant incense o'er its burnish'd track!
I tell the, Charmean, forty thousand lords,

Fair weather lords, in their united worth,
Were not the tithe of nature's nobleman!
If thou wouldst bind thy mistress ever to thee,
Devise some means consistent with my fame,
To win this truant back.—*B.*

O, love, mysterious and capricious love,
Though scorn'd so long, at length thou art revenged
On my poor heart!—*Ib.*

MARRIAGE.

United in affection as we are,
And waiting but thy blessing on the union,
Thou may'st dispense with tedious ceremony.
When votaries reluctant kneel before thee,
Omit no form that binds them to each other,
Lest struggling, they escape and shame thy work:
That is a work of form, and must be formal,
Or it is nought: but here our willing hearts
Are coupled to thy hand—and, though unbound,
They cleave together, and require no tie
But thy frail outward tenure.—

SACRED EXTRACTS.

A mean estate is not always to be contemned: nor the rich that is foolish to be had in admiration.—*Ecc.* ch. xxii.

If thou hast gathered nothing in thy youth, how canst thou find anything in thy age.

A woman, if she maintain her husband, is full of anger, impudence, and much reproach.

Many have fallen by the edge of the sword, but not so many as have fallen by the tongue.

Love thy money for thy brother and thy friend, and let it not rest under a stone to be lost.

There is no riches above a sound body, and no joy above the joy of the heart.

In all thy works be quick, so shall there no sickness come unto thee.

If thou be made the master of a feast, lift not thyself up, but be among them as one of the rest; take diligent care for them, and so sit down.

A concert of music in a banquet of wine, is as a signet of carbuncle set in gold.

If thou be among great men, make not thyself equal to them; and when ancient men are in place, use not many words.

Do nothing without advice, and when thou hast once done, repent not.

Riches and strength lift up the heart, but the fear of the Lord is above them both: there is no want in the fear of the Lord, and it needeth not to seek help.

Wisdom is better than rubies, and all the things that may be desired are not to be compared to it.—*Proverbs* viii. 11.

There is that scattereth and yet increaseth; and there is that withholdeth more than is meet, but it tendeth to poverty—*Proverbs* xi. 24.

How much better is it to get wisdom than gold? and to get understanding rather to be chosen than silver.—*Proverbs* xvi. 16.

A friend loveth at all times, and a brother is born for adversity.—*Proverbs* xvii. 17.

Even a fool when he holdeth his peace is counted wise; and he that shutteth his lips, is esteemed a man of understanding.—*Proverbs* xvii. 28.

Thy youth is renewed like the eagle's.—*Psalm* ciii. 5.

Like grass which groweth up and flourisheth, in the evening it is cut down and withereth.—*Psalm* xc.

Man goeth forth unto his work, and to his labour, until the evening.—*Psalm* civ. 23.

They that sow in tears, shall reap in joy.—*Psalms.*

For a thousand years in thy sight are but as yesterday when it is past, and as a watch in the night.—*Psalm* xc. 4.

The Lord is King, be the people never so impatient. He sitteth

between the cherubims, be the earth never so unquiet.—*Psalm* xcix.

Thou hast put away mine acquaintance far from me; thou hast made me an abomination unto them. I am shut up and I cannot come forth.—*Psalm* lxxxviii. 8.

Blessed *is* the people.—*Psalm* lxxxix. 15.

Who maketh the clouds his chariot; who walketh upon the wings of the wind.—*Psalm* civ. 3.

Or ever the silver cord be loosed, or the golden bowl be broken, or the pitcher be broken at the fountain, or the wheel broken at the cistern.

Then shall the dust return to the earth as it was, and the spirit shall return unto God who gave it.—*Ecclesiastes* xii. 6, 7.

The heart of fools is in their mouth, but the tongue of the wise is in their heart.

TIME.

Day unto day uttereth speech—night unto night showeth knowledge. Let us, therefore, so number our days, that we may apply our hearts unto wisdom. For wisdom is better than rubies, and all things that may be desired, are not to be compared to it.

I will utter dark sayings of old.

ENGLAND.

The harvest of the ocean is her revenue, and she is the mart of nations.

Do swans flock with ravens, or lambs herd with wolves?

Open thy mouth for the dumb—in the cause of all such as are appointed to destruction.

Open thy mouth, judge righteously, and plead the cause of the poor and needy.

As for man, his days are as grass, as a flower of the field, so he flourisheth. For the wind passeth over it, and it is gone, and the place thereof shall know it no more.

ANECDOTES AND WIT

OF

THE BENCH AND BAR.

CHAPTER XV.

1. Upon one occasion, when Edward Tilghman, a cotemporary and equal of Lewis and Ingersoll, and a lawyer unequalled upon questions involving title to real estate, was engaged in a very heavy and complicated ejectment, with two colleagues much younger than himself, contrary to rule, he determined to open the cause, and submit the evidence in behalf of the claimant. In doing so, he rendered everything so plain, so regular, and so conclusive, that when he read the last paper referred to in his brief of title—he threw it down, and with a smile upon his face, after having so satisfactorily accomplished his task, turned to the Court and jury, and triumphantly exclaimed, "Now, gentlemen, I have done. I have opened my case, I have exhibited my

proofs, and I leave it to my colleagues to *lose* the cause —if they *can*."

2. I remember a striking instance of the importance of what is called "*action*," early in my own practice. A gentleman sought legal redress for one of the deepest wounds that could be inflicted upon his domestic peace. His voice was unbroken—his brow placid—his eye rayless—his breast tranquil; his whole soul obviously sleeping upon the subject of his complaint. From his character, every word that he uttered was believed. But I told him frankly, that if he related his story in the same unimpassioned manner on the approaching trial, it never would be credited by the jury, as his heart seemed to bear testimony against his tongue. The prediction was realized. He told the story in the same cold and listless way—he was totally unimpeached and uncontradicted; but, influenced by the ordinary principles that govern the determinations of men, the jury utterly rejected the testimony, and the defendant was acquitted.

3. Two young men called one morning upon Mr. Duponceau, and one of them said: "Mr. Duponceau, our father died, and made a will."

"Is it possible?" said Mr. Duponceau. "I never heard of such a thing before! A most remarkable thing, indeed!"

"Why, Mr. Duponceau, we thought it was an everyday affair."

"I never heard of such a thing before, I assure you."

"Well, then, sir, if there is any difficulty about it, we wish your services," at the same time handing him a fee.

"Oh!" said Mr. Duponceau, "I think I know now what you mean. You mean that your father made a will, and died. Yes, yes, that must be it."

4. Mr. Duponceau, as is well known, was a very absent man, very shrewd and somewhat deaf. One day, in the midst of a cause, he suddenly gathered up his papers, and rushed out of court, leaving the Court, counsel, and jury, in mute astonishment. After waiting a few minutes for his return, one of the members of the bar went over to his office to see what was the matter, and to bring him back. Mr. Duponceau was found almost breathless, and apparently much excited.

"Have they put it out?" he inquired of his visitor.

"Put what out, Mr. Duponceau?"

"The fire; I thought they said that the court-house was on fire."

"Nothing of the kind, my dear sir, has happened. Pray, come back again."

"Well, I am out of breath now, and very much exhausted by my fright. I will be over in a few minutes. Make my apologies to the Court."

The visitor departed; and the learned counsel, who had been unexpectedly caught in a tight place in the trial of the cause, looked into some authorities, and came

back to court quite composed, prepared to surmount the difficulty, and proceeded with the cause.

5. Quintilian seems to think that a mean, careless, dirty dress, worn by an accused party, has at times had wonderful effects in his favor. That must depend very much upon the nature of the charge. We remember a case in which a wretched woman was charged with keeping a house of ill-fame. She appeared before the Court in apparently the most squalid poverty; and no one could suppose that she had been the recipient of those vast illicit gains with which she was charged. The Court and jury were much impressed in her favor. The next day, however, no doubt under advice, when she appeared, she was richly apparelled in all the colors of the rainbow. This produced an immediate change, and a conviction followed.

6. Judges and lawyers, in England, it is said, scarcely ever die poor. "Lawyers, among us," says Henry Clay, "work hard, live high, and die poor." But we think it may be said, that litigious *clients* die poor *everywhere*. Even success in a doubtful cause, like a prize in a lottery, invites to new chances, and often ends in ruin.

7. Lord Denman, upon the trial of the Queen, introduced a Greek quotation, said to have been furnished by Dr. Parr, which gave offence to George IV., and, as was believed, stood in the way of his lordship's

judicial advancement. He applied to Lord Lyndhurst to explain this to the king, and to satisfy him that no offence was designed. Lyndhurst promised to do so; but after waiting six months, acknowledged that he had omitted it, as it was a matter of so much delicacy. Denman then applied to Wellington, who boldly said, "that the counsel had done no more than his duty, and that he would so represent it to his majesty." This was done; and Denman, shortly after, was appointed Chief Justice of the Court of King's Bench. (1832).

8. B—— used to say, "that of all the prosecuting deputy attorneys general that he ever encountered, D—— was the most dangerous, as he always contrived to get from the jury a conviction when he asked it. And his way was this. If an important and doubtful case was approaching, he would contrive to thrust in before it, some trifling misdemeanor—such as an assault and battery, or an indictment for malicious mischief. He would introduce the evidence, and then abandon the case, with a show of great mercy, saying, 'This is a small matter, it may have resulted from ignorance or accident on the part of the defendant. He is a young man, and we must make some allowance for his indiscretion,' etc., etc. The defendant is, of course, acquitted. Then the important case is called, and, with not half so much to support it, the same prosecutor would tell the same jury that the prisoner

deserved to be convicted—drawing upon his prior mercy to support his present severity. The jury deeming him a most liberal man, takes him at his word, and almost without evidence, the defendant is convicted."

9. It is recorded that Sergeant Maynard had such a relish for the old year-books, that he carried one in his coach to divert his time in travel—and said he preferred it to a comedy. The late Judge Kennedy, of the Supreme Court, who was the most enthusiastic lover of the law we ever knew, used to say that his greatest amusement consisted in reading the law; and, indeed, he seemed to take almost equal pleasure in writing his legal opinions, in some of which (*Reed* v. *Patterson*, for instance,) he certainly combined the attraction of law and romance.

10. Some twenty years ago, when the old system of bail below and bail above prevailed, Mr. B——, supposing the defendant in a cause, to be a gentleman, induced a friend to become bail for his appearance in the sum of two thousand dollars. Immediately after this, the defendant departed for Jamaica, and left his bail in a very awkward position. It so happened, however, that the plaintiff's counsel filed his *narr*, and took out a rule of reference (instead of suing out the bail-bond,) by which the bail was discharged, and the debt lost. Under the present practice, this difficulty is entirely removed.

11. In a suit brought by Myers Fisher, a lawyer of note, against a person by the name of Buncom, in Chester court, for slander, in the year 1774, the defamation having been clearly made out, Mr. M'Kean called some scores of witnesses, not to deny the slander, but to show that his client was such a notorious liar that no man in the county believed any thing he said, and that therefore no damages could possibly have been sustained by the plaintiff. *And so the jury found!*

12. It has been suggested that the terse and pungent character of the speeches in Athens was attributable to the Clepsydra, by which orators were governed in their speeches. We have a severer rule with us. With the ancients, they stopped the clock while the documents were read; whereas, with us, the documents and all are taken into account.

13. The suggestion of the origin of terseness is not a bad one. The telegraph, which was not discovered in their time, and which requires payment for every word, will also, no doubt, exercise some influence upon verbosity, if it should not be counterbalanced by the recent reduction of postage.

14. "*Suit the Action to the Word!*"—This instruction was never more fully carried out than by the late George W—— B——. He was an exceedingly eloquent man, and of great wit and acuteness. But in argument, if he spoke of a pocket, he thrust his

hand into his pocket; if he spoke of a key, he would rummage his pockets for a full minute until he found a key; and if, in short, he spoke of any thing within his reach, he would be almost certain to lay his hand upon it.

15. Many years ago, when Mr. James A. Bayard was appointed by C. J. Johns, to defend a person charged with murder, after the case had been submitted, the learned judge decided or charged, that the facts and the law established the charge of murder beyond all reasonable doubt—and either the prisoner was guilty, or he (the judge) was.

16. Mr. Broom, a gentleman of the bar, who weighed nearly four hundred pounds, and of great corpulency, applied to the Court for the postponement of a cause, alleging as the reason, an acute pain in the small of his back. "Well," said his adversary, "upon any plausible ground I should like to accommodate Mr. Broom—and the case may therefore be continued at once, if he will tell us simply *where the small of his back is.*"

17. A gentleman died, leaving a considerable estate, and four daughters, among whom it was to be divided. The division of the personal estate proceeded very amicably, until they came to a favorite parrot—all claimed it, and none would give it up. It became at last a subject of bitter controversy, very much to the annoy-

ance of the excellent counsel. They would not allow it to be sold, and taken by the highest bidder. They would not cast lots for it. They would not leave the question to any umpire. At length Mr. C—— directed them to bring the bird to him, and he would settle the unnatural dispute by wringing off its neck.

18. Mr. R—— tried a criminal case—and lost it. He moved for a new trial, on the ground of insanity of the prisoner. "Your motion is of no use," said the Court. "Where is the testimony upon which you rely?" "Here it is," said R——, turning to Mr. O'N——, "he knows all about it." "I?" said O'N——. "I never saw the man." "Didn't you tell me he was deranged?" "Yes," said O'N——. "When you told me he had employed *you*, I did say he must be deranged. I think the result has shown it."

19. O'Rourke was called to prove insanity in a child. "State, Mr. O'R——," said Judge Kelly, "what expressions you have known used by the child, indicating an unsound mind?" "Expressions, may it please your honor?" "Yes, expressions—what did you hear her say?" "I have heard her use expressions, may it please your honor, which I never heard from anybody who was a thousand years old."

20. "What toasts did you drink at the meeting at Adelphi Hall?" said a lawyer to a witness. "Why, we drank General Pierce and General Washington." "You

drank Pierce first?" "Certainly we did, because he was alive." "And upon the principle, I suppose, that a living ass was better than a dead lion."

21. A young mechanic called upon counsel to obtain a divorce. The ground was, that his wife wished him to wear a white cravat instead of a colored one, "which," said he, "I cant do; and she is perpetually worrying me." "Does your wife refuse to wash for you?" said the counsel?" "O, no," said the client, "she is perfectly willing." "Well, then," said the lawyer, "my advice is, that if she desires it, you should put on six white neckcloths a-day."

22. "What do you take for your cold?" said a lady to Mr. C——. "Four pocket-handkerchiefs a-day, madam," was the prompt answer.

23. Mr. M——, in the midst of the trial of a case of some moment, before Judge Rush, found that one of the witnesses had absented himself. He appealed to Judge Rush for delay, suggesting that the witness had probably left the court-room upon some call of nature. "Go on with your case, sir," said the judge, "and we shall shortly see whether nature will call him back again—our business at present is with justice."

24. At a bar supper, a gentleman, turning to William Rawle, Junior, asked whether he had read Mr. Brown's tragedy of Sertorius. "Certainly," said Mr. Rawle, facetiously, "I have *waded* through it." "*Waded!*"

said Mr. B., who was present, "you must surely have been *over your head.*"

25. A gentleman of considerable note, who was addressing a jury, and who indulged freely in chewing tobacco, in spitting deposited some of the saliva upon his neck-cloth. "Certainly," said Mr. W——, "whatever may be that person's pretensions, he cannot *expect to rate* as a gentleman."

26. This same Mr. W——, in rising from his chair suddenly, nearly tore off the skirt of his coat. "Now," said he, turning to a friend, "I surely ought not to complain of poverty, as I carry my rents with me." "Yes," replied his friend, "that is true, but remember they are *all in a rear,* (arrear).

27. "Are you going to Mr. N——'s fancy ball to-night," said one member of the bar to another. "Certainly," was the answer. "In what character?" said the first. "In my own character—that of a gentleman. What will be yours?" "I shall go as Charles the Second," rejoined the first speaker. "You had better," said B——, who was standing by, "go as Charles the First, and then you will *require no head.*"

28. A lawyer who had given himself up to inebriety, but who frequently professed to have reformed, came into court one day, and said to C——, "Congratulate me, my dear sir. I have resolved to return to the bar." "Which *bar?*" was the answer.

29. Mr. D——, addressing himself to B——, observed, "You have written a play, and presented it to your friends, beautifully bound in cloth; but as you are a lawyer, why did you not cause it to be bound in calf?" "It was out of regard to *your* skin," was the reply.

30. "Give Mr. I——m a seat," said the judge, addressing the crier, at a time when the court room was full, and many of the bar were standing. "Thank your honor, I have a seat," replied Mr. I——m, "but I have no chair to put it upon."

31. Mr. R——, who was of an old and aristocratic family, turning to a gentleman whose family was but little known, said to him, "Is this your family coat of arms cut upon your seal?" "No, sir," was the reply, "it is my *own*. Let me see *yours*."

32. At a bar dinner, Mr. Sam Ewing, a lawyer and a great punster, was called upon for a song, and while hesitating, Judge Hopkinson observed, that at the best it would be no great matter, as it would be but *Sam* (psalm) singing. "Well," replied Ewing, "even that would be better than *him* (hymn) singing."

33. "I have a most contemptible opinion of you," said one lawyer to another. "To be sure you have," was the reply, "*you* can have no other."

34. "You look sad this morning," said B—— to A——. "It must be the reflection of your melancholy

face," replied the latter. "Poor fellow," rejoined B——, "it is, I fear, the only reflection you have ever been blessed with."

35. In the trial of the *State of New York* v. *Frost*, for manslaughter, arising out of alleged malpractice as a physician, the defendant introduced some forty or fifty patients as witnesses to his general skill. On the part of the State, all the medical faculty testified. "Now," said Mr. B——, who was concerned for the defence, "we have offered you the ocular proof of forty living patients. The State has produced forty doctors, but not one *patient*. Where, pray, are *their patients?* They are among the missing, and before they can find them, *they must dig for them*."

36. In the same case, Mr. B—— was opposed by two lawyers, one named Phœnix, and the other Griffin. "Before I have done with these birds of fabulous origin," said he, "I shall endeavor to pluck the plumage of the one, and cut the talons of the other."

37. In a very interesting case of Parker and his wife and three children, who were claimed as slaves, before the court at Mount Holly, New Jersey, Mr. B——, after the investigation had proceeded some four or five days, and the claimants were about to close their evidence, upon looking for a deed of manumission, upon which he chiefly relied for the defence, found that it was not so authenticated as to be competent evidence.

It was on Saturday evening. He mentioned the difficulty to the late Mr. Shipley, who was always the faithful and indefatigable friend of freedom, and requested him to set off at once for Dover, a distance of more than one hundred miles, in order that the document might be authenticated. "Well, but what is to become of the case?" said Shipley. "The evidence for the plaintiff will close in an hour, and without this paper you will have no defence." "Leave that to me," said the counsel, "the paper is of no use in its present condition. Be back by Monday morning, if possible, but let no one know your object." Mr Shipley set off at once, and Mr. B—— immediately started an objection to a point of evidence, and continued the argument until the court adjourned; and on Monday morning Mr. Shipley arrived with the document complete."

38. "Are you a relation of Peter A. Browne?" said a gentleman to David Paul Brown. "Not at all," said the person addressed. "His name has an *e* final." "Well, what is the difference?" "Why, the difference is that between a boot and a bootee."

39. The late Mr. Barton rose to address the court, after one of the counsel on the same side had spoken. "We cannot," said the judge, "hear two counsel, except in a capital case." "I am sure, your honor," was the reply, "this *is* a *capital* case."

40. "My son is admitted to practice. What course

would you advise him to pursue, in order to success?" said Mr. C—— to a lawyer. "He is a scholar and a gentleman, and all that he will require is composure." "Yes, but how is he to acquire that?" "As Peter the Great learned to conquer, by being buffeted and beaten," was the reply.

41. "A gentleman not blessed with the sweetest breath, being sent for by the court, entered into the court room in great haste, and observed to Mr. I—m, "I have lost my breath in running up stairs." "I am glad of it," said Mr. I—m. "I hope you will find a better one."

42. "Upon what principle is it, that you ask the schoolmaster to be discharged from sitting upon the jury?" asked Judge Grier, in *Hanway's case.* "Upon the familiar doctrine of the day," said the counsel, "that the schoolmaster should be *abroad.*"

43. Upon the removal of Judge Tilghman from his house in Chestnut street, the building was immediately torn down, preparatory to the erection of the arcade. While the mechanics were engaged in taking out the windows, a gentleman said to Judge Hopkinson, who was passing at the time: "Why, they are actually gutting the building." "Yes," said the Judge, "you may well say *gutting;* for the *liver* went out yesterday, and they are taking out the *lights* (lights) to-day."

44. "Is the plaintiff in this case your son?" said a

judge, turning to an Israelite, who was under examination as a witness. "No, sir," said the Jew, "he is my son-in-law." "Why," said the judge, "he says he is the son of your wife; how is it, then, that he is your son-in-law?" "Because," replied the witness, "he was born eleven months after my absence from my wife. Now, although I deny his *paternity*, he is still my son IN LAW."

45. M. Marinot, a well-known French cook, being examined before Judge Peters, and his examination being prolonged beyond his expectation, anxiously exclaimed: "I have a pheasant at the fire, and it will be burnt." "Let him go," said the judge to the counsel: "in law, you know, *damage feasant* is not allowable."

46. Mr. B—— was examined in the case of Cresson, for the purpose of proving that, by the peculiarity of the hair, he could distinguish an insane person from one that was sane. Having finished his testimony, he turned to the opposite counsel, and asked if there were any questions. "None," was the reply; "but I beg leave to express my thanks for the first practical explanation I have ever heard of the term *hair-brained*."

47. Two members of the bar, somewhat tinctured with infidelity, expressed themselves astonished that the doctrine of Christianity should be tolerated in this enlightened age. "Is it not remarkable," said B——,

who was standing by, addressing a friend, "that men like these, who could never be saved by their works, should deny the authority of a Redeemer?"

48. "I shall handle your witnesses without gloves," said Mr. A—— to Mr. B——. "That you may do with safety," replied the latter; "but it is more than I would venture to do with yours."

49. "My client," said Mr. I—m, "has, in this case, been *chased* through every street in the city." "I doubt," said Mr. B——, "whether she has been *chaste*, in *any* street in the city.

50. Upon a member of the bar requesting that a jury, who had convicted his client, should be polled, a barber, who happened to be the foreman, declared that it was a personal insult that he would not submit to.

51. Mr. Levy applied to the court for a rule to show cause why a new trial should not be granted. His application was in these words: "I move your honors for this rule, on the ground that John Hunt was admitted as a witness for the gaining party. I suppose your honors know John Hunt—everybody knows John Hunt." The rule was allowed.

52. Upon one occasion, the venerable William Rawle was offered as a witness. The necessity for an oath was dispensed with, and after the examination by the plaintiff's counsel, the court asked Mr. Levy if he had any questions to ask?" "No, sir," said Levy, "I

have no doubt he will swear and stick to all he has said."

53. Mr. Pinckney was very fastidious in his orthoepy and choice of words. It was he who introduced at Washington the pronunciation of *li*en, for *le*in, which involved Mr. Peters, who was a great imitator of Mr. Pinckney, in the following absurdity: "If," said he, "the doctrine of the opposite counsel be correct, his lion (lien) will eat up the entire house—bricks, mortar, and all."

54. The late Judge Pettit, while District Attorney, was prosecuting a criminal case of great importance, in which he introduced an accomplice as a witness. In the course of his argument, while he admitted that there might be some objection to the witness, he pledged himself still to show that he was right in the main. "But," said Mr. B——, who was engaged for the defence, "that will not be sufficient. You must show that he is right in the tail (tale), too."

55. In the case of the *United States* v. *Harding*, in in which Mr. Rush and Mr. Pettit were engaged for the prosecution, Mr. O. Hopkinson, in opening his defence to the jury, said that, "although the case came in with a *Rush*, it at best was but a *Petit* affair."

56. "How did you like my opinion this morning, in the case of *The Nereid?*" asked Judge Washington of Mr. Pinckney. "It was an able opinion," said the

latter, "but you used one word that was not English—*jeopardize*. Jeopard, is the word."

57. In the case of *Wynkoop* v. *Pennsylvania Medical College*, Mr. Phillips, the defendants' counsel, stated that his clients were distinguished lights of the medical profession. "I don't doubt it," was the reply; "but I desire to snuff those lights, that they may burn brighter in future."

58. A very dashing gentleman entered Mr. R——'s office, dressed in the first style, and with hair powdered and curled. When passing out, Mr. R—— observed: "I thought he bore with him all the perfumes of Arabia, but they proved to be those of Jamaica."

59. A client said to his counsel, after the judge had charged: "Well, we may go home now; for the case rests entirely on the conscience of the jury." "On their stomachs, you mean," was the reply. "Didn't you see them filling their pockets with gingerbread, as they went to their room. Depend upon it, the man who has laid in the largest stock will rule the verdict."

60. A German jury, in a case of fornication and bastardy, brought in a verdict of manslaughter.

61. Judge P——, upon the trial of a cause, had some knotty points of evidence presented to him—one of the counsel strenuously insisting that the testimony was admissible, and the other, that it was not. Many books were cited on both sides. At last the Judge, losing

his temper, exclaimed, "How is this matter to be decided? you say one thing, and your opponent says another; and your authorities are about equally contradictory. Why, Mr. P——, do you vex the Court with these knotty questions?" "I thought," replied Mr. P——, in a very unsophisticated way, "that courts were appointed to decide knotty questions."

62. An irritable and obstinate judge gave great offence to Mr. H——, by refusing attention to his argument, upon which, the lawyer turning to a friend, observed, "That judge has every quality of a jack-ass—except patience."

63. "What is that you have under your cravat?" said B—— to I——, (the latter being rather slovenly.) "My shirt, to be sure," said I——. "I know it is your shirt," responded B——, "but which end of it?"

64. A son of Judge Peters having a difference with the farmer on his father's place, received a severe blow, inflicted with a jug by the farmer. The next day, while at a family dinner, a note was handed to the Judge, bearing the superscription, "Jug Peters;" upon which, he immediately handed it to his son, stating, that it certainly must have been intended for *him*.

65. A Virginia lawyer once objected to an expression of the Act of Assembly of Pennsylvania, that the State-house yard should be "surrounded by a brick wall, and remain an open inclosure forever." "But,"

said Judge Breckenridge, who was present, "I put him down by that Act of the Legislature of Virginia, which is entitled, 'A Supplement to an Act, entitled an Act to amend an Act making it penal to *alter* the *mark* of an *unmarked* hog.'"

66. A lawyer, of more practice than classical learning, was expounding a statute, when he was interrupted by the Judge, who said: "Mr. M——, you ought to understand that law, for you were in the Legislature, and assisted in its passage." To which the lawyer replied, "No, may it please your honor, I never gave my *veto* for the law, but was *unanimous* against it."

67. In a case in Admiralty, before Judge Peters, the chief complaint of the men against the captain was, that the bread furnished to the sailors was sour and musty, and not fit to eat. A biscuit was brought into court and handed to the Judge, as a sample of the fare. After the evidence was finished, the counsel was proceeding to address himself to the Court, when, upon inquiring for the biscuit, he found that the Judge had eaten it. That, of course, decided the case.

68. Upon a reception of the Marquis Lafayette in Philadelphia, during his last visit to this country, Col. Forrest, one of the Revolutionary officers, upon being presented, burst into tears. Upon which, Judge Peters, who was standing at the side of the Marquis, dryly observed: "Why, Tom, I took you for a *Forest* tree, but you turn out to be a *weeping* willow."

69. Mr. B——, arguing an important case in the Oyer and Terminer, was, in the midst of his speech, astonished to find one of the Associates (Judge Morton,) fast asleep. The counsel, raising his voice, and striking his hand with violence upon the desk, roused the Judge from his slumbers, and then publicly apologized for having disturbed his rest. "I should beg *your* pardon," said the Judge, "but really your voice is so sweet, it always lulls me to repose."

70. A person of gigantic proportions was called to the witness stand, and upon cross-examination, Mr. B—— asked, "What is your business?" "That is none of your business," said the witness. Being told by the Court that he must answer, he turned round to the lawyer, and said: "Well, sir, I am a baker, and what have you to say to that?" "Why," said Mr. B——, "only this; that although you are the *largest*, you are far from being the *best* bred man in town.

71. A lawyer engaged in a case before Judge Peters, tormented a witness so much with questions, that the poor fellow at last cried out for water. "There," said the Judge, "I thought you would pump him dry."

72. A sheriff makes the following return of the service of a writ: "The deponent saith, that he knocked three times at the door of defendant, but could not obtain admission, whereupon this deponent was proceeding to knock the fourth time, when the defendant

pointing a musket or blunderbuss at the deponent, loaded with balls or slugs, as this deponent believes, said, that if said deponent did not instantly retire, he would send his (the deponent's,) *soul to hell;* which this deponent believes he would have done, had not this deponent precipitately escaped."

73. Judge B——, of the District Court, came hurriedly upon the bench, but unfortunately a quarter of an hour after the appointed time. The jury and parties were all in waiting. "I beg your pardon, gentlemen," said the Judge, "for being so late, and I would fine myself, but that I have a good excuse—I have been unwell this morning, and besides, gentlemen, the town clock is out of order." "That is the clock," said Mr. B——, "by which you fine the jury?" "Not," said the Judge, "since she has been out of order." "It is a happy thing, may it please your Honor," replied Mr. B——, "that the clock and the Judge should get out of order at the same time—as one excuses the other."

74. The same Judge—who was in the habit of sending to market by the crier—upon one occasion, being about to charge a jury, sent the crier for a shad for his family. He then began his charge: "I will dissect this case for you, gentlemen of the jury—eviscerate it." And turning to the crier, who was just leaving the room on his mission, "And see that the guts are all taken out!"

75. In a great case of *The Commonwealth* v. *Boyer et al.*, for a conspiracy, Mr. B——, of Philadelphia, then a very young man, was concerned for the State; Mr. Buchanan, Mr. Irvine, Mr. Biddle, Mr. Baird, and others, for the defence. Mr. Buchanan, who closed the argument for the defendants, animadverting with some severity upon the want of discretion on the part of his youthful adversary, and comparing him to the countryman to whom Jupiter gave a goose that daily laid a golden egg, but who, not content with his gradual increase of wealth, killed the goose that he might obtain all the golden treasure at once, and thereby *lost* it all. "This," said Mr. B——, in reply, "is an excellent story; it wants but one thing to recommend it to favor—and that is, application to the cause. But notwithstanding this, the learned counsel may rest assured it has left a deep impression upon my mind, and in all time to come, such is the power of association, I shall never see a *goose* without thinking of HIM."

76. In the year 1810, a young member of the bar, just admitted, was spoken to by a gentleman of fortune, who asked him how he would like to argue a case in the Supreme Court at Washington. This was a tempting intimation, and earnestly caught at, as it was calculated at once to lay the foundation for a professional fortune. The young lawyer was employed. The case was a very important one—the first case on the list of the Court, and the term was to commence in three

days. The young man called upon his colleague, Mr. Lewis, who gave him all the information he could—furnished the notes of his argument—the paper-book, etc.; and full of trepidation, the young man and his learned colleague proceeded to Washington. The cause required months of preparation; but as the youth had entered upon the task, there was no time, however he might regret it, to retract. The counsel opposed were Richard Stockton, D. B. Ogden, and other eminent men, who were ready and eager for the conflict. The Court at that time consisted of three judges. It so happened that Chief Justice Marshall, on his way from Richmond, met with an accident which fractured his collar-bone. Judge Johnson, of South Carolina, was prevented from attending court by sickness in his family. Of course, the Court held no session. The case went off for a year, at the expiration of which time our young friend was abundantly prepared—argued his case with signal ability, and with the entire approval of the Court, as well as of his learned colleague, and returned to the city, not only decked out in golden opinions, but bearing in his purse a *golden fee* of one hundred guineas—"*Audentes fortuna juvat.*"

77. Judge Burnside held a court at Doylestown, where he was engaged in trying an interesting will case. Upon one of the witnesses to the will being called, he refused to swear. The judge told the clerk to affirm him. He refused to affirm. "What, in the

name of Heaven, will you do?" said the judge. "*Nothing,*" said the witness. "What," said the judge, "will you, a subscribing witness to the will, refuse to prove it, and thus jeopard the will? I'll commit you for contempt." "You may do as you please," was the reply, "but I will not be qualified." "Now, sir," said the judge, "I see what you are after; you wish to be made a martyr of by being sent to prison, but I'll disappoint you. I consider you insane—and direct the Prothonotary so to make an entry upon his docket. I will then take secondary proof of the execution of the will. And let me tell you further, that if your wife applies for a commission of lunacy against you, I will grant it to her at once—for you are as mad as a March hare."

78. One of the pleasantest features in the practice, in Delaware, is the agreeable intercourse that prevails among the counsel at their mess. We speak of Newcastle now, and believe that is a fair specimen of the professional habits or customs throughout the State of Delaware. When I was invited to their mess, after the cloth was removed, Mr. B——, who presided, called for the Digest of the Laws of Delaware, which, like most Digests, was in alphabetical order. He then opened the book, and said, "C," that being the first letter on the page which he opened. He then passed the book round the table, and each member of the company opened it, until at last some unlucky one opened

at Z, when there was a general laugh, and the chairman called upon the unfortunate man to "call in the wine"—which was accordingly done. When the stock was exhausted, the same ceremony was repeated, and thus the table was abundantly supplied. Invited guests are never permitted to take a chance in this agreeable but hazardous, and somewhat expensive lottery, though they share in the prizes.

79. "Is your client," said Judge R——, addressing Mr. B——, "conscientious against pulling off his hat in court?" "Ask him that question yourself," said B——. "I am neither the keeper of his conscience nor his hat." "But," said the judge, "you might advise him." "I am here," replied the lawyer, "to advise him in his legal defence. His heavenly defence I leave to *himself*, or to *you*, sir, if you choose to take a part in it."

80. A member of the bar, who was remarkable for his irritability, and consequent disposition to quarrel with every one who ran counter to his views, upon one occasion declared in the presence of a number of his legal friends, that he never retired to his bed at night without making his peace with all mankind. "No doubt," said Mr. B——, who was standing by, "you are entirely sincere, but although I know you to be a very industrious man, I am actually astonished at the labor you must go through every night, before you betake yourself to your pillow."

81. "Has it been thirty years since you and I argued the case of *McCrea* v. *Dickerson?*" said a lawyer to Judge K——. "I am afraid it has been," said the Judge. "Your Honor should never be afraid of that which is past," was the reply, "only the present or the future."

82. Mr. R—— having used a term of some reproach towards his antagonist in the course of an argument, the latter promptly asked him what he meant. "I speak," said Mr. R——, "in the most offensive sense." "That is no answer," was the reply, "for all who know you, know that you always speak in an offensive sense."

83. Governeur Morris, while the surgeons were amputating his leg, observed his servant standing by, weeping. "Tom," said Mr. Morris, "why are you crying there? it is rank hypocrisy—you wish to laugh, as in future you'll have but one shoe to clean, instead of two."

84. Upon the trial of Eldridge, in which the main question was that of identity, Mr. B——, who was for the defendant, in discussing the question, said, that the clerk of the bank had stated that the color of the hair of the individual who presented the check, resembled his own, (the witness's.) "But," said Mr. B——, "that still affords us no light, inasmuch as you all saw that the witness wore a wig; and although it was his own hair by *purchase*, to speak technically, it was not his by nature or *descent*." Mr. I——, who was one of the ablest advocates that the Philadelphia bar ever

produced, when he came to reply, rebuked his adversary, for having relied upon his fancy for his facts, and told the jury he had sent for the clerk, who would be here presently, and who would satisfy the jury that he did'nt wear a wig, and thereby remove even this flimsy reliance, which the ingenuity of the counsel had suggested; and in which there was more wit than wisdom. Just at that moment the clerk entered. "Come forward," said Mr. I——, addressing him in a very triumphant way, "and tell this jury whether you wear a wig." "Certainly I do," said the witness, pulling it off, and thereby producing a laugh, and turning the tables against the learned advocate.

85. Mr. Biddle and several other members of the Philadelphia bar, were members of the Convention which sat in this city about fifteen years ago, to amend the Constitution of Pennsylvania. About the time that the session of the Convention in Philadelphia began, the question was raised in the District Court at the calling of the trial list, what should be done with cases in which the members of the Convention were engaged as counsel, whether they should be continued or marked for trial. The members of the Convention asked that they should be continued—the opposing counsel, that they should be put upon the trial list. After several had spoken upon the subject, Mr. Biddle observed to the Court, that these cases

should be continued in compliance with the maxim, "*conventio vincit legem.*" The cases were continued.

86. Judge Peters being asked to define a captain of a company, said, it was one man commanded by a hundred others.

87. He also said, when asked what was meant by civil, that it was something that was not military. And when inquired of, what was meant by military, he replied, "That which is not civil." This has also been attributed to Talleyrand.

88. Upon a lawyer's observing, in the course of his speech, that his client had remained in Ireland a whole month an entire stranger, Mr. B—— observed: "In that you must be mistaken, sir, no man ever remained a month in Ireland as a stranger."

89. "What do you understand from the terms, "The schoolmaster is abroad?" said Mr. S——. "I understand," said the person addressed, "first, that instruction is disseminating itself throughout the land; and secondly, that the scholars are at liberty to do very much as they please."

90. "I am astonished at your Honor's decision!" said a young lawyer to a judge who had decided against him. "This remark cannot be permitted," said the Judge, and an apology will be necessary on your part." "Permit me," said the senior counsel, "to offer an excuse for my young friend—he is new in these matters, and,

when he has practised as long before your Honor as I have, he will be astonished at nothing."

91. General Knox, who was a corpulent man, was engaged in conversation with Tench Coxe, who was very slender. They stood at the entrance of a door, and impeded the passage of Judge Peters;—who, waiting a while, at last pushed between them, exclaiming, "Here I go, through thick and thin!"

92. Judge Peters asked the late J. W. Condy for the loan of a book; the latter said, "With pleasure, I will send it to you." "That," said the judge, "will be truly (Condy-sending) condescending."

93. The same judge once observed to a Mr. Davidson, who was a very tall man, "You must have great responsibility resting upon you." "How so?" said Davidson. "Because," said the judge, "nine-tenths of mankind are compelled to look *up* to you."

94. This witty judge, upon seeing a wagon pass, which had very thick iron upon the wheels, observed, "That it must have come a long journey, for it seemed so well tired." A gentleman who was present, who did not himself take the joke, still observing the laugh it produced, undertook to repeat it, by stating to a company as an admirable matter of the Judge's, "That, on seeing a wagon pass with thick iron wheels, he had remarked, 'that it appeared to have travelled far, as it was so much *fatigued*.'" He was much surprised at

the very different effect produced by the original remark and its repetition.

95. "So," said C——, "poor M—— is dead," (speaking of a famous brewer.) "My dear sir," said the person addressed, "what carried him off?" "The bier," was the reply. The person who thus obtained information, afterwards circulated the story, that M—— had died of drinking too much *beer*.

96. Upon the marriage of Miss Willing to Mr. Hare, Judge Peters, having been called upon for a toast, gave, "The maid that was *Willing* before she had *Hare*."

97. Governor Pope, of Kentucky, who had lost his hand, was one of the counsel engaged for Milton Alexander, upon a charge of murder. "What do you think of the Governor's speech?" said a friend to Mr. W——. "Why, I think," said the latter, "that he is an off-hand speaker."

98. Judge Parsons, of Massachusetts, was a great sloven—and Harrison Gray Otis was exceedingly choice and cleanly in his apparel. "Judge," said Mr. Otis, "how often do you change your linen in a week?" "Why, once," said the Judge. "Why, you must be very dirty." "How often do you change?" said the Judge. "Every day," was the answer. "Then," said the Judge, "you must be more dirty, to require a change so often."

99. Mr. A. J. Dallas, who was for a long time District-Attorney of the United States, in addressing Judge Washington and Judge Peters, used the word Honor, instead of Honors, repeatedly,—until, at last, Judge Peters, turning to Judge Washington, said, "You must not take offence at the manner of the counsel's address. The fact is, that Mr. Dallas has been so much accustomed to address me, when sitting alone, that he forgets that Judge Washington is upon the bench."

100. Judge Peters, sitting alone to hear a law argument, after a very able discussion turned to the counsel and said, "The Court is divided in opinion."

101. Judge Peters used to say, "I am the District Judge,—but Judge Washington is the *strict* judge."

102. When a gentleman congratulated Judge Peters upon Congress having passed an act to increase the salaries of the district judges of the United States—"I don't know," said the judge, "that it will be of any advantage to me. Don't you perceive that the act provides for the increase of the salaries of *certain* district judges, whereas it is known that I am a very *uncertain* district judge."

103. Judge King, who, though an able man, was by no means remarkable for choice language, in charging the jury, told them "that their verdict must depend upon the question, whether the plaintiff or defendant had the beneficiary interest?" "I doubt much," said

one of the counsel, "whether one of the jury understands the term beneficiary." "I presume," said the judge, "every man understands it who understands English." "I understand English," said the counsel, "and I do not understand the word in its application to this case." "You mean to say," observed Mr. I——, who was standing near, "that you do not understand KING'S ENGLISH."

104. Mr. B—— mentioned to a friend, that one of the highest rough compliments he had ever received, was upon one occasion after the elder Mr. Ingersoll and Mr. Rawle had spoken. He rose to reply,—when he distinctly heard a ship-carpenter on the jury, say to his fellows, "Now comes Broad-Axe!" "That was a high compliment, truly," said his friend, "but I recollect one that eclipses it. I had been engaged in a cause in Newcastle against Mr. Bayard and Mr. Clayton, who had the best of the case, and of the argument. Finding that the case was in great danger—and my laurels too—and that I could not save the first, I determined, if possible, to preserve the last, and made one of my most flourishing and enthusiastic *ad captandum* speeches. The effect quite equalled my expectations; for, as I left the court, the avenue was lined on both sides, and a burly-looking personage exclaimed, in a stentorian voice, 'Make way for the Thunderer.'"

105. Mr. Sergeant, who had long been at the head of the Whig party in Pennsylvania, and, as Sancho Panza

said, wherever he was, "was the head of the table," was informed by a younger politician, that a great festival was to be given to Daniel Webster. "Why," said Mr. S——, "I have not heard of it." "No," said the informer, "it was thought not politic to invite any who were considered party hacks." "Party hacks!" replied Mr. Sergeant, his fine eyes beaming with intelligence, "I have carried the party a long time, and I may be considered a hack in one sense, but I never took *hack hire*."

106. A jury was about to be sworn to try a case of *assumpsit*, when Mr. Peters approached Mr. B——, and said—"My plea is set-off, but I have omitted to give you the ten days' notice that the rules require—but the omission is nothing among gentlemen." "Certainly," said B——, "and the instrument upon which I have sued is under seal, and the action ought to have been debt, but, as you say, 'this is nothing between gentlemen.'"

107. A case being opened upon a promissory note, (the signature of the maker being denied,) Mr. Brashear was about to prove the note, when he perceived there was a witness to the note whom he had not subpœnaed. Mr. Phillips, the opposite counsel, insisted upon the regular proof, whereupon Brashear said he must submit to a nonsuit. "Never despair," said Brown, "call the witness." This was done, and the witness answered.

108. In a case of life or death, Mr. B——, in an

excited appeal to the jury, after describing the sacrifice made by a mother to preserve her child, exclaimed,—"Oh, Holy Nature, thou dost never plead in vain!" At this instant, one of the jury rose, and, in a most cold-blooded manner, asked permission to go out. *This was the end of pathos.*

109. Upon another occasion, in Reading, the same counsel was making a highly figurative and classical speech, when several of the jury appealed to the judge in German to interpret the testimony—when it was ascertained that but one man on the jury could speak English.

110. "This man," said Mr. L——, turning to a defendant, "with the Act of Assembly in one hand, and the Bible in the other, wrote this malignant libel." "With his teeth, I suppose," said the adverse counsel.

111. During the display of the tri-color, upon Lafayette's arrival in Philadelphia, a gentleman with a very red nose asked Mr. B—— if he had mounted the tri-color. "Yes," was the reply; "did you?" "Certainly," said the former. "What an extravagant fellow you are," said B——, "you should have bought the blue and white, and relied upon your nose for the red."

112. A gentleman being found reclining upon a sofa, in his office, a friend inquired if he was sick. "O no," said he, "I am only taking a *requiem*."

113. "All the judges of the United States follow the Pennsylvania decisions as a beacon," said Mr. ——. "It is no wonder, then," said B——, "that they are so often wrecked, or run ashore."

114. The late Judge Rush, who was a man of great mental power, of great energy, but still great simplicity of character, towards the close of his judicial career, was put in nomination for sheriff. Upon a visit to the Philadelphia Library about this time, we met the Judge there, engaged in examining the files of some ancient journals, and we inquired what he was hunting for, which gave rise to the following brief dialogue:

Judge.—"I am looking for some early literary productions of mine, which have been generally ascribed to Dr. Franklin. They may be serviceable to me at the approaching election for sheriff."

B——.—"But why, at your time of life, will you leave the bench, which you have graced so many years?"

Judge.—"I am tired of it, Mr. B——; and although President, I cannot but feel degraded and disgusted by being overruled at times by my two associates, who know nothing of the law, and smoke common cigars."

B——.—"You have lately had a lawyer for an associate, Mr. I——m; but, it is true, he did not remain long."

Judge.—"Only nine days—a mere nine days' wonder. I promised myself some relief from his appoint-

ment, but he rather added to my annoyance. He afforded me no aid—he never spoke while he was on the bench."

B——.—"I think you must be mistaken in that—for I heard him speak once myself, and pretty authoritatively."

Judge.—"You must be in error, sir."

B——.—"No, sir. Do you not remember that upon one occasion, soon after taking his seat, he turned to the tipstaff, and exclaimed, 'Kick those dogs out of court.' "

Judge.—"Right, sir—you are right. And don't you remember, that I immediately said to the crier—'*Turn* the dogs out of court!' laying the emphasis upon the word *turn*, to express my abhorrence of such inhumanity?"

115. Judge Rush was a credulous man, though of the most sterling morality. While holding a court, some forty years ago, at Westchester, Mr. D——, a member of the bar, and a great wag, arrived at the court about an hour after proceedings had commenced, and was called upon for an explanation of his want of punctuality.

"The facts are these," said he. "While on my way to court, passing through a neighboring wood, what was my astonishment to encounter a creature in the form of a man, entirely covered with hair. Immediately upon seeing me he ran up a tree, and perched

upon its topmost branch, and there chattered and made all sorts of grimaces at me; and, in short, so fixed my attention, as to drive everything else out of my memory."

"Most remarkable," said the judge; "quite sufficient, undoubtedly, to account for your absence—most marvellous! No doubt one of the Orang Outang species, that has in some unaccountable manner made his way into this region."

The case proceeded. This was, of course, all a fiction, framed to impose upon the judge's credulity; and Mr. D—— having mentioned it to the members of the bar, it reached the Judge's ears. "Very well," said the Judge, "he has imposed upon himself more than upon me. He has violated the truth, and let him never venture to come before me as a witness, for I would not believe him on his oath."

116. A sailor having been tried before Judge Washington for manslaughter on the high seas, the jury, contrary to the charge, brought in a verdict of guilty. Whereupon, the judge said, "I cannot for a moment bring myself to believe that the defendant was art or part in the transaction. You have, however, found him guilty, and I sentence him to a fine of one dollar, and imprisonment for one day."

117. Mr. Hopkins, of Lancaster, Pennsylvania, was an able lawyer, but perhaps the most deliberate speaker that ever appeared at the American bar. Mr. Talbot,

of Kentucky, on the contrary, was a most rapid and hurried speaker. This led Judge Washington, upon one occasion, to observe, that he would ask no longer lease of life than while Mr. Hopkins was delivering one of Mr. Talbot's speeches.

118. Robert Morris, the Recorder of the city of New York, was upon the point of pronouncing sentence upon a woman for larceny, prior to which he asked what she had to say to mitigate her punishment. Not a word was uttered, but her little boy, about ten years of age, sprang from her lap, and falling on his knees, held up both his hands to the judge. The kind-hearted Recorder was overcome by the appeal, and at once discharged the prisoner.

119. Hon. Richard Riker was at one time Recorder of the City of New York, and upon the invitation of the Inspector of the Prison, he was about to visit the jail at Blackwell's Island. He complained, however, of not being shaved, when he was told he could be shaved by a prisoner, who was an excellent barber. After the Judge had been lathered, and the razor applied to his throat, upon looking up, he found he was in the hands of an ill-looking fellow, who, but a week before, he had sentenced to seven years imprisonment—when the following dialogue ensued:—

Judge.—"What is your name, my friend, and what are you here for?"

Prisoner.—"You ought to know my name, and you

certainly know why I am here, as you sentenced me, yourself," said the prisoner, scowlingly.

Judge.—"Well, you look like a clever fellow, and I think I shall recommend you to executive clemency for pardon." The Judge, by his promise, got safely through the operation, but never kept his promise, extorted as it was, by *duress per minas.*

120. "I don't like your definition of a dog," (the male of b—h,) said Mr. B—— to Judge Bouvier, who had just published his Dictionary. "What would you suggest, in place of it?" said the Judge. "Son of a b—h," was the answer.

121. Dr. B——, a distinguished clergyman, called upon Mr. B——, and stated that Mr. R——, one of the officers of his church, had been robbed of his silver during the previous night, by some burglar. "Now, sir," said the reverend gentlemen, "what advice would you give to me, for Mr. R——." "Well," said B——, "my advice would be, what you as a minister of the gospel, might more appropriately advise. That Mr. R—— should, in future, lay up for himself 'treasures in heaven, where neither moth nor rust doth corrupt, and where thieves do not break through nor steal.'"

122. A young girl was called up on the judgment-day of the Sessions of New York, to answer to an indictment. She pleaded "guilty." The humane judge directed her to reconsider her plea. She repeated it,

saying she was guilty—that she wished to be imprisoned; and emphatically added, "This is the second time of my being accused of felony; the first time I was innocent, and was convicted. I served my time out—my character was blasted—everybody shunned me—the world is nothing to me, and I desire to retire to my cell, and there to hide myself forever."

123. The late John C. Wells, who, though a respectable lawyer, was a most tiresome speaker, many years ago was engaged in a heavy mercantile case in the Circuit Court. The jury was made up of the most intelligent merchants—Robert Waln, Sims, and men of that sort. Mr. Wells spoke for an entire day, and was to resume the next day. In the interval the jury complained to everybody of the sufferings to which they were condemned, and next morning at the opening of the Court the court-room was crowded by merchants, for the purpose of seeing a man who could speak two entire days. Thus encouraged, Mr. Wells occupied the second, and in short, did not finish his speech until the close of the *third* day. But he never had a chance of speaking in a mercantile case again.

124. "Young gentleman," said Judge Rush to Mr. M—n, who was defending a case of felony, "there is no such evidence before the jury as that which you have quoted from your notes." "I say there is, may it please your Honor." "You are mistaken," said the Judge. "Gracious heaven," exclaimed the lawyer,

"has it come to this—that a judge shall control counsel in an important criminal cause!" "Young man," interposed the Judge, "The Court does not sit here to listen to blasphemy, and if you repeat this, we will commit you."

125. When Mr. Williams was appointed United States Judge for the territory of Iowa, he was often compelled to hold his court in the open field. In criminal cases the prisoner was fastened to a tree—the jury seated on the ground, and the Judge placed upon the top of a hogshead. On one of these occasions the head gave way, and the Judge, in the midst of his charge, suddenly disappeared.

126. The same gentleman, before he reached judicial dignity, was defending a client in the interior of Pennsylvania, against the claim of a quack doctor, (who professed every thing and knew nothing,) and who had instituted a suit for surgical services, and had marked the suit to the use of another, in order to become a witness. The following was the cross-examination:—

Counsel.—"Did you treat the patient according to the most approved principles of surgery?"

Witness.—"By all means—certainly I did."

Counsel.—"Did you decapitate him?"

Witness.—"Undoubtedly I did—that was a matter of course."

Counsel.—"Did you perform the Cæsarean operation upon him?"

Witness.—"Why, of course, his condition required it, and it was attended with great success."

Counsel.—"Did you, now Doctor, subject his person to an autopsy?"

Witness.—"Certainly, that was the last remedy adopted."

Counsel.—"Well, then, Doctor, as you performed a *post mortem* operation upon the defendant, and he survived it, I have no more to ask, and if your claim will survive it, quackery deserves to be immortal."

127. While Mr. B—— was speaking at 2 o'clock in the morning, in a case of murder, his clients, whom he was defending, sat on each side of him fast asleep. Upon his attention being invited to this matter—he observed, turning to the jury, "The innocent can always sleep—for they are always secure."

128. A commission was issued to Canton, in a case in which a Hong merchant (Houqua), was plaintiff. The only cross-interrogatory ran thus: "What have you to do with the case?" Upon the return of the commission, the answers of the witness fully supported the plaintiff's claim; but, when he came to the answer to the above question, he destroyed all that he had previously said, by answering, "I have a great deal to do with the case, for I am entitled to one-half of the

amount recovered." Of course, the evidence was rejected, and plaintiff nonsuited.

129. Judge B—— was engaged in trying a case having relation to a quantity of hay which was claimed by both plaintiff and defendant. The defendant's counsel moved, before proceeding to address the jury, for a nonsuit. "Why didn't you make the motion before?" said the Judge. "Because," replied the counsel, "I thought your Honor might be like Issachar's ass, divided between two bundles of hay."

130. A person when called upon the stand as a witness, and examined upon an occurrence of some ten years past—stated, truly, no doubt, but to the surprise of every one, "that he was thirty years old, but that, in cutting down a tree, a few years ago, it fell upon him, and so injured his head, that from that moment he lost all memory of everything that had previously occurred." He was tested in every way, but in no instance did he recollect any event antecedent to the accident.

131. Mr. Moses Levy entered a *caveat* against a will, for a disinherited son. The party called a score of witnesses, to show that the father was utterly insane, and the case was considered hopeless for the defence; when Mr. Thomas, being called upon to support the will, said "he had but one witness,"—which excited some surprise. However, the witness was called. He was a lawyer of the highest respectability, and his statement ran thus: "I knew the testator. He called

upon me on the evening of the day on which this will bears date, and entered into conversation with me, which continued several hours. He talked upon various subjects, and with great intelligence, and very much to my satisfaction. At last, rising to take his leave, he said, 'I ought, Mr. Bayard, to explain my reasons for having so long trespassed upon your time. They are these: I have this day executed my will, disposing of my estate, and disinheriting my son Ralph. Now, he is so abandoned in his principles, that I am sure he will attempt to set aside my will, probably on the ground of insanity;—what I ask from you is, that, should he do so, you will attend court, and express your opinion of my sanity.'"

132. Mr. Duponceau, (afterwards celebrated as a man of great learning,) was through life very near-sighted, and absent of mind. During the Revolutionary war, at the battle of Monmouth, he was found leading on a body of the British forces against his own countrymen, and never detected the error until he was taken prisoner by the very men that he imagined he was commanding.

133. The same gentleman, at the time of the impeachment of Judge Chase, at Washington, was on his way with a number of his brethren to attend the trial, but, instead of waiting for the boat to cross the Gunpowder River, he walked directly into the stream, and his life was luckily saved, by Mr. E. Tilghman seizing him by the collar before he got beyond his depth.

134. Mr. B—— complained to the judge of the ——— Court of ———, of the postponement of a case. The judge, however, continued it, against his objection; upon which, Mr. B—— said, "I think it probable this case will never be tried, except in the court above." "That is a court," said the judge, "in which you may not be permitted to plead." "Very likely, Sir," replied Mr. B——; "but you will be compelled to plead, and lustily too, if you hope to escape condemnation."

135. *Blunders of the Press.*—In the case of the Orange riot, Mr. I——, in describing the attack of the defendants upon the Hall during a festival, exclaimed: "They approached like a body of living *caissons*, all armed with stones." In printing the speech, the compositor made it read, "like a body of living *capons*, all armed with stones."

136. In the speech of David Paul Brown, at Mount Holly, in describing the condition of the defendant, he said: "You behold him, abandoned and desolate, wandering at the hour of midnight along the banks of the Delaware, like a hapless ghost upon the Stygian shore" —to which the printer adds, "without a resting-place for the soles of his feet."

137. In an argument in the Circuit Court, the counsel for the prosecution, while speaking, threw himself into the most crooked and ungainly positions imaginable, and finally placed his leg on the table. His ad-

versary expressed his surprise, and asked him what was the matter? "I have got the spinal disease," said the speaker. "If you will substitute an *r* for the *n*, I should understand it—you mean spiral disease, I should think."

138. "I heard you," said a gentlemen of the bar to another, who had not much business, "as I passed your office, apparently delivering a speech in your office, while surrounded by your children." "That," said B——, who was present, "is his only mode of trying *his issues*."

139. In the case of Mrs. C——, Mr. L—— exclaimed: "Unhappy woman, left to buffet with the storms of a tempestuous and cruel world, deprived as she is, of her husband, who has gone in that bourne in which, as a great lawyer once said, no man ever comes back from." This is excusable; as it was once said by Mr. P——, who was a bright scholar, that a witness who had spoken, "deserved, as *Shakspeare says*, to be *thrust* into outer darkness."

140. Upon one occasion, a young man who had lost a cause in the Criminal Court, handed in his reasons, and moved for a rule to show cause why a new trial should not be granted. The judge glanced his eye hastily over the reasons, and throwing them down, told the counsel there was nothing in them, and that he would'nt grant the rule. An elder member of the bar privately

remonstrated with the judge, and observed to him, that the young man appeared to be mortified, and that it would, perhaps, have been better to have allowed the rule, and heard the argument, if even finally, the new trial should not be granted. "But," replied the Judge, "the reasons actually amounted to nothing." "Suppose it were so," rejoined the counsel, "motions of this sort often amount to nothing, as you, yourself, know. You were an eminent lawyer before you were placed upon the bench, yet, in the case of *Early*, in which your client was convicted of murder, one of the reasons assigned by you for a new trial, was, that in arguing the case of the defendant, you had put some of the jury to sleep, yet the Court entertained your motion, and I defy any man to suggest a poorer reason than that." The Judge laughed—admitted the truth of the statement—and reformed his practice.

141. An interesting case of a Quadroon, from Norfolk, came on for a hearing upon the claim of her master, about fifteen years ago, before Judge Randall. Mr. Haley and others represented the claimant, who held an official post at Norfolk. Lovey had one child, and the claimant was its father. After a full hearing, the slavery of the fugitive was established, and the judge ordered the slave into the custody of a famous dealer in flesh—one D——, who was the alleged agent of the master. Lovey was what is called a likely woman, and she was a shrewd and resolute one. On her way

with the officer to the South, she curried favor with him, stimulated his salaciousness, expressed her delight at having been placed in such genteel custody, and feigned great gratification at having escaped from the abolitionists. D——, entirely overcome by her flattery, "grumbled pity," and when they arrived at Wilmington, invited her to sup with him. This, however, she modestly declined, as being too great an honor, but offered to prepare his supper and wait upon him, and then take her own humble meal at the second table. Blinded by this humility and reverence, he consented, and she prepared his supper; but while he was enjoying his luxurious repast, she passed out the kitchen door, made her way into Chester County, and finally, when next heard of, was in Canada.

There is a sequel to this story worthy of notice. D—— was offered by some philanthropic man of color five hundred dollars for the freedom of Lovey and her child. He refused it; but when she had escaped, he offered to accept the sum. There was no flinching on the part of her friends, but the production of the woman was required before the payment of the money. This could not be complied with. D—— then offered to accept half the money, and to warrant her recovery. This was not accepted. Thus his cruelty was utterly foiled by his lechery. So it is that most crimes unite together, and sometimes defeat each other.

142. A year or two after this, another case even

more interesting, was brought before the same judge. It was that of a young girl, apparently white, who was claimed as a slave. The owner was represented by Mr. I—— and Mr. I. W——. There were, of course, many to swear to her ownership and her identity. She was said to have left Maryland in her infancy, and not to have been seen for many years—(she was sixteen). On the other side it was testified that her mother, a white, was a resident of Philadelphia, who, in dying, left her in charge of a highly respectable colored man, whose wife adopted her. That by the will of her benefactor she would be entitled to several thousand dollars, and that she had been known in this city from her childhood, and long before it was pretended that she and her mother had escaped from Maryland. After an excited and zealous discussion she was discharged. Shortly after, her colored friend died, and true to his word, left her all his estate. She afterwards married respectably, lived comfortably, and died only within the last few years.

We have recently heard from a gentleman of undoubted veracity, a story connected with her release, that was not known at the time, or there might have been a different result. A hair-brained Irishman, while the case was going on, informed the friends of the girl that he thought he had seen her many years before, in Philadelphia. He was at once called to the stand, and he swore roundly and positively that he had seen her,

and gave time, place, and circumstances. After she was discharged, he was asked by our informant, why he had been so doubtful at first, and then so *positive*. "Oh," said he, "that is owing altogether to my knowledge of the law. We are told by the law, that in doubtful cases we should always acquit; now I was in very great *doubt* about the girl, and therefore I, of course, swore *positively* in her favor. That is acquitting in a doubtful case."

143. Passing out of my office one morning, a tall, herculean person nearly walked over me as he entered, with his hat on, and a formidable stick in his hand. "What is your pleasure?" was my remark to him. "I wish to see Mr. B——." "You do see him—what is your will." "If you are the person," said he, "I wish to employ you to recover two niggers who have escaped from my plantation near Elkton." "You can't employ me," was the answer. "Why not?" "Because I am not to be employed." "Well," said my rough visitor, "will you refer me to some other gentleman?" "No gentleman will take the case; and if he would, I would not insult him by referring a case to him, that I refuse myself." "Well, give me the name of some one who is competent to attend to the business." "No one would be competent who would take it." "Well, then," said the stranger, "I take leave of you." "As Hamlet says, 'you cannot,' was the reply, 'take from me any thing, that I more willingly would part withal.'"

144. "That book of yours on Insolvency," said Judge H——, to Mr. I——, "is not reliable authority." "Very likely," said Mr. I——, "it contains so many of your Honor's opinions."

145. Mr. ——, as Attorney General, was replying to the argument of two members of the bar, whom he designated as "those two men;" one of his opponents objected to the roughness of the reference, and said it was usual to refer to members of the bar as *gentlemen*. "I am content," said Mr.——, "to be called a man." "That is very probable," replied the other, "for no one who knows you would call you a gentleman."

146. The same gentleman, in arguing a case, observed that he had raised himself by great effort from early humble beginnings—from being engaged in grubbing by the day, to the situation of Attorney General of the State. "That is a doubtful elevation," said Mr. B——, "for I hold a good grubber to be better than a bad Attorney General."

147. A person by the name of Day was indicted before Judge King and Judge Knight for burglary. The prisoner's counsel wittily suggested the defence, that a burglary could not be committed by Day. He however was convicted, and Judge King, in addressing him, said to the defendant: "You have been convicted, notwithstanding your defence, of burglary. Your defence, however, to some extent shall avail you, for though the

crime was committed by Day, you shall be sentenced by Knight." Whereupon Judge Knight proceeded to sentence him.

148. Upon one occasion, Mr. Webster was on his way to attend to his duties at Washington. He was compelled to proceed at night by stage from Baltimore. He had no travelling companions, and the driver had a sort of felon-look, which produced no inconsiderable alarm with the Senator. "I endeavoured to tranquillize myself," said Mr. Webster, "and had partially succeeded, when we reached the woods between Bladensburg and Washington, (a proper scene for murder or outrage,) and here, I confess, my courage again deserted me. Just then the driver, turning to me, with a gruff voice asked my name. I gave it to him. "Where are you going?" said he. The reply was, "to Washington. I am a senator." Upon this, the driver seized me fervently by the hand, and exclaimed—"How glad I am. I have been trembling in my seat for the last hour; for, when I looked at you, I took you to be a highwayman." Of course, both parties were relieved.

149. Mr. Webster used to say, that there was an old Revolutionary fire-eater who professed to be much attached to him, and who gave as the reason—that "he never looked in Webster's face, without its reminding him of gunpowder."

150. Mr. Webster was called upon by an old gentleman from Nantucket, to undertake a cause for him,

the argument of which was approaching, and his client asked what would be his terms. "Why," said Mr. W——, "I cannot argue it under one thousand dollars; for, although the case is not a heavy one, it will require me to hang about the court for a week, and I should be as willing to be actually engaged for a week, as to lose my time in this way." "Well," said the client, "if I give you a thousand dollars, will you argue any other case in which you may be employed." "Certainly," said the advocate. The bargain was closed. The old man, having an eye to business, applied to several persons in Nantucket who had cases on the issue list, and made his own terms for Mr. Webster's services, and actually received four hundred dollars beyond what he had paid, and, beside that, gained his own cause gratis!"

151. Mr. Webster was, generally speaking, indifferent, not to say careless of money—it seemed neither at rest in his pocket, nor upon his mind. A client knowing this, applied to him to argue a case in Washington. Mr. Webster was at that time closely engaged in examining some authorities in his law books. The client laid down a five hundred dollar note, and, after stating his case, left the office. Months rolled round—the time for his argument came on. He again called upon Mr. W——, who said he was not able to go to Washington, "he had no money, and he had no time." "Well, but," said his client, "I gave you five hundred

dollars." Mr. Webster didn't remember it. "Well, but," said his client, who had noticed the name of the book which Mr. Webster was reading at the last call, "you were, at the time, looking over Cooper's Justinian." Mr. Webster went to his book-case, and there found the identical note, and the chief difficulty was at once removed.

152. On the trial of Mrs. Carson, in 1814, during the adjournment, it was necessary to examine some of the witnesses at the office of the counsel. The tipstaff inquired where the witnesses should be sent. "Why," said Mr. L——, "send Mrs. De Gorgue and the other *old* witnesses to my young friend, Mr. Ingersoll—send the *young* women to ME."

We will not venture to designate the name of the gentleman from whose speeches the following abstracts are taken, but leave it to the bar to discover their author.

153. The case is as plain, as that the Honorable George Morton is Associate Judge.

154. In every well regulated society, laws are to be *dispensed with*, according to their spirit.

155. Since the establishment of this colony, the whole Code is to be construed liberally, and to be considered applicable to all cases, which, according to the best consideration of the judge, is to be applied to this case.

156. The law laid down in Cowen's Report, was law in this colony before New York was settled, in the time of George I., when the Lord's Act was passed.

157. The Guardians of the Poor are an excellent body—they are excellent guardians *against married women*, whose husbands go astray.

158. I contend, that the order of the Court is an execution.

159. I don't by no means reflect nor insinuate nothing as to the Guardians of the Poor.

160. To destroy the technical, or mere character of the proceeding, until then it don't assume the shape of money.

161. "The moral principles of a husband in deserting his wife," as my honorable friend, Mr. Scott says, "are destructive of his character as a man."

162. On this very day, in the Senate of the United States, has the motion been made, over and over again—I say, let the body be sacred.

163. The very principle which the respectable Judge Morton has thrown out in part, that services are to be performed by an apprentice,—*So it has.*

164. *King* v. *Wakefield*, 13 East, [going to read it,] says, "it is not *quite* a case under the *law of nations.*"

165. I won't say that in 13 East, 190, you will find a case which it won't be contempt to refer to.

166. (9 Johns. 368.) Let me tell my honorable

oppōnent, Mr. Scott, or *oppŏnent*, to speak more correctly.

167. I am satisfied that the *constant* examination of cases by the judges, which they *frequently* do, will satisfy them there is nothing to shake their jurisdiction.

168. Those modern *empirics*, the *reporters;* I have read none of their books, because I know more than there is in them.

169. The different cases that have passed upon amendments, the Court, when they look at them, centre down into one fixed, unalterable principle.

170. Can I express by any implication that I may express upon the principle of the act which is the foundation of the action.

171. Mr. Norris's writing is like my own, *therefore* I do not read it, and I have made a transcript of it.

172. *Specimen of a speech before Judge Hallowell.*— "Gentlemen of the jury, cases are to be supported by evidence; evidence is to be given by witnesses; witnesses must testify to facts; facts, to satisfy a jury, must be prominent and conclusive."

173. Mr. Pinckney, whose vanity almost equalled his oratory, and Mr. Richard Rush, were engaged in a very important case before the Supreme Court of the United States. Mr. Samuel Dexter, of Massachusetts, was replying to Mr. Rush, when the latter, turning to

Pinckney, said, "That is a very able argument." "WAIT TILL YOU HEAR ME," was the reply.

174. Mr. Pinckney, when he returned from his embassy to England, was appointed Attorney General of the United States. He was at that time about fifty years of age—and, for a great man, very foppishly disposed. In person he was above the common size. His hair was dyed of a sort of Tyrian purple. He had blue eyes, rather coarse features, and full face. His usual apparel in court was a blue surtout coat, buttoned up to the throat, with a cravat drawn so tightly as apparently to throw the blood into his face, with ruffles down almost to his fingers' end, and buff kid gloves. The impression of the bar, upon his first appearance, was not very favorable. And David B. Ogden, who was a strong, but a plain man, is reported to have said of him: "When I *first saw* Mr. Pinckney, I considered him a small man, but I never considered him so after I *first heard* him. On the subject of national law he had no equal, and in eloquence he had certainly no superior."

175. Mr. Grinnell, having brought an action to recover damages for a severe personal injury suffered by his client on a voyage from Europe, called upon one of the sailors to prove his case. The witness, however, in common phrase, blew his case out of water, and made out a clear defence. "Will your honor, and my learned friend opposed to me," said Mr. G——, "allow me,

as a matter of personal vindication, to ask this witness one or two questions." Of course, the privilege was accorded. "Now," said the counsel, addressing the witness, "did you not tell me the very opposite of what you have stated here, not an hour ago, in my own office?" "Certainly I did," said the witness, "but I was not *sworn*, and you had no right to *examine* me in your office."

176. A monk of St. Bernard, some ten years ago, called upon Mr. B—— with European credentials, indorsed by the Mayor and Recorder of the city of Philadelphia. The object was to obtain funds for the charitable brotherhood to which he professed to belong. B—— subscribed five or ten dollars, and other subscriptions were made, amounting to several hundred dollars. The monk was afterwards charged with being an impostor, his money was taken from him and deposited with the Mayor, and he was committed to prison. B—— and the other contributors received notice of these proceedings, and were requested to take back their money. This B—— refused, stating that he had given it upon official authority, and he would not reclaim it. The monk getting to hear of this, engaged B—— to sue the Mayor for the amount in his hands. This was accordingly done, and the whole sum recovered—so that the counsel, in refusing to receive his money back, made ten times as much. "A bird in the hand is not *always* worth two in the bush."

177. Mr. Webster was in the habit of writing and re-writing most of the finer passages of his senatorial and forensic speeches, and sometimes prepared them, in order that they might afterwards be introduced when occasion should offer. He was wont to say, that the following passage in his speech upon President Jackson's protest, in May 1834, had been changed by him twelve times, before he reduced it to a shape that entirely met his approval. Perhaps it is not surpassed for poetical beauty, by any thing that ever fell from his eloquent lips. Speaking of resistance by the United States of the aggressions of Great Britain, he says: "They raised their flag against a power, to which, for the purposes of foreign conquest and subjugation, Rome, in the height of her glory, is not to be compared. A power which has dotted over the surface of the whole globe, with her possessions and military posts—whose morning drum-beat following the sun, and keeping company with the hours, circles the earth daily, with one continuous and unbroken strain of the martial airs of England."

178. Party spirit running high in Portsmouth in the days of the embargo, great efforts were made at an annual State election to carry the town by both parties. The Republicans succeeded in electing their Moderator, Dr. Goddard, a position of potentiality, because he decided, in case of a challenge, the right to vote. A man's vote was offered on the part of Mr. Webster's friends

which the Republican party objected to, and the Moderator was appealed to for a decision. The Doctor hesitated; he did not wish to decide against his own party, and still he was too conscientious to make intentionally a wrong decision. He seemed at a loss what to do. "I stand," said he to the meeting, "between two dangers; on one side is Scylla, and the other Charybdis, and I don't know which to take." "I fear, then," said Mr. Webster, rather *too* loudly, "I fear your Honor will take the *silly* side."

179. Extemporaneous lines, by a lawyer, upon hearing a highly rhapsodical member of the bar delivering a most grandiloquent speech:—

> Sun, moons and stars, in wild confusion run—
> The stars put out the moons—the moons the sun.
> Thus GENIUS thrives in Nature's sheer despite,
> Or courts were blinded from excess of light.

180. "I wish I had your brass," said one lawyer to another; "I should then succeed at the bar." "If you had half my *gold*," was the reply, "you would require no *brass*."

181. In the case of Harding and five others, in the Circuit Court of the United States, charged with murder on the high seas, the counsel, by agreement, were to speak two hours only on a side. Mr. B—— was approaching the conclusion of his argument when the clock struck two, his limited hour. He closed in-

stantly, with this remark: "The clock, gentlemen of of the jury, has struck; that settles forever the question of TIME, but the question of ETERNITY remains for you—your verdict is to the prisoners, THE FIAT OF FATE."

182. "I am entirely composed within," said Mr. B—— to a friend, "and have no annoyance, strictly speaking, of my *own;* all my agitations are from *without.* The world seems changed, and every thing is in disorder." "The world is not changed," was the answer, "*you* are changed—and as you have no troubles or cares of your own, you occupy yourself in spying into the troubles and cares of those around you. A man who is occupied with his own affairs, has no time to watch the world."

183. *Judicial opinion upon poetry.*—One of the most extraordinary manifestations of a want of poetical taste, that ever was exhibited by a gentleman of learning and of great legal acquirement, was displayed by Mr. Recorder Riker, in the trial of Dr. Frost. The Recorder, in his charge to the jury, observes, that "Any one who abridges human life, for a single instant, is, in the judgment of the law, guilty of at least manslaughter, as a moment may be of infinite service, in regard to the affairs of this life, but of how much more, as regards a life to come. I am not often guilty of quoting poetry, but a very great man is my authority, for what I am about to recite to you. There was

a gentleman who was a skeptic as regards the immortality of the soul. He was upon one occasion riding out with a pious friend, when his horse threw and killed him. His friend took out his pocket-book, and at once wrote therein this beautiful verse :—

> " 'Between the stirrup and the ground,
> He mercy sought, and mercy found.'

"I question whether this couplet is equalled by any thing in Homer, or *Joel Barlow!*"

184. A lawyer, returning to his house, was informed by his wife, that the hydrant-pipes were burst, and she added, "It really seems like a judgment." "Oh, my dear," said he, "the *judgment* is nothing, what I am afraid of is *the execution*."

185. A member of the Philadelphia bar, in large practice, stated that he never ate his dinner when he expected to speak upon any important case in the afternoon, for which he gave the following reasons: "Blood is the life and strength of man. It is the motive power in all human actions—it is the guardian of life's citadel. If the brain is called into action, the tendency of the blood is to the head; if the digestive functions are in requisition, the blood rushes to the stomach. If, then, a speech and a dinner are to be digested at the same time, the blood owes a divided duty, and the result is, that a man becomes either a *fool* or a *dyspeptic*."

186. A man was indicted before a Recorder of the Court for stealing wine, by drinking it out of a bottle which was confided to his care. The owner had offered to settle the case, if the offender would pay the value of the wine—which offer was refused. Upon a *habeas corpus*, the Judge discharged the defendant from custody, on the ground that *no felony* had been committed, and then bound over the prosecutor for offering to compound *a felony*.

187. In visiting the different states and county towns, lawyers are sometimes subjected to no inconsiderable annoyances. Upon an occasion of this sort, Mr. B—— finished his argument in Newcastle upon a murder case, at two o'clock in the morning of one of the coldest days in the winter of 1852. He returned to his hotel, and found his way to his chamber, the landlord and his servants having retired. The fire had gone out—the glass was broken out of the windows—and, upon entering his bed, he found there was no covering but a single sheet. He, of course, rose early, —and, finding one of the judges in the parlor, the following dialogue took place:

B.—"You are a hardy people in Newcastle—being able to work all day, and freeze all night."

Judge H.—"Yes, we work pretty hard—but we keep warm beds."

B.—"Very! I slept all night with the mercury at zero, under a single linen sheet."

Judge H.—"You amaze me! I had a mountain of bed-clothes."

B.—"Judges are not quite so plenty as lawyers, and they can't spare them."

There the matter rested for an hour or two; but, after returning from receiving the verdict, the landlord requested to explain to Mr. B——; and he began, by saying, "that Mr. B——'s chamber had been robbed last night." "Robbed!" said B——; "there was nothing to take but a single sheet, and any man would have had hard work to take that, without taking me." "What I mean, is this," said the landlord; "about twelve o'clock, a number of passengers arrived in the southern stage, and nobody being up but the servants, the travellers, finding their rooms cold, rushed into the other chambers, and yours among them, and removed all the bed-clothing to their own rooms. This must account to you for the occurrence of which you may well complain." "Yes," said B——, "it does account to me, but without any advantage—it can never possibly happen again, as I go to-day—to return—never."

188. The following exquisite burlesque, written by a member of the bar* some thirty years since, is not less instructive than witty, and although we have no claims to its authorship, we cannot withhold it from

* William M. Meredith.

our professional brethren and the public. The *dramatis personæ* will easily be recognized.

DIES JURIDICI.

Scene 1*st.*—A court-room in Vandalia—Judges Buzz, Burly, and Pallet on the bench. Officers, lawyers, &c., &c. The court having been opened by the crier in the usual form :—

Judge Buzz.—(Knocking on the desk with the handle of his pen-knife.) Gentlemen of the Bar, hand in your motions. Come, let us hear from you, gentlemen of the bar!

Peter (the crier.)—Silence! you must n't talk, gentlemen.

Mr. Modicum.—May it please the Court: I beg leave to move for—

Judge Buzz.—Give me leave, Mr. Modicum—the Court will hear you in good time, Mr. Modicum—stay for a short space, Sir. (Judge Buzz whispers with his brother Pallet.) Meanwhile, a general conversation commences in the court-room.

Peter.—Silence!

Judge Buzz.—(Rapping on the desk.) In very truth, Gentlemen of the Bar, there is conversation which disturbs the Court—the Court is disturbed—I have said it. I pray you, let there be an end, gentlemen: nay, this *must not be!* Prothonotary, hand me the motion list. (The prothonotary hands the motion list—Judge Buzz whispers with his brother Burly—general conversation commences as before. After some time Judge Buzz begins to call the motion list.) *Hump* v. *Bump!* Mr. Grumble! Mr. Count. Continued! Peter! Peter! Peter! Where is Peter?

Peter.—(Standing up.) Sir!

Judge Buzz.—Come hither, Peter. Ah! What is your first name, Peter?

Peter.—Sir? My name is Peter Pipkin, Sir.

Judge Buzz.—Yes—it is so—right. "Peter Pipkin"—it is so, indeed. *Driesback* v. *Smashpipes!* Mr. Modicum! Mr. Drift! Con—

Mr. Drift.—Argument, Sir—we are ready on both sides.

Judge Buzz.—Go on, then, Mr. Drift.

Mr. Gripe.—I believe your Honor has passed the case of *Taylor* v. *Cabbage.*

Judge Buzz.—I think not, Mr. Gripe. What is the term and number?

Mr. Gripe.—It is at the very head of the list, Sir; I have not heard it called.

Judge Buzz.—It is so, Sir; I have it here, Mr. Gripe; it is at the very top of the list, and to-day we begin at the bottom, Mr. Gripe. It shall be heard in its turn—the Court will hear you, Mr. Gripe, when the case is reached—go on, Mr. Drift.

Mr. Drift.—May it please the Court:—

Mr. Grumble.—(To the Court.) I have not heard the case of *Hump* v. *Bump* called, Sir.

Judge Buzz.—*Hump* v. *Bump*—what is the term and number, Mr. Grumble?

Mr. Grumble.—It is at the foot of the list, Sir.

Judge Buzz.—It is so, Sir; I have it here, Mr. Grumble; it is at the very bottom of the list; it has been called and continued, Mr. Grumble; it is a very late motion, Sir—it can wait.

Mr. Count.—We are very anxious on both sides, to have it disposed of, Sir. (The three judges confer together.)

Judge Buzz.—Are you ready, gentlemen, on both sides, in *Hump* v. *Bump?*

Messrs. Grumble and Count.—(Speaking together.) Yes, Sir.

Mr. Drift.—May it please your Honors, in the case of *Driesback* v. *Smashpipes*, I—

Judge Buzz.—You hear what is said, Mr. Drift; I pray you to stay for the present, Sir; you shall be heard: the Court will hear you, Sir—sit down, Mr. Drift. The Court will now take up the case of *Hump* v. *Bump*.

Mr. Count.—May it please the Court: A judgment was obtained in this Court, by *Henry Hump* against *Benjamin Bump*, at April term, 1828, on which a *fi. fa.* has now been issued, returnable to July term. I have taken a rule to show cause why the execution should not be set aside, as having issued irregularly and improvidently, and shall proceed to lay before the Court the grounds upon which the present application is founded. In order that the facts of the case may be understood, it will be necessary for me to submit to your Honors an analysis of—

Judge Pallet.—The meaning of analysis, I take to be this:—It means when a man takes a thing and divides it into parts—that is, proceeds to consider it in a—an—analytical manner—that is, you see, he analyzes it. You see, that is the meaning of analysis. Now I view it in this light, that an analysis is sometimes very difficult to make, for this reason: that when you consider any subject, it is but *one* subject, and the mind considers *one* subject, (at least the minds of most men can consider one subject,) with more facility, because it is but one: but my view is this—that when you divide a thing into parts, though you may call them *parts*, yet they are in fact so many different things; (because, unless they are different, why do you divide them?) And then, instead of considering one thing, (as the whole was but one thing at first,) why, when you have divided that into a number of different things; then the mind is compelled to consider just as many different things as you have divided the subject into, which is more difficult: (and I have known many men—men of education, too—I have, myself, often

experienced it, and I dare say others have, though I never saw this view taken of it before—become very much confused in consequence;) besides which, after dividing it, it is of no use until you put all the parts together again, (because it is to have a view of the whole together,) and this also is sometimes not easy for any man: I have found it not easy; therefore the result of my opinion is this—I mean to say, that I shall be very glad to hear an analysis for this reason, that it is so very difficult.

Mr Count.—May it please your Honors, I shall proceed to state the facts, just as they occurred, without any attempt—

Judge Buzz.—(Knocking on the desk as before.) Hear me! I pray you to listen to me, Mr. Count; let me break this case for you, to save time. I will just break this case for you; then the points will present themselves, and you can proceed with the argument. Mr. Count listen to me; you move to set aside this *fi. fa.*, alleging that the judgment on which it was issued was fraudulently obtained, and that therefore the Court should interfere to stay or avoid the execution: the courts have the power to do so, doubtless, Sir; nay, this Court has often done so, to prevent injustice. *Fraud*, therefore, in the plaintiff, Henry Hump, is the point in this case; is it not so? Have I not said it aright, Mr. Count? *In very truth*, is that not the point of your case?

Mr. Count.—No, sir: we do not allege fraud in the judgment, but are prepared to show that this execution has issued irregularly and improperly, which I apprehend will—

Judge Buzz.—(Knocking as before.) How is this, Sir? *Let me understand this!* You allege no fraud in the judgment!—Shall you then say to the Court, that a party holding a valid judgment shall not have execution? that he shall not have the process of this Court, to recover his debt? *Do you say that*, Sir? You should have strong grounds to lay before the Court. Go on, sir—go on, Mr. Count.

Mr. Count.—Why, really, sir—

Judge Pallet.—Yes, and another thing—you ought to have proof of the facts; because the statement of counsel alone, is not proof, however respectable, for this reason: that suppose counsel on opposite sides make different statements—equally respectable—or disagree in their statements, how is the Court to determine? And even the affidavits of the parties are not evidence, on the hearing of a rule to show cause. The distinction is this: the affidavit of a party is sufficient evidence, on which to grant a rule to show cause; but, when you come to the hearing of the rule, it is not evidence. And my view of it is this: that such an affidavit ought not, or the Court ought not, to suffer it to be even read, on the hearing of a rule to show cause, for two reasons; because the party is interested, and cannot be a witness in his own case; and besides, the opposite party has had no opportunity for cross-examination; which is a very important objection, because a witness may tell a very straight story, as long as he is allowed to go on in his own way; but, when you come to question him—to sift him—then you very often destroy the effect of the testimony which he has given on his examination-in-chief. And that is the practice of this Court, always to require *depositions* on the hearing of the rule, (the distinction is between the *granting* of the rule to show cause, and the *hearing* of that rule,) because, on depositions, the opposite party has an opportunity of cross-examining; and, if he does not choose to cross-examine when he has the opportunity, why, then, he has no right to complain; for he has had an opportunity;—you see? the Court have given him an opportunity, but he did not make use of it.

Mr. Count.—I have several depositions regularly taken, which will establish all the facts on which we rely, and I will now read—

Judge Buzz.—Ah! you have depositions? Well—well—stay. (The three judges confer.) This case has already occupied more

time than was expected;—I mean to cast no reflection, Mr. Count, I beg that I may not be misunderstood. Gentlemen of the bar are more intent upon the performance of their duty to their clients, than on saving the time of the Court. Let this suffice. This Court is much oppressed with business; the Court will hear you, Mr. Count, you shall have justice, Sir. No party shall have cause to complain, that he has not received substantial justice at the hands of this Court. *This Court will do justice between the parties in this cause!* Judge Burly is now about to call his trial list for the next period; after that, the Court will dispose of this case, if there be time. I have said, *if there be time.*

(Judge Burly now calls the trial list. During this time, Judge Buzz whispers with his brother Pallet, and then retires quietly. The calling of the trial list being over, Judge Buzz is missed from the bench.)

Mr. Grumble.—(To the Court, after a pause.) Will Judge Buzz return, sir?

Judge Burly.—Humph! I don't believe he will, to-day.

Judge Pallet.—Why, I don't think it certain; because, just before he went away, he said to me, "Are you going to stay?"—and I said "I was, for this reason; that, perhaps, there might be time, after the trial list was called, to dispose of the case of *Hump* v. *Bump.*" "Well," said he to me, "I am going;" and then he went away: that was all he said to me, and he did not tell me whether he was coming back again or not. Now, my view of it is, that it is very uncertain whether he does come back again or not, to-day; because he said nothing about coming back, when he went away."

Judge Burly.—Humph! Adjourn the Court.

(The Court is accordingly adjourned, in the usual form.)

ROMANCE OF THE FORUM,

OR

FACTS AGAINST FICTION.

CHAPTER XVI.

THE SUICIDE.

Ἀγωναι, δοξαι, Φίλοτιμιαι, νομοι,
Ἁπαντα ταυτ' επιθετα τῃ φυσει κακα.—*Menander.*

A SHORT time after my admission to practice, but long before that practice commenced, when I had much more leisure of *every* kind than business of *any* kind, I concluded to spend a few days with my relatives at Berkley, New Jersey. I accordingly set off upon my journey, and had proceeded a few miles below Camden, absorbed in my own meditations, with nothing either to attract or interest me, when, suddenly, the shady, solitary, and apparently deserted scenes, through which I was passing, opened upon a large field, where were assembled from five hundred to a thousand people, who broke in upon the stillness of the rural scene by occa-

sional fits of loud laughter, and other boisterous demonstrations of mirth and amusement. It mattered but little to me, so that I arrived before nightfall at the place of my destination, how the intermediate time should be occupied, and, influenced by youthful curiosity and the novelty of this circumstance, I proceeded at once towards what appeared to be the main point of attraction, where I beheld all the athletes of the country for miles around engaged in their various sports. It seemed that there had been a horse-race in the neighborhood, which having terminated, as usual, by elating most of the winners, and depressing the losers, was succeeded by all sorts of wagers and games, by which the spoils of former success might be enhanced, or the mortification of former disappointments or losses repaired or diminished. Some were wrestling, others jumping, others running, and others pitching quoits. But the greater portion of the crowd were surrounding, in the most intense anxiety, about a dozen men of the largest and most muscular frame, apparently Jerseymen, all of whom seemed to be engaged in what is called throwing the bar, an athletic sport too well known to require any explanation. This, upon drawing near, I perceived to be no children's play—the bar, I should suppose, weighed from twenty to thirty pounds, at least—scarcely a competitor among them was less than six feet high, and most of them strongly knit, and fitted, at all points, for their herculean task. There

was one among them, however, "in form and bearing proudly eminent," the decided favorite of the ring, who, with but little apparent exertion, though with vast skill, easily bore off the prize, and was proclaimed victor by loud and repeated acclamations. It was readily perceived that the conqueror was a Jerseyman, from the unreserved delight expressed by almost all around him, and from the general huzza for New Jersey, that made the welkin ring. I confess I have always belonged to the weakest party, and though half a Jerseyman, myself, I felt mortified that the victors should glory so immoderately in their success. The favorite and fortunate competitor was hoisted upon their shoulders, and paraded through the field, and wagers, to any amount within the limited means of the bettors, were offered upon him against any one that could be produced; but so decided had been his superiority, that no one could be, for some time found, willing or hardy enough to incur the disgrace of what was considered an assured defeat. At length, a rough, greasy-looking individual, apparently a butcher, made his way in among them, actuated, probably, more by mortification than desire of gain, and inquired whether they would bet against any man on the ground? "Yes! yes!" was the unanimous answer, and every man's hand sympathetically and eagerly drew from his pocket the voucher for his sincerity. The butcher and some few of his friends, obviously from the sister state of

Pennsylvania, covered the bets, and nothing remained but to produce their champion. This was soon done, as he had no doubt been previously selected.

Passing to the skirts of the crowd, while all eyes anxiously pursued them, they brought forward a young man, who appeared to have been an unconcerned spectator of the struggle, but who, nevertheless, instantly acquiesced in the proposition made to him. From his looks he might have been about twenty years of age, tall and magnificently proportioned, and with short, thick, black curly hair, and features altogether Roman. He advanced with a step neither "rash nor diffident," and took his stand beside his powerful antagonist. It was so arranged that they were alternately to throw the bar thrice, and it fell to the lot of the stranger to commence. As I have already said, or intimated, the general outline of his figure indicated great strength, and the fine proportions of his limbs were perceptible to the slightest glance, notwithstanding he was but indifferently if not coarsely clad. Upon rolling up his sleeves, preparatory to his effort, he displayed an arm which struck all present with mute amazement. It was a perfect model of strength and symmetry. No artist, in his warmest fancy, ever chiselled or delineated such an arm as *that*. He seized the immense bar, and comparatively without effort, whirled it a single time around his head, and threw it further than most men could carry it, but still not beyond the mark

which gave victory to his competitor in the previous struggle. It now became the turn of the Jerseyman to throw. He threw, and far excelled himself. The air was rent with the applause of his friends. Bets were doubled and redoubled upon him, yet still the stranger smiled, as though utterly indifferent to the result. Even his adherents, as though they knew their man, although evidently anxious, betrayed no symptoms of dismay. They threw again, and again the Jerseyman was successful. The last and decisive trial of strength and skill now arrived. The smile of the stranger gave place to an expression of the most determined resolution; the recklessness of his air was gone, and "every petty artery in his body swelled with a giant's strength." He grasped the bar as if all past were sport, and passing it, with the quickness of lightning, around his head, hurled it many, many feet beyond the furthest mark. His antagonist stood appalled; in a moment the whole aspect of things was altered. Merriment and grief changed sides. The Jerseyman, however, accustomed to triumph, still made his last effort, and a prodigious effort it was; but the charm was destroyed, for he was of that number with whom effort depends as much upon success, as success upon effort: he threw—he threw despairingly—and he lost.

Gratified, I scarcely know why, by the result, I resumed my little journey, musing upon the past events, and comparing these village heroes, in their limited

sphere of action, with those thunderbolts of war, who, not more influenced by ambition, though acting upon a wider field, wield the power of mightiest monarchies, and subjugate the world.

Ten years rolled on—with what various incidents and changes, it is partly the design of these hasty pages to show—when, one morning, in the latter part of the autumn of 1828, after I had become sufficiently known to induce some persons, at least, to suppose my professional services might be desirable—when, I say, two persons were ushered into my study, and in one of them I almost immediately recognized, though I had never seen him since, the VICTOR OF THE BAR. He was not materially altered, except that his person was somewhat fuller and broader; he had the same air of composure, and the same pleasant smile that he was wont to have; and yet the business upon which he came was dark and terrible. He revealed it all—but in manner, as if he had not the least concern in it, and without alleging his innocence, still with all the dauntlessness of virtue. He had been charged, together with the individual who accompanied him, with passing counterfeit notes of the Bank of the United States, and bail of five thousand dollars had been exacted and given for his standing his trial at the approaching term of the Circuit Court, for this heinous and hazardous offence.

The day of trial came. He was arraigned, and as he uttered the words "not guilty," my eye fell upon him

for a moment, and I observed the same fixed, firm, and resolved expression of countenance that years before he had displayed when summoning, as it were, his whole body and soul for the last physical effort which I have already described. The jury was impanelled; his trial, and it was an awful one, proceeded, and still he remained the same. Day after day, during which the protracted investigation continued, had no effect upon him. He told me, it is true, he would rather they had sent a bullet through his heart; but he said this with the same placidity and composure, and in the same tone that would characterize most men in expressing their preference of one dish to the exclusion of another at a festive or social repast. To say, therefore, that I attached but little importance to his declaration, is to say what will readily be conceived.

An entire week was occupied by the evidence and the discussion of his case, during all of which he never lived up to it, but was the same wonderful and unchanged being. It avails nothing to say what labor and what exertion were bestowed upon his defence; it is his history, not mine, that I am writing. The current of the evidence was unquestionably against him, and even the law, that was relied upon mainly in his behalf, was considered by the distinguished judges before whom he was tried, as incapable of affording him any relief—in a word, he was *convicted.* Several of the jury, in pronouncing the awful verdict of guilty, sunk

into their seats, overcome by their sympathies. They were husbands and fathers, and he, as it appeared, though never breathed by himself, had a wife and five helpless children. I ventured to look at him once more, and I saw him again as I had last seen him—unmoved, and immovable. "What a piece of work is a man!"

The marshal approached to take him into custody and convey him to the prison; and I then advanced to take my leave of him, and to inquire whether there was any further service I could render him. He said he desired to see his wife. It was the first time that tender and endearing name had escaped his lips. Application was accordingly made to the marshal to grant him the indulgence, and to accompany him to his dwelling, but whether it was from fear of his escape, or to avoid the painfulness of the scene, certain it is, the officer mildly but firmly refused. "Never mind," said I to his prisoner, who evinced a momentary air of peevishness upon the refusal, "never mind, it would be but a sad parting, and can answer no possible purpose, but to sharpen your mutual afflictions. We will endeavor to obtain a new trial, and you can then, it is hoped, meet in more favorable circumstances." "But," said he, "if I don't see her it will kill her." And his voice seemed a little broken as he spoke, yet his face was calm, and gave not the slightest denotement of the horrible tempest that must have been raging in his tortured and heaving breast. "Well," said he, at length,

"very well—I have no more to say—but I would rather they would put a bullet through me:" and again his sinews swelled, but the same determined smile rested upon his brow, like a sunbeam gilding a terrific and approaching storm. I left him; having traced him through all the vicissitudes of grief and calamity, I left him still the same.

On the ensuing morning—for there is something attractive in this firmness of soul—I visited him at his prison. He received me with his accustomed manner, without any complaint, any murmuring. He took from his pocket some papers, upon which he desired me to bring a suit, and to account to his wife for the proceeds. "I hope I shall be able to account to you," I replied, actuated by a disposition to encourage and sustain him. "Very well," said he, "account to me," and handed me the documents. I begged him to be composed, and I would see him again in the course of the morning. "An't I composed?" he replied, smilingly; "do you see any want of composure in me?" I said nothing, but shook his hand and withdrew. In one hour he was a dead man.

Upon going into court, immediately after leaving the gaol, for the purpose of moving for a new trial, I met a friend of his, who had faithfully watched the course of the trial, and who, with horror in his face, told me that B—— had, to use his own language, ripped himself open with a knife directly after I had left him.

Supposing that this was either an error, or that perhaps B—— had inflicted some partial injury upon his person, under the idea of exciting the commiseration of the Court in his behalf, I bestowed no great attention upon it, until shortly afterwards I heard it repeated from other quarters, accompanied by details, which rendered it a subject of much more serious consideration. Accompanied by the gentleman who assisted me in his defence,* I again betook myself to the prison—inquired the fate of the prisoner from the keeper—and found—he was no more!

After I had left him, as has been described, he descended into the yard which is attached to the gaol, where he borrowed what is generally called a clasp-knife, from some one of the many felons there confined, and instantly turning around an angle of the building, to avoid observation, he plunged it into his body just below the breast-bone, cutting himself in the direction of two sides of a triangle. When first discovered, he had inserted knife, hand and all into the gaping wound, exclaiming at the same time: "I cannot reach my heart!" Before the person who saw him could give the alarm, he drew out his intestines and deliberately cut them off, then throwing them in one direction, and the bloody knife in another, he walked firmly towards the steps by which he had descended, and at the foot of which

* Samuel Brashears.

he fell. He was borne to the apartment of the doctor; all assistance was in vain; he uttered not a "groan to guess at," but declaring his innocence, and requesting that his remains might be left to the disposition of his friends—expired.

For the last of these details, I am, of course, indebted to those who were present and witnesses of this mournful scene; what is still to be told, is related from my personal knowledge. Upon expressing an inclination to see the body, the keeper led the way for me and my companion to the chamber of death. Upon entering, a truly frightful spectacle was exhibited. We passed through a long range of gloomy apartments, lined on each side with felons and malefactors of every possible description, embodying the idea of hell and the fallen angels. All was silent and black and fearful as night—not a syllable was uttered, not a smile to be seen—every human being seemed awe-struck and confounded. Upon entering the chamber, as I have said, by the dim light which was afforded from the heavily barred and grated windows, I saw the body stretched upon a coarse pallet or mattress, in the centre of the room, nearly surrounded by a host of criminals, equipped in their prison garb. They fell back to allow us to advance; their eyes were all fixed; they stood like so many shocking statues—not a tear was shed nor breath drawn. They looked as if the sources of their grief were exhausted with those of virtue. Their eyes

glared while they rested on the remains of the deceased. One of them, then approaching the covering of the corpse with a motionless and solemn step, withdrew it from the body—and we saw all that remained of one of the most powerful and extraordinary men that has lived in the tide of time; a man who might have stood by Cæsar!

I shall never forget the effect of that moment. It was a scene fitted for the pencil of Angelo. The body was entirely exposed; the arms folded across the ample breast; the frame and limbs huge, but of the most exact symmetry, and the face exhibiting the same fixed smile, which had been displayed in life, and which particularly became the marble features of death. The partial rays of light admitted into the room, centred all upon him; and there was so much beauty—so much serenity—so great a contrast between him and all about him, that, instead of inspiring horror, it overcame me with admiration. They may talk as they will of their Socrates and their Catos, who, in the decline of life, antedated their doom, in all human probability, but a few months—men in whom the vital principle was nearly extinct—and whose feelings were enfeebled and obtunded. Here was a man with all the vigor and energy of youth about him, with no fame, no immortality to spur him on—who never dreamt of commemoration on the historic page—and who knew nothing of the precepts of philosophy; and yet who, nevertheless, showed

that the love of glory is not a more powerful incentive to human courage, than a sense or fear of shame.

Thus ends the cause of poor B——. I omitted, however, to mention that the crime of passing counterfeit notes, with which he was charged, was alleged to have been committed at a horse-race in Delaware County, and that a portion of his defence consisted in his allegation that the money was received by him as stakes, and put down without knowledge of its spurious character. At a horse-race! It was there I first beheld this unfortunate man. It was there, in all human probability, his career of vice commenced—and it was there, alas! it was consummated. Such is the frailty of mankind, that our very accomplishments are frequently our lures to destruction. To excel in any thing becomes a subject of admiration—and, intoxicated with applause, we pass step by step into the flowery ambush, nor dream of our danger until, like the covert serpent, it uncoils itself, to sting our joys to death.

CASE OF LUCRETIA CHAPMAN.*

In the month of September, 1831, Bucks County, and indeed the whole State, was thrown into commo-

* As this case has been so often referred to in publications here and abroad, there can be no reason why the names of the parties involved in it, should be disguised or suppressed.

tion by an alleged murder, of a most extraordinary and anomalous character. Mr. Chapman, an eminent teacher, and a man of the highest respectability, living in a state of competence, with an accomplished wife and five most interesting children, had died, apparently without disease, though he had been indisposed for some days previously, on the 23d of the preceding July. For a time mysterious suggestions were thrown out, of his having come to his death by unfair means; and, at last, the report gaining strength by its progress, about three months after his burial, a number of respectable physicians were called upon to exhume and examine the body, to analyze the contents of the stomach, and to determine whether he had not been carried off by poison.

A disinterment of the body took place accordingly; and, notwithstanding a long time had elapsed since his death, his frame was found in a perfect and somewhat wonderful state of preservation. A rapid and unsatisfactory anatomical examination took place; the stomach of the deceased was removed; an analysis of the contents took place, and from the report of the doctors and chemists employed, and from some other matters of suspicion, the public authorities deemed themselves called upon to prefer charges of murder against his widow and a young Spaniard, by the name of Don Lino, who had been a resident of the house at the time of his death.

Don Lino was soon arrested; but the widow, either influenced by fear of opprobrium, or a sense of guilt, had fled to a remote corner of New York, (leaving her offspring at her mansion under the charge of her relatives,) where she continued until some time in December, employed in instructing the children, as a governess, of a very respectable family.

About this period I was apprized, through the public journals, which teemed with miraculous accounts of this mysterious transaction, that Mrs. Chapman was arrested, and that it was understood—from what quarter I am at a loss to ascertain—that her defence was to be confided to me. Without bestowing more attention upon the report, so far as regarded myself, than its source deserved, I awaited the period, should it ever arrive, of a more regular and legitimate application. Just about the close of the year, and, I think, a day or two before the session of the Court of Oyer and Terminer, in which the alleged offenders were to be tried, a lady and a male attendant were ushered into my office, to whom, after the usual salutations, I addressed myself, in the commonplace language of "What service can I render you, madam?" At this moment my eye, for the first time, rested upon the form and features of the visitant. There was something striking in both; her figure was above the usual height, slender and well-proportioned, and her face, though not handsome, bore evident indications of con-

siderable intelligence and refinement. She sat like a statue, and nothing but the restlessness and glare of her eye gave denotement of animation. Without turning to me at all, or changing her position, she uttered a groan, as from her inmost soul, and exclaimed, "*Mrs. Chapman!*" as though the association of that name, with the notoriety of the charges, would be sufficient to apprize me of her lamentable story. It was so; and I proceeded at once, as delicately as possible, to ascertain the object of the call, the precise nature of the accusation, and her means of defence.

In this, after many sad interruptions, I at length succeeded; and, although at the expense of great personal and professional inconvenience, engaged to afford her my feeble aid upon her rapidly approaching trial. The conversation was long and interesting, though, at the same time, painful; and, upon its termination, I took leave of her, with the promise to give my attendance at the court, which sat in an adjoining county, on the ensuing Monday. She left me—was removed forthwith to the scene of trial, and, the offence not being bailable, she was, of course, conveyed at once to the gloomy cell of a common jail.

I rarely remember a more disagreeable sensation than that which I experienced on assuming the responsibility of this cause, on the issue of which depended not only the life of an individual, but the hopes and happiness of all who belonged to her. With no know-

ledge of the case but that which had been hastily collected; with the certainty that the prejudices of the community set strongly against the defendant, I was alive to no small degree of irritation towards the professional gentleman to whom Mrs. Chapman had early written, requesting that competent counsel might be employed, and proper measures adopted to afford her an opportunity of a fair and impartial trial in the result of her being arrested.

Complaints or repinings, however, never remedy evils; and I, therefore, anxiously embraced the limited time allowed, in preparing myself, as fully as possible, for the investigation of this important, complicated, and mysterious transaction. I cast my eye about for some one who might be calculated to lighten or to share my labour; and fortunately succeeded in fixing upon a gentleman,* who, although young in the profession, had given sufficient earnest of his fidelity, industry and talents, to render the selection a judicious one; and I rejoiced the more in making it, as the celebrity of the cause was such as was usually calculated to afford the best of opportunities to a young man to signalize and distinguish himself. He accepted my proposal to join in the defence with the promptitude which it called for, and the day after, we arrived at the scene of action.

The County town, though of no inconsiderable size,

* Peter M'Call.

was literally overflowing with witnesses for the prosecution, and visitors drawn thither by the extraordinary features of the case; and, for a time, it remained uncertain whether we should not be in the condition of Noah's dove, with no resting-place for our feet. At length, however, and late at night, we succeeded in obtaining lodgings, comparatively comfortable, and we entered at once upon the business of preparation. A most awful and embarrassing business it was.

Without witnesses, without process to procure their attendance, and without an individual to serve the process if we had possessed it, in a strange place and surrounded by none but strangers, it is hardly to be wondered at that our hearts almost sunk within us, at the idea of the fearful odds which we seemed inevitably doomed to encounter. In this condition, with as cheerful an air as we could assume, we waited upon our client at her melancholy abode. If fate had so decreed, that the heavy grated door, which groaned on its hinges to receive us, should have closed forever upon me, I do not know that my emotions could have been more poignant upon entrance than they were at that moment. Habitually inured as I was to scenes of horror, and ready to do all in my power for the accused, I was conscious, from circumstances over which we had no control, that *all* would avail but little against prejudice and proof, both of which were arrayed in behalf of the prosecution. I contemplated

the prisoner as a victim, about to undergo the ceremony of a trial, it is true, but entirely at the mercy of the Commonwealth, and almost without a single helping hand in her extremest need.

Some of her witnesses were forty, and some four hundred miles off; not ONE was present. In all human probability she was liable to be called upon in one hour to answer the charge. We conferred with her as fully as the state of her mind and ours would allow—ascertained the character of the evidence which probably might be procured, filled up the subpœnas with our own hands, employed officers for their service from our own purse, and determined that all that was practicable should be done, both for her sake and our own. The main hope of our reliance was the mere possibility that the evidence against her might occupy so much time as by chance to allow the return of our process, and that the witnesses thus procured would enable us, at least, to protract the investigation until those more remote might be brought to our aid. This was a forlorn hope, it is true, but it was almost all that was left.

The trial, as we anticipated, was speedily called. The prisoners were arraigned, and pleaded not guilty, and the case was ordered to proceed. As a last effort in behalf of the defendant, a motion was made for a postponement of the cause, on the ground of the absence of testimony; and after a brief argument, it suc-

ceeded, and the trial was adjourned until the 13th day of February ensuing.

Such were the agitation and anxiety of my feelings, during this short period of suspense, that, for weeks afterwards, my health was evidently shattered, and I had barely recovered my composure and equanimity, when the allotted day arrived. Widely different, however, were my emotions at this time; the interval had been employed by my colleague and myself, in the necessary preliminaries of the trial. All that could be expected was done. Our witnesses were in readiness; and we at least felt satisfied, that, if life were to be lost, it would not be without a struggle. The eventful morning came, and we took our professional post at the side of the prisoner. Apprehension had given place to reasonable confidence; and, so far from approaching the case reluctantly, we met it firmly at least, if not eagerly. The disclosures of the evidence, it is unquestionable, were shocking; and are briefly summed up in the following narrative:

On the 17th of May, 1831, the young Spaniard to whom I have referred, presented himself, in a tattered and forlorn condition, at the door of Mr. Chapman, whose seminary was at Andalusia. He begged for refreshments and a night's lodging. Mr. Chapman directed him to a tavern but a short distance below; but the stranger informed him, in his broken language, that he had already made his application there, and, as

he had no money, had been refused. Mrs. Chapman then interceded for him, and at her instance, he was permitted to remain. In the course of the evening he related, in the presence of the family, the story of his misfortunes, and interested them all very deeply in his behalf. He said he was the only son of the Governor of California, who held immense possessions in Mexico, among which he mentioned a gold and silver mine, and other sources of incalculable wealth. That, as he approached the age of manhood, his father deemed it expedient, in order to the completion of his education, and a proper acquisition of a knowledge of the world, that he should travel and visit Europe, which he accordingly did, under the charge of a distinguished physician, to whose government he had been confided. That they set sail for France, where they arrived without any material occurrence, literally loaded with the wealth which a fond father had lavished on them. It so happened, as the story runs, that shortly after their arrival in France, and while at church, the physician fell down in an apoplexy, and instantly died. Don Lino returned disconsolately to his hotel, an utter stranger, totally unacquainted with any other language than his own, and, changing his apparel, which was very costly, for that of an humbler character, threw himself in despair upon his bed. While in this state, the British consul (for his friend was an Englishman,) entered the chamber, and, in his official capacity, di-

rected all the trunks and property to be removed to his stores, in order that they might await the orders of the legal representatives of the deceased. Don Lino remonstrated, through an interpreter, against the injustice of the procedure, alleging that one of the trunks, containing money to the amount of thirty thousand dollars, belonged to him, and explained, as far as he could, the relation in which he stood to the deceased. This was all considered an imposture by the consul, who told him he was no more than a servant of the physician, a suggestion which derived strength from the present meanness of his attire; and everything was immediately removed, leaving the wretched Mexican without money or friends, or the expectation of obtaining either.

There are benevolent beings in all countries; and some individuals of that class consoled him in his afflictions, and presented to him the sum of one hundred dollars, to defray the expenses of his return voyage. Another difficulty, however, here occurred; there was no vessel bound for Mexico: but there luckily then was a vessel about sailing for Boston, in the United States; and Don Lino, knowing that his grandfather owned a vast quantity of stock in one of the Boston banks, and also understanding that an intimate friend of his family, a Mr. Casanova, resided in that neighborhood, he concluded, in his emergency, upon adopting this chance of bettering his condition,

and accordingly set sail for Boston, where he arrived early in May.

Misfortunes, it is said, never come singly. Upon landing, he found that he had been deceived in relation to the stock; and upon inquiring for his friend Casanova, he ascertained that he had recently married, and embarked with his wife for Mexico, but was expected soon to return. Sunk in the depth of disappointment, Don Lino was taken ill, became subject to extraordinary fits, and exhausted nearly his last shilling: but hearing, when partially recovered, that there were some Mexican gentlemen with whom he was acquainted, upon a visit to Count Survilliers, he set off on his journey, and some days after, arrived at Philadelphia; when, what was his astonishment, to learn that the Count resided at Bordentown, at his chateau, which Don Lino had passed on his journey. Of course, nothing remained but to retrace his weary steps to Bordentown, which he was engaged in doing, when, overcome by heat, hunger and fatigue, he presented himself, as we have related, at the hospitable mansion of Mr. Chapman. This "melancholy story sent his hearers weeping to their beds."

A day or two afterwards, the carriage was ordered; and Mrs. Chapman, who was the active individual of the establishment, with the approbation, if not at the request of her husband, in company with one of the pupils of the school, set off with Don Lino, for the

residence of the Count, in the vicinity of Bordentown. When they arrived, the Count was at dinner with some gentlemen, and could not be disturbed. The steward, however, in reply to their inquiries, informed them that there had been some Spanish gentlemen there a few days before, but they had departed. This seemed partially to confirm Don Lino's story; and, as the day was waning fast, and Mrs. Chapman could not wait for an opportunity of seeing the Count, they returned again to Andalusia. The result of the journey was communicated to her husband; and the attentions of the family to this distressed, though distinguished stranger, were redoubled.

Mr. and Mrs. Chapman both wrote to his parents, in conformity with his direction—apprized them of his situation—pledged themselves to bestow upon him the regard which they should expect to be extended to their own children, in similar circumstances; and concluded, by informing them, that, as he was desirous of learning the English language, the best instruction should be given to him during his residence at their house, that their means would allow. These letters being prepared, Mrs. Chapman, under the authority of her husband, accompanied the stranger to the house of the Mexican consul, for the purpose of procuring them to be forwarded.

They waited upon the consul accordingly, who received them with great hospitality and kindness; and,

as Mrs. Chapman had an engagement elsewhere, she left him and Don Lino engaged in conversation, with the promise of returning for the latter in the course of an hour or two, by which time she expected their business with each other would be terminated.

Upon her return she found Don Lino at dinner with the consul and his family, of which she was invited to partake. This, however, she politely declined; and, taking her seat in an adjoining parlour, she was introduced to a lady of the house, who expressed to her the high sense of gratitude which she and the family entertained for the favors which had been conferred upon a friendless, though distinguished Mexican. After various attentions, and an invitation to the house of the consul, she took her leave, and accompanied by Don Lino, returned to her own home.

If anything had been required to confirm her and her husband in the entire belief of Don Lino's melancholy tale, it was certainly derived from the supposed reception he had met at the house of a gentleman of unquestionable character; particularly as that gentleman, being himself a Mexican, was presumed to be intimately acquainted with his own government, and, therefore, perfectly able to detect any imposition that might be attempted to be practised upon him. From this period, therefore, Don Lino was to be considered as a permanent resident at Andalusia, and the family of Mr. Chapman, no doubt, one and all, considered

themselves as highly honored by the presence of so exalted a personage.

Time rolled on—every succeeding day seemed to confirm the pretensions of the stranger, and the attachment of those whose hospitable abode he had selected as his refuge. Mrs. Chapman rode out with him frequently—ministered to his disease while sick—introduced him to her friends—spoke of him as her son—and, perhaps, displayed more attention and interest in his fate, than, in ordinary circumstances, would be deemed reasonable, or even consistent with decorum.

Yet his gratitude appeared not disproportioned to the extent of the kindness received. Upon one occasion, when he was considered dangerously ill, he executed a document in the nature of a testamentary request, directing his father, upon his death, to pay to Mr. Chapman and his wife, each, the sum of fifteen thousand dollars, in consideration of their services. From this sickness he recovered, but still his gratitude had no limits. He stated that he had ordered a magnificent carriage to be built for them, under the direction of his friend, the Mexican consul, which would shortly be ready, when he hoped to see his benefactors and their family riding and enjoying themselves in it. He desired Mr. Chapman to discharge the workmen engaged in the improvement of his building, until his remittances should arrive, when, at his

own expense, he would have the house and grounds decorated and adorned in the Mexican fashion. He promised largely, and there was much reason to suppose his promises would be more abundantly fulfilled. The easy and supine nature of the husband, and the pride and ambition of the wife, were alike gratified with the idea of countless treasures. The course of assiduous labor in their seminary was now deemed unnecessary; in short, everything was absorbed by the stranger.

On the 17th of June, 1831, about the hour of retiring, Mr. Chapman was taken ill.

On the 16th of June, 1830, Mina was in the City of Philadelphia, and at that time purchased a quantity of arsenic—professing to intend it for the preparation of birds. This was the day before the sickness of Chapman. The sickness was slight at first; but, on Monday, the 20th, Mrs. Chapman prepared some soup for him, which she took to the parlor, to season it. At that time, she and Mina were alone in the room. It was further attempted to be shown, that, at this time, the poison was mixed with the soup—taken to Mr. Chapman during the morning——partly drank by him—and the rest thrown into the yard. In the evening, the chicken of which the soup was made was taken up to him, a small portion eaten, and the residue also thrown into the yard. The next day, a neighbor's ducks died in an unaccounta-

ble manner. This was ascribed to the arsenic. From the time of taking the soup, Chapman got worse, and complained of burning in his stomach—the symptoms indicated arsenic. In the evening, he complained of a want of attention. A friend stayed with him till 11 o'clock, when Mrs. Chapman came in, and requested him to retire. He asked her to send for a physician, which she declined—and no physician was sent for until Tuesday evening—and his medicines were not administered. Chapman lingered until the 23d, when he died: and, on the 5th of June following, Mina and Mrs. Chapman were married.

Three months after the death, (the marriage and other circumstances leading to suspicion,) a disinterment and a post-mortem examination took place, as we have already stated. In addition to these matters, it should be mentioned that the defendants, upon the first intimation of suspicion resting upon them, betook themselves to flight, and, after a time, were with some difficulty arrested.

The defence was, that Chapman was an aged man; that he died from natural causes; that there was no adequate proof of poison; that Mrs. Chapman was of good character, and the daughter of a Revolutionary officer; an estimable and moral teacher; married in 1816; resided in Philadelphia until 1828, when they moved to Andalusia, and lived in great domestic happiness with her husband.

These facts, as opened by the prosecuting counsel, Mr. Ross, (with whom Mr. W. B. Reed was associated,) were pretty clearly proved by the evidence. That is to say—the purchase of arsenic by Mina—the sickness of Chapman—the administering the soup—the throwing out the residue—the death of the chickens and ducks the day after.

In addition to this, the doctors gave it as their opinion, from the state and smell of the stomach,—the symptoms attending the disease—the rigidity of the body after death, and its preservation for months after burial—that the death was caused by poison. There were other portions of the evidence which were fearfully corroborative of that mentioned: the marriage—the letter written by Mrs. Chapman to Mina—and her attempt to escape from justice, when she became an object of suspicion. The letter, especially, appeared to be almost inexplicable, consistently with the idea of innocence. It ran thus:—

"ANDALUSIA, *July* 31*st*, 1831.
"*Sunday afternoon.*

"LINO,—Your letters of the 19th and 28th inst. are both now before me, both of which, together with yours of the 18th, have been carefully perused and re-perused by me this day. Your letter of the 19th, written at Baltimore on Tuesday evening, was not received by me untill Friday following; when my anxiety was so great for you, *fearing you were* SICK, that I arose, and though I was without a cent of money in my house, (in consequence of having bestowed *my all on* YOU,) at 3 o'clock in the morning, and

took a seat in the mail coach, with an intention of following you to Baltimore, if I did not find a letter from you in the Citty; but what was my astonishment, Lino, when I called at the house of your Consul and was told that you had not been there for a *long time,* that they had heard nothing of your friend's death, and that your Consul with his sisters had gone to the falls of Niagara, instead of being at New Orleans, as you had informed me your Consul and Minister both were; I then made inquiry at the United States Hotel, and at Mr. De Brun's and then I called on Mr. Watkinson, who told me that your Consul had inform'd him that he believed you to be an IMPOSTER!! I was thunderstruck at this information; and told Mr. Watkinson that I could not believe you were capable of so much *Ingratitude,* as not to return to *reward me,* who had ever been a sincere *friend to* YOU; the truth of this assertion I believe you cannot doubt; when you reflect but for a moment that when you were destitute, I took *pitty* on you, and gave you a home, fed you, clothed you, and nursed you when you were sick, &c. &c. If I have been *sincere,* why has Lino been induced to practice so much *deception* on Lucretia? Why not keep your appointment and return to me the same week you left, on Saturday, at 4 o'clock, as you promised?—But too well you knew your own guilt!! You never intended to return to me: I thank you, Lino, and I thank my God, for having returned my dear innocent child Lucretia to me in safety; for as you have been permitted to practise so extensive a robbery on me, I feel thankful that my children are spared to me; and perhaps may yet prove a blessing to me; tho' you, Lino, are the cause of my enduring much misery at this present time; yes, my heart is pained with the crimes you have committed; think, Lino, (and if your heart is not of adamant,) I believe if you reflect for a moment on the cruelties you have practised on me and on my dear daughter Mary, your heart will bleed with mine! I have now *no husband* to aid me in supplying the wants of my dear Innocents. Ah! Lino! do not extend your

cruelties so far as to deprive me of every thing which might be sold to aid in supplying my dear children with food and clothing! Tell me in your next letter where I may find my horse and Dearborn, if you really have not sold them, but "have left them with a friend till you return;" as you informed me in your first letter; but if you have sold my horse and carriage, gold and silver watches, breast-pins, finger-rings, medals, musical boxes, silver bells with whistle and cake basket, &c. &c. and do not intend to send me any money as you promised to do, to relieve my distress, or need of money, I say, if you do not intend I shall ever possess any of the property you have deprived me of, than (*then*) I must tell you that I wish you would *never write to me again*, and do not request others with whom you correspond, to direct their letters to you here, and to my care, as you will find I have forwarded one to you by enclosing it in this of mine. But as you have forsaken me, do not torment me by sending *any more* of your letters, filled as they are with *fair words and pretended affection*. By this time I suppose my rings decorate the fingers of one, whom, *perhaps you do love* sincerely; and the worst wish that Lucretia sends after you, is, that you *may be happy*. You say in your last letter that "as often as you remember me, you bathe yourself in floods of tears," and that "you are dying of grief," &c. I cannot think you indulge in grief if you are in possession of the $45,000 which you wrote me you expected to receive; and then you visit the President frequently, and have the honour of walking with a Duke of England; all this must surely make you happy, without your sending even a wish or a thought after *me!!* And then, I observe you speak of a female friend ———, who, perhaps, now receives your fondest caresses, and perhaps renders you perfectly happy. But no, Lino, when I pause for a moment, I am constrained to acknowledge that I do not believe that God will permit either *you or me* to be happy this side of the grave. I now bid you a long farewell.

"LUCRETIA."

The grounds upon which the defendant rested, to resist the facts arrayed against her, were these: That she had not been shown to have known any thing of the arsenic purchased; that the soup contained no arsenic; that her daughter Lucretia gave the deceased the soup—and the chicken; that she drank of the soup, and ate the chicken, after her father had been supplied, and before any portion had been thrown out; that *she* was not affected, and, therefore, the soup could not have been poisoned; that the ducks did not die of arsenic, but from lime water, by which the house was surrounded, as bricklaying was at that time going on; that the symptoms were the ordinary symptoms of cholera; that the rigidity of the body was attributable to the bleakness of the morning, and the lapse of time before it was laid out; that the preservation of the body did not arise from the antiseptic properties of arsenic, but from the unusual depth and gravelly character of the grave, and the sloping ground on the surface, which carried off rain and moisture, and prevented decomposition. As to the flight, it was encountered by the argument, that weak nerves were no evidence of guilt, and that even a woman of undoubted innocence might be terrified, in the horrors of her situation, into indiscretion; that she was surrounded by rumors, and crushed by grief, and that it was, therefore, too much to expect from her, the conduct which would belong to calmness and composure. As regarded the letter, the

footing upon which that was met, is best presented by the following remarks of the defendant's counsel:

"There is one letter, however, written by the defendant to Mina, while at Washington, which is said to contain at least an equivocal passage, and to afford ground for the belief, in the language of the opposite counsel, 'that all was not perfectly right.' In passing to the consideration of that clause, we must be allowed to premise, that it is not sufficient, that all was not perfectly right; it is incumbent upon the prosecution to show to your satisfaction that all was perfectly *wrong*. We agree that all was not perfectly right. It was not right that she should marry within a little month after her husband's decease. It was not right that Mina should sell her jewels, her plate, her horses, and her carriage, or that he should give away the trunk and books of her deceased husband. It was not right that he should take two ladies to the United States Hotel, and that, remaining there with them, he should pay their expenses and his own out of his wife's honest earnings. It was not right that he should squander her means in the journey to Baltimore, under the false profession that it was for the purpose of obtaining a legacy of forty-five thousand dollars, left by his friend Casanova; and it was manifestly wrong that he should practise all sorts of frauds and falsehoods, upon this unsuspecting woman, during his absence. We agree, therefore, as we have said, that

all was not right; but we deny that writing under the influences fairly attributable to these manifold outrages, this clause referred to in her letter, is to be considered as an evidence of her having voluntarily aided in the destruction of the deceased.

"It is a well-settled principle in criminal jurisprudence, and it cannot be too steadily borne in mind, that where the acts or language of men admit equally of opposite interpretations, that construction shall be adopted which is most favorable to innocence. With the benefit of this doctrine, let us turn to the objectionable paragraph. I quote it from memory, and shall willingly submit to correction, if I quote it erroneously. 'When I reflect, Mina, I am constrained to acknowledge, I cannot believe, that God will suffer either you or me, ever to be happy on this side of the grave.' Was not reflection upon the events just referred to entirely sufficient to induce these expressions, without imagining the perpetration of an offence so heinous as that charged against the prisoner? She had been imprudent; she had been imposed upon; she had been impoverished, together with her children, to whom she was tenderly attached. And if this were not a state of circumstances calculated to produce such a reflection, I am utterly at a loss to conceive what would be. *On this side of the grave,* indicates worldly suffering for worldly indiscretion. If she had been guilty of the imputed crime, her fears would not have

fallen short of that punishment which awaits the wicked *beyond* the grave.

"Taking these letters all together, and carefully perusing them, nothing can be found inconsistent with the consciousness of innocence. Can you suppose, if this woman had committed so odious and hateful a crime as that imputed, writing as she did, under the sanctity of a seal, and to her partner in iniquity, she never would have allowed a single word to escape her, in which the lynx eye of the prosecution could perceive a semblance of guilty remorse or timidity? If we are determined to suspect crime first, and then to distort and pervert every thing to the support of that suspicion, no man, innocent or otherwise, can escape punishment. I defy the counsel, with all their learning, skill, and accuracy, to write a letter upon any subject, in which I cannot detect, being suspiciously disposed, either an intention to conceal some motive that they entertain, or a disposition to convey some idea that they do not. If their composition be loose, it will be indefinite and equivocal, and admit of a vast variety of constructions. If it be terse and precise, we may plausibly infer, from that very terseness and precision, that they are anxious to guard themselves against the disclosure of some lurking motive."

The trial commenced on the 13th of February, 1832, and, on Saturday night, on the 26th of February, after an able charge from Judge Fox, the jury, upon an

absence of two hours, returned a verdict of not guilty, and the defendant was discharged by proclamation.

Mina was afterwards tried on Tuesday, 25th of April, 1832. Mr. Ross and Mr. W. B. Reed prosecuted. The defence was conducted by Mr. M'Dowall and Mr. Samuel Rush. The prisoner was convicted on Friday, the 28th, after a deliberation of three hours, was sentenced on the 1st of May, and was subsequently executed.

The most surprising incident to this cause we have now to relate: At the beginning of the trial, prejudice ran so high, that there was but little room for hope. That prejudice, however, diminished every day—and, on the Sabbath, (the day after the acquittal,) those who had previously been most violent against Mrs. Chapman, visited her in crowds, congratulated her, and accompanied her and her children in their carriage, in a sort of triumphal return to her house in Andalusia—the alleged scene of a husband's murder!

In taking leave of this melancholy and remarkable case, although professional compliments should form no part of our present business, we cannot do less than say, that Mr. Ross, Mr. W. B. Reed, and Mr. M'Call, all of whom were comparatively young men, (and this being probably their first highly important case,) manifested an ability and eloquence which have rarely been surpassed, and which will long be remembered.

LOVE, JEALOUSY AND MURDER.

In the year 1834, the town of Bordentown, and, indeed, the whole State of New Jersey, was appalled by the brutal murder of a young lady of a respectable position in life, and of no inconsiderable personal and mental accomplishments. The murderer was a young man, a native of New England, who held a reputable standing in society, and who was employed as a contractor and engineer in Burlington County.

The lady married in very early life, and had been left a widow, with two infant children. She resided with her mother, who kept a select boarding-house, and it was by C——'s becoming an inmate of that house, that the acquaintance was formed which, in a few short months, had so horrible a termination. There was no disparity either in the age or condition of the parties, which forbade their alliance; and there soon grew up between them a kindness, not to say a tenderness of feeling, which, on his part, ripened into devoted attachment.

The lady, though she did not encourage, did not check his growing passion as soon as she ought; and when her suitor made proposals of marriage to her, which she declined, or at least postponed, the revulsion produced by his disappointment almost drove him to desperation. He jealously watched all her steps—became enraged at any civility or consideration bestowed by her upon any one

to his exclusion, and became almost frantic at her having, at a large sleighing-party, withdrawn from his sleigh and taken a seat in another. In short, there was nothing so harmless or insignificant in the deportment of the lady, as not to be construed by him into cruelty and wanton disregard. In this condition of things he threw up a profitable business—collected the money due to him, which amounted to a considerable sum, and uniting himself with some rowdy and reckless companions, he took, as he professed, a final farewell of his inamorata, and hurried off to the city of New York. There he threw off all restraints, indulged, contrary to his former habits, in the pleasures of the bowl—in gaming—and almost all the other vices. All this was apparently the result of despair rather than of temptation. In a few days, of course, he was stripped of all his honest earnings—robbed of his watch—deprived of some portions of his wardrobe—and in less than a fortnight, beggared and disgraced, and full of revenge against one, to whom he attributed all these disasters, (from her having rejected him,) he returned to his former lodgings at Bordentown. Here he was confined to bed, from the effects of the excesses referred to, and during his confinement he was occasionally attended upon by the lady of his choice. He renewed his appeals to her, which, with greater reason than before, she discountenanced, though with the greatest delicacy and propriety.

Finding that there was no hope of his suit proving

successful, he resolved that no *rival* should triumph; and having prepared a dagger, and an ounce of laudanum, upon her next visit, on her again declining the proffered marriage, he caught her feeble form with one hand, and with the dagger in the other, struck her eleven times to the heart. He next seized the laudanum, which was on the table near by, and attempted drinking it; but he was so excited, tremulous, and horror-stricken with what he had done, that the contents of the phial were spilt, and the murderer was reserved for the gallows.

The most remarkable circumstance connected with this atrocious homicide, was this, that after the eleven wounds, all of which penetrated the heart, the poor victim called loudly and repeatedly for her mother, extricated herself from the grasp of her assailant, and walked down a flight of stairs. In the room below she fell, and in a few minutes expired.

The offender made no attempt at escape—no excuse—but remained there stupefied with horror; and was finally removed, under the heaviest execrations of an outraged community, to the jail at Mount Holly, there to await his trial. Such was the state of matters when counsel were applied to, to defend the prisoner. A gentleman of Mount Holly was associated with Mr. Isaac Hazlehurst and myself, and all proper means were adopted, in order to afford the defendant a fair trial. Any trial, however fair, would have resulted in his

conviction. The prejudice at the time ran so powerfully against him, that with the slightest show of proof, there would have been but little hope of success. The blow was struck—a woman—an estimable woman, was the victim; and as to what might be called a metaphysical defence, it was absurd. How could counsel give an ordinary jury to understand the delicate structure of the human mind—its liability to sudden overthrow and insurrection. In order to the success of such an argument in any case, there must be reflecting minds to appeal to. There was scarcely a man on that jury that knew what *mind* meant, and the following appeal to them was not only lost, but thrown away.

"That man, who shall have determined upon the guilt of the prisoner, without having heard what his counsel, feeble as they are, may urge in his defence, has permitted his zeal—his honest zeal, if you please—to rob the defendant of the threefold shield which law, justice and mercy themselves have supplied.

"Hear him for his cause—it is a solemn appeal—it is a story of the heart traced in characters of blood—and its sequel will be life or death. In such a case, the bosom must be locked up in triple steel, that now, in the prisoner's extremest need, can withhold its sympathies—its charities, from one who, whether guilty or innocent, craves only the humble boon of being *heard* before he is adjudged—fairly and fully heard, as you yourselves would be entitled to be heard, should the great Disposer of events in the mysterious vicissitudes of life place you in his condition, and him in yours.

"In what shall be urged in his behalf, I wish to deal fairly with you—and I am sure you will in return deal fairly with me. I

ask you, then, to abjure the idle rumors of prejudice, as it respects the subject of the issue which you are to try. Without this, all reasoning is vain; as the mind at once rejects, without examining, that to which it is opposed. I ask you to abjure it, not only as it respects the prisoner, but his counsel—the former, I trust you have done; the latter, I am sure you will do, when you perceive that the indulgence of one is just as fatal to the objects of justice as the other.

"I speak not for myself personally—in this case I am too insignificant to be the subject of remark, being utterly lost in the importance of the occasion; but I speak to the views that are too generally entertained of professional exertion in behalf of an individual who has fallen under the ban of public reproach. It is too often imagined that professional remarks should be disregarded, or placed to the account of the pride of advocacy, instead of being received with a ready ear, and weighed and considered by a willing and a feeling heart. We are often told, and we shall be told again, that the facts of the case are the polar star by which you are to steer. Agreed, they are so—but the reasoning on the facts is just as important to a judicious result as the ascertainment of the facts to which that reasoning is to be applied; and you do the defendant—you do yourselves—you do the justice of the country as much wrong in closing your minds against a fair and honest discussion of the principles of the case, as though, disregarding or dispensing with all evidence, you should, by your foreman, upon the indictment being read, promptly pronounce the verdict of death, and rely for justification upon the columns of some pernicious newspaper. Hear all—try all—hold fast to that which is good—and let the world frown as it will, the light of heaven will rest upon your verdict, a light which no earthly tempest can either extinguish or obscure.

"The advocate, it is true, may be feeble—but so much the more important is it that you should lend him your honest aid, and not

diminish the little strength he may possess by increasing the difficulties to be encountered. In vulgar, though emphatic language, give us fair play, let us all discharge our duties mutually, faithfully, and harmoniously. If we are to offer up another victim—let him, I say, be offered up at least with those ceremonials which become the ministers of justice, and her own sacred temple, and not swept from the face of the earth by a whirlwind of blind, indiscriminate, headlong and exterminating rage. I ask this for the prisoner—Will you refuse it? I solicit it for justice—Can you refuse it? I demand it for yourselves—*Dare* you refuse it?

"There has been, we are told—DEATH—an untimely death—the death of an amiable, an accomplished female. I mourn as much as the opposing counsel, while I am compelled to confess it. But is the calamity abridged by depriving another fellow creature of his life? Will the flowers refuse to spring from her pure and unpolluted grave, unless moistened and nourished by the blood of the prisoner? 'But,' says the learned counsel, 'she died by his hand'—fatal and unquestionable truth! Yet all this may be, and still to deprive him of life, may be less pardonable than even the offence which is the subject of complaint. It is the *heart* and not the *hand* of the alleged offender that is to be examined. It is the motive, the impulse, and not the act itself that is the subject of contemplation. Thousands of cases present themselves—none more melancholy or deplorable, it is true—but all more heinous, in which life may have been lost, and still the actors in those bloody scenes remain free from legal or moral reproach.

"Man is a moral and responsible agent; such, at least, is his presumed character, and as such he is rewarded or punished. His reason is sovereign, and he is a traitor to it, should he voluntarily abuse or pervert its divine precepts. But take reason from him—destroy all the delightful harmony of the intellectual structure, and render it like 'sweet bells jangled out of time and harsh,' and where is his responsibility, either to this world or the next? Would

it not be barbarous—manifestly unjust, to add to the afflictions of a distracted and distempered mind the still heavier curse of an ignominious and disgraceful death?—a death provided and designed only for those the condition of whose mental faculties supplies them with the rational power to choose between good and evil. I agree that all men are presumed to be sane until the existence of insanity be shown—and, on the other hand, I contend that when general insanity is once shown, the presumption is in favor of the alleged offender, and it is incumbent upon the prosecution to defeat or remove that presumption by establishing a lucid interval at the time of the commission of the offence. But, if the insanity relied upon be not general, but partial, and of a temporary existence, all that those on the part of the prisoner are bound to show is, that the insanity existed at the very period to which the charge against the prisoner refers.

"In the construction and interpretation of the evidence upon these points, however, there is this essential difference—We having succeeded in creating rational doubts of the sanity of the defendant, the mercy of the law, which, as I have said, 'spreads undivided, operates unspent,' through all stages and branches of criminal jurisprudence, entitles the defendant to an acquittal. For there is no difference between a reasonable doubt of the commission of the act itself, and a similar doubt as to the moral agency or responsibility of the defendant. It is in vain for the gentlemen to tell you that the fact itself is as plain as a sunbeam; that it has been abundantly proved—that it is not denied. The indictment charges the act with having been committed feloniously and with malice aforethought—the motive is the essence of the offence, and where there is no mind there is no motive."

The defendant, as has been intimated, probably could never have been entirely acquitted, but still, the

difficulty of the case was increased by the state of the law at the time of his trial. There was at that period no "murder in the second degree," in New Jersey.* Felonious homicides were there divided, as in England, into murder and manslaughter. The gulf between murder and manslaughter was too wide to be overleaped. Nor is it even certain, that if murder in the second degree *had* existed under the laws, that the facts in this case could have been reduced to that limit.

After a trial of upwards of a week, during all which time the able Chief Justice, Hornblower, displayed alike great comprehensiveness of mind and great humanity, the result was a conviction.

The counsel concerned for the prosecution, were Mr. J. Moore White, Mr. Warren Scott, Mr. Southard, Mr. Dayton, and Mr. Hamilton. For the defence, Mr. Cambloss, Mr. Hazlehurst, and David Paul Brown. The arguments were elaborate, but on the part of the defendant, almost entirely hopeless.

During the course of the trial there was an occurrence which is entitled to notice. When I first called upon the prisoner, after he had furnished me with some of the prominent details, I asked him how the deceased was dressed at the time of the blow. He said, in black. I observed, "that was better than if the dress had been white." Upon which the prisoner turned

* Murder in the second degree has since been introduced, and the law in that respect in New Jersey, resembles that of Pennsylvania.

hastily round, and asked what difference that could make. The reply was, "No difference in regard to your offence, but a considerable difference in respect to the effect produced upon the jury by the exhibition of the garments, which no doubt, will be resorted to." And so upon the trial it turned out. The black dress was presented to the jury—the eleven punctures through the bosom pointed out—but no stain was observable, no excitement was produced. At last, however, they went further, and produced some of the white under garments—corsets, etc., all besmeared with human blood. Upon this exhibition there was not a dry eye in the court-house. And the current of opinion continued to run against the defendant from that moment until the close of the case, and finally bore him into eternity.

There are two other matters—matters connected with the history of the unhappy man—that deserve notice. After his conviction, when stepping into a carriage with my family to return home, I was informed by a person that C—— wanted to see me, and that he had resolved to take his own life, in order to avoid public execution. Directing my family to wait for me, I went forthwith to the prison, where I depicted to him the horrors and the hopelessness of suicide—showed him it was a crime of the darkest dye—that, as it was the last act of his life—and as there was no repentance in the grave, his perdition must be irrevocably fixed. After going into the matter much more

fully, the unhappy man relinquished a knife, which he had concealed in his clothing, and abandoned the notion of "self-slaughter."

Subsequently, and as the time for the expiation of his offence was drawing near, he became very much alarmed, but strange to say, his fears were all directed to physical suffering—the pains of the body—in the article of death. He consulted the doctor as to the best mode of avoiding prolonged agony. He studied the length of the rope—the fall that would be necessary to dislocate the neck, and adjusted all his plans with the utmost care. But while making these sad arrangements, he also contrived to loosen and remove the bars of his cell, and to escape through an aperture thus formed, of not more than fourteen inches square. He was gone—rewards were offered—the county swarmed with pursuers—the woods in the neighborhood were surrounded, but no discovery was made. In a short time no doubt the search would have been abandoned; when, on the night of the second day, he issued voluntarily from his hiding-place with an axe upon his shoulder, and surrendered without any attempt at resistance, declaring that he was hungry, and had had nothing but a few crackers to eat for the last forty-eight hours.

This is, perhaps, the most extraordinary feature in the melancholy career of this young man—shrinking from an ignominious death—having succeeded in escaping from his imprisonment, and eluding his pursuers—

a good swimmer, and within a short distance of the Delaware river, which, once crossed, he might have considered himself safe. That, in these circumstances, he should have loitered about in the woods, in the neighborhood of the prison, for more than two days, and then voluntarily surrendered himself, because he was hungry, would almost seem to exceed the limits of rational belief. Yet, so it was—and the gallows was the sequel.

MURDER AND MAGNANIMITY.

THE earliest case that I distinctly remember, was that of John Joyce and Peter Mathias, for the murder of Sarah Cross. I was then nearly twelve years old, and as the murder took place in the neighborhood of my residence, was induced by youthful and natural curiosity to go to the court to hear the trial. The court-room was very much crowded, and it was only by favor that admission was obtained. The prisoners were defended by Richard Rush—afterwards Secretary of the Treasury of the United States, Attorney General, etc. —and by Nicholas Biddle, a distinguished scholar and most accomplished gentleman, subsequently President of the Bank of the United States.

In despite, however, of the ability and eloquence of the counsel, both of whom were very young men,

though of great promise, the defendants were convicted, and shortly after, executed. The execution was much talked of among the children at the time; and as one of its mysterious and startling incidents, it was said that after Peter, who was the least offender, was cut down, by dint of the galvanic process he had been restored to life.

Years rolled round. The murder and the miracle, as it was considered, were both forgotten; when in the year 1822, (fourteen years after,) Luke Morris, Thomas Harrison, and Isaac T. Hopper, called upon me to defend an alleged fugitive slave from the claims of his master.* The case was to come before Recorder Reed, who had consented to give a hearing at the Prune Street Prison, where the slave was confined.

On arriving at the place of trial I approached the respondent, and privately, as a preliminary, inquired his name. He told me his name was Peter *Mathias!* as quick as lightning, my boyish recollections recalled to my mind the report that Mathias had been restored to life by the galvanic experiment. Scarcely doubting that the man before me was this veritable personage, and involuntarily somewhat recoiling from him, I exclaimed, "Peter Mathias!—why a man of that name was executed some years ago for murder." My astonishment was not a little increased, when he replied, "Come near, and I will tell you all about it." If I had had any doubts

* The master was represented by Charles Jared Ingersoll.

before they would have vanished. Upon approaching him, however, he soon relieved my apprehensions by the following extraordinary disclosure: "My name is not Mathias, but John Johnson. I knew Peter Mathias when he was thrown into prison. I also at that time was imprisoned for an assault and battery. On the morning that Peter was led forth to execution, he called me to him, and said, 'John, you are a *slave;* I am *free;* here are my freedom papers; I am going where I shall not want them; they may be of use to you—take them; change your name to Peter Mathias; and if your master should ever claim you, show these papers, and they will protect you.'"

Of course, no honorable advocate could take advantage of such an artifice, and the unhappy man was restored to the claimant. This simple story is introduced to show in what horror slavery is held by these wretched beings; and also to show how much magnanimity may be sometimes concealed under a sable skin. Had Peter been a Roman, he would have figured for this one act upon the historic page, and secured an immortality of fame.

SUPPOSED MUTUAL MURDER.

On a Sabbath night, in the summer of 1845, a man staggered into my office, weak from exhaustion, and

perfectly wild with terror, and suddenly exclaimed, "I have just killed a man, and I want your advice as to what I am to do." "First let me know," I replied, "what you *have* done." The story ran thus, in his own words:

"As I was coming out of Darby with my gun, two gentlemen drove along in their buggy, and so closely to me, that my gun got caught in the wheel, and broke one of the spokes. Immediately one of the gentlemen jumped out, and approaching me violently with a loaded whip in his hand, struck me with great violence, and as he passed, I struck him with the butt of the gun, and he fell dead." I suggested the probability that he was not dead. But the poor man could not change his mind, and added, that so great had been his terror, that he had taken a back road and run all the way to the city, a distance of five miles. "Now," added he, "what am I to do?" The advice given to him was to repair immediately to a neighboring magistrate—to relate his story exactly as he had related it to me—to request it to be taken down in writing—to give his exact residence, and to promise to give any bail, or surrender himself to prison. All this was done, and my name was left at the office of the magistrate.

Three days after this, the magistrate called upon me, and requested that I would send the self-accused man to his office, and related the following circumstances: "Yesterday morning," said he, "a gentleman,

slightly injured about the head, called and informed me that he had reason to believe he had killed a man on the Darby road; that he had struck him a heavy blow with a loaded whip; that he himself also received a blow by which he was prostrated; that upon recovery, the party whom he struck could nowhere be found, and that no doubt he had dragged himself into some covert or ditch on the road-side, and there died; that as night came on, he could not be found, but no doubt was dead, as the blow was a severe one." The two ghosts were of course soon brought together, and there never were two apparitions more delighted—so they shook hands —mutually paid costs—and parted friends.

INFANTICIDE.

A young and interesting girl, of a respectable position, had trusted, and been betrayed. She became a mother. At the age of three weeks the child died—somewhat suddenly. A post mortem examination took place. The death was said to have been produced by arsenic, and the medical witnesses strengthened that opinion by their testimony. The mother was indicted for murder, and was tried before Judge Symser, of Montgomery County, a humane, an industrious, and eminent judge.

In addition to the scientific evidence, and in strong

corroboration of it, it was shown that a day or two before the death of her infant, the mother had sent for half-an-ounce of arsenic to a grocer's. That after the death the arsenic was taken to the grocer's, and was weighed, and had lost twenty-four grains in its weight. This circumstance, together with the opinion of the chemist, presented a strong case. Neither was sufficient in itself, but together they were dangerous. Of course, the cross-examination as to the weight, was very rigid and severe. Upon this particular point it ran thus :

"When the arsenic was purchased, how did you weigh it?"

"I weighed it by shot."

"How many shot?"

"Six."

"Of what description?"

"No. 8."

"When it was returned, did you weigh it in the same scales?"

"Yes."

"Did you weigh it with the same shot?"

"I weighed it with shot of the same number—for I had no other number."

"How much less did it weigh?"

"Twenty-four grains less."

It was plain that this testimony bore hard upon the prisoner—but at this stage of the case the court ad-

journed. Immediately my colleague (Mr. Boyd) and myself visited the stores of all the grocers, and took from various uncut bags of No. 8, the requisite number of shot, subjected them to weight in the most accurate scales, and found that the same number of these different parcels of shot varied more in weight than the difference referred to as detected in the arsenic at the time of its return. The shot—the grocers—the apothecary—the scales—were all brought before the Court. They clearly established the facts stated, and enabled us fairly to contend that there had been no portion of the arsenic used,—which argument, aided by the excellent character of the prisoner, proved entirely successful, and after a painful and prolonged trial, she was acquitted; so that her life may be said to have been saved by a *shot*.

CASE OF DR. ELDRIDGE.—FORGERY.

On the 1st of May, 1840, the newspapers teemed with accounts of a series of forgeries, perpetrated the day before, on twelve of the Philadelphia banks, that, for skill and boldness, surpassed all former exploits in the annals of that branch of crime. It seemed, that more than a year before, the offender, whoever he was, had opened accounts in twelve city banks, and had kept them in active motion until the final consummation of his purpose. He used the names of three firms,

entirely fictitious, viz., in four of the banks, Geo. B. M'Kee & Co.; in four others, Sternes & Wood; and ——— ———, in the four other banks. It was apparent, from an analysis of the deposits and drafts, that his whole stock of cash was less than twelve hundred dollars, yet, with this sum of money, he kept up the appearance of a lively business account in each bank, by drawing and depositing continually, and thus established with the tellers, for these fictitious firms, a familiarity and confidence that enabled him to achieve, in the end, complete success.

The plan which he adopted, was this: In October, 1839, all the city banks had suspended specie payments, and had not yet resumed; it was, therefore, policy on their part, to reduce their circulation as much as possible; and the mode they practised to carry out that determination, enabled the forger to mature his purpose with less risk, if, indeed, as was generally believed, it did not *suggest* it to him. The checks of their customers were no longer paid in bank notes; but, as presented, if of any amount, were marked on their face "*Good*," by the paying teller, with his signature subscribed. These checks were then passed from hand to hand; but, generally, they were deposited in banks by the holder as cash, in the bank in which he happened to keep his account.

For some months after this system was adopted by the banks, it was carried out with great strictness. No

bank notes could be obtained from any bank in payment of checks. In course of time, however, the banks relaxed the rule; and, in April, 1840, they would, if desired by the holder, pay out their notes, though certainly somewhat reluctantly. On the 30th of April, the ingenious contriver of the scheme we are describing prepared thirty-six checks, twelve for over eight hundred dollars each, twelve for over four hundred dollars each, and the remaining twelve for twelve hundred and thirty dollars each. The two former series of checks were drawn by each of the fictitious firms, on one of the particular banks in which the account of that firm had been kept, and all marked "Good," with the forged signature of the paying teller of the bank. The remaining checks were drawn ready for use, when the forged checks should be deposited, and entered as cash in the respective banks. On the day of final operations, the money remaining had been prudently withdrawn from the banks, so that nothing should be wasted.

Armed with these thirty-six checks, and with his twelve bank books, the forger started out, on the 30th of April, 1840, to reap his felonious harvest, and, in two or three hours, succeeded in obtaining twelve hundred and thirty dollars from each of the twelve banks whom he had favoured with his custom. He deposited in each, one of the checks of over eight hundred dollars on another bank, and one of the checks of over four hundred dollars, also on another bank, adroitly

placed with thirty dollars in bank notes in the bank book; and the credit was entered by the receiving teller. He, then, in every instance, walked to the desk of the paying teller, presented the check of twelve hundred and thirty dollars upon that bank, stated that he wished it paid in notes, and received the amount accordingly. The operation went through with the most complete success. In fact, the forgery of the signatures of the paying tellers of the different banks was so well executed, that, until they were carried around, as usual, to the banks the next morning, and the complicated machinery of the fraud gradually developed itself, no suspicion was excited.

The interest excited by this bold exploit in crime, was soon after increased, by the remarkable circumstances connected with the arrest of the party accused. It is due to the defendant to say that after a series of trials he was acquitted.

PERILS OF INFIDELITY.

One of the most extraordinary characteristics of an infidel, and one that I have never heard adverted to, is, that while he assumes bravery enough to defy the Deity and trample upon his holy word, he is, of all human beings, the greatest and most unmitigated coward, when opposing his fellow men, and confronting human laws. He can bear prospective and eternal

punishment beyond the grave, but immediate and temporal punishment, though it be but the punishment of opinion, entirely overthrows his philosophy.

I have known a witness engaged for hours in endeavoring to evade an acknowledgment of his infidelity, though he would voluntarily obtrude it, perhaps, upon any private opportunity. For the benefit of those who are of this way of thinking, and who consider future punishment so remote, as to venture to sport with and invite it, we may be permitted to say, what to some will be matter of novelty, and to many matter of interest, that in most Christian governments, and especially in this Republic, no man possesses the full franchise of a citizen, who does not believe in a Creator, or a future state of rewards and punishments. Nay, to such a depth is he degraded, that he not only can hold no office of trust or profit under the Constitution and laws of the land, but he cannot be permitted to testify, either for or against another, or in his own behalf, even where he has sustained personal injury: he is placed upon the footing of a felon, against whom sentence has been pronounced, with this difference, that the convict may be restored to competency by pardon, though he retain the stolen goods, but the Atheist never can be restored, until he recant his opinions, and of course, cease to be an Atheist.

We remember two remarkable instances, illustrative of these positions; one in a civil, the other in a

criminal case:—A merchant of great wealth, having instituted a suit against another, offered himself to prove, according to the general legal privilege, his books of original entries, upon the establishment of which, as they were kept in his own handwriting, his entire fortune depended. Before he touched the Bible, to be sworn, the opposite counsel called two witnesses, who proved that some months before, the plaintiff had stated that the Bible was no better than a romance, and that future rewards and punishments were all a farce. Of course he was excluded, until with difficulty he succeeded in showing, that since the time of using those expressions he had reformed his opinions, become a regular attendant at church, and had invoked the aid of a minister of the gospel in the last sad offices performed for a dying friend. How narrow was *his* escape from *annihilation* on *this side of the grave!* When finally allowed to be sworn, you may suppose he professed the most devout belief in all that was necessary to render his testimony effective.

The other case to which I have referred, was that of an individual charged with murder; the only evidence against whom, were the dying declarations of the wounded party. *He* was shown, also, to have repeatedly used expressions similar to those adverted to in the civil case; and although a consciousness of approaching death is deemed equivalent to the obligation of an oath, yet as an infidel could not be sworn, his

dying declarations could not, of course, be received. These decisions of the law, to say nothing of piety, are founded in the purest reason.* Every man who becomes a witness, assumes an obligation to tell the truth; but where is the obligation in such a case as this? A man who does not believe in a God, certainly has no right to challenge belief at the hands of his fellow men. But, as we have intimated, there are still other disabilities to which an unbeliever, such as I have spoken of, is subjected. From the highest to the lowest public office or function in the General or State governments, the sanction of an oath or affirmation is required. The President of the United States, the Senate and House of Representatives—all the members of the judiciary—the jurors, who are to determine upon the rights and liberties, and lives, of those committed to their charge; the counsel, who are attendants upon the courts of justice—nay, the very bailiff or tipstaff who escorts the jury, are all *sworn* to the faithful discharge of their respective duties, and therefore, no man who is an unbeliever, in the sense in which we have spoken, can be competent to fill any of those posts, or exercise any of those functions, or indeed any other office or function which, under the Constitution and the laws, requires the preliminary obligation of an oath.

These penalties, or these deprivations of privilege,

* Lord Bacon.

as they may more properly be called, belong to civil polity, and are essential to those principles upon which the administration of temporal justice is founded.

TRIAL OF JOHN WINDSOR FOR MURDER.

As remarkable a case of murder as probably ever happened in this country, is that which is now briefly placed before the reader. It was tried before the Court of Oyer and Terminer, held at Georgetown, Delaware, on the 25th day of June, 1851. The trial itself was surrounded with circumstances somewhat unusual. The case occupied nearly two weeks; and the excitement produced through the surrounding country became so great, that several days were occupied in obtaining a jury. This, however, was at last accomplished, after exhausting the regular panel and a great number of talesmen: sixty-four challenges for cause, and fifteen peremptory challenges, having been made. But we pass over many unusual incidents connected with this case, and proceed to a brief history of the facts essentially involved in the issue.

The prisoner, John Windsor, was a man of about seventy years of age, of small and delicate person, and bore the appearance of having been respectably associated in life, and proportionably well educated. Through honest industry and attention to business he

had succeeded in laying up a pretty considerable amount of property. About six years before the time of this trial, he lost his first wife, and some two years after that event, married the unfortunate woman who came to her untimely death by his hands. She was quite young—some twenty-three years of age, and described to have been interesting, faithful, affectionate, and, in a word, all that her husband conceived she was not. By this wife, Windsor had two children; but so far from their births affording to their paternal parent the pride and satisfaction that it would be supposed his advanced age would receive from such events, they were the innocent cause of that unfounded suspicion which finally developed itself in decided monomania, and terminated in the murder of this unoffending and innocent woman.

Windsor conceived the idea that these children were not his own—the notion originating, no doubt, from his reflection upon his advanced age, and the great disparity of years between himself and wife. There was, however, no proof of this, though it is a fair surmise, to explain how the demon of jealousy and suspicion first crept into his bosom. He had been married before, and from all that appeared to the contrary, had lived peaceably enough with his first wife, who, we believe, never brought him any children. He had always been a strange man, and by ordinary people, would have been considered an insane man, as far back as he could be traced, but by

the *extraordinary* people of the county where he lived, it appears he was regarded without remark or suspicion. His beliefs and superstitions on many subjects were kindred to those of others, and in proportion as he exceeded them in his disordered flights they venerated him rather as a superior being. He believed in ghosts, in fortune-tellers, charms, and witches—so did they. Their folly was from ignorance—his from a diseased physical organization and perverted mind. But this distinction they could not see; and the fact has only been adverted to here for the purpose of showing how difficult it would be to convince such a set of people that any man could be insane, whatever might be his doctrine or conduct.

The doubt of the legitimacy of the children having once entered his mind, it naturally sought for objects to connect with it and strengthen it. It seems that there was one Joseph Osborne, who was acquainted with Windsor's wife, and frequently visited the defendant's store and house—upon this man his suspicions fell, though without the slightest foundation.

For some considerable time previous to the murder, Windsor watched every action of his wife and this Osborne, closely. Their most innocent and ordinary actions were construed by him into evidences of the strongest guilt. He made memoranda on pieces of paper, and the backs of old almanacs, etc., of every thing they did and said, every expression of their countenance, their slightest gesture, both when they

were apart, and together. Some of his entries were such as these: "14*th of April.*—Found them fastened up together—wife confused, etc. Quarrelled with wife about it. Wife abused me about Osborne. She would delay milking till dark to meet O.; traced their tracks; showed them to Ann and John Rollins; caught them together afterwards. She went home 5th January, 1848, to her father's; before she went, she took a saunter in the garden to the grape-house, touched the strainer as she passed, and O. met her there; saw the track plain; saw him in the cooper-shop beckoning for her. *January*, 1847.—Saw wife and O. winking; he patted her on the shoulder. *February* 14.—She went to see O. *March* 14*th.*—Wife angry because she can't see O., which she says is heaven; says she didn't like me. *May* 2.—They meet out—so every opportunity while I was sick. He poisoned my dog. *July* 9.—Wife abused me—said I was a fit associate for Billy Briam. *Aug.* 20*th.*—She was with O. last night. I looked sulky in the morning, and she took the hint and denied it. *Oct.* 11*th.*—She was with him in the stable. I now found out that rattling the strainer was a sign for him. *April* 1.—Said she was not satisfied with me; said I need not accuse poor O. *June* 7*th* and 9*th.*—They were together; also 28th and 29th. She erased the tracks with a hoop; she made sport of my accusations. She found out she was pregnant, and tried to make me believe it was mine. I

walked with her, and going by where the strainer was hung, she touched it; knowing it was a sign for O., I accused her of it, and she 'blowed me,' which came near killing me, etc., etc."

These notes contained almost a diary of his suspicions—his wife's conduct, etc.; a note of every one who came to the house, and showed suspicions of almost every one. They stated many instances of abuse of himself by his wife, by words and blows; most aggravating and tantalizing language, &c. The above extracts, from the original papers kept by the prisoner, and produced at his trial, will serve to give a fair idea of his condition of mind at the time to which we refer.

Day by day, this delusion strengthened upon him. And there was still another cause more extraordinary, added to it. He supposed (obviously, from his reliance on witchcraft,) that his wife and Osborne had acquired the power of blowing "a hot, poisonous stuff" upon him, and that they were constantly exercising this power, for the promotion of their criminal intercourse. Nor was this suspicion confined entirely to these two, but he thought that several of his neighbors, that he believed to be confederates with and abettors of his wife and Osborne, possessed a similar power of doing him injury. He said that they all could *blow this hot stuff upon him* from a considerable distance, and that his nose, face, head,

and whole body, were continually burning with it. It was to this power that he referred, when he speaks in his memorandum of his wife's having "blowed him."

In a short time from the commencement of these two several delusions, they became combined together—inseparably—and finally took entire possession of his mental faculties. His entire hallucination had reference to his wife's infidelity, and the conspiracy to poison him. He would sometimes get up from his bed in the middle of the night, and take his clothes and shirts several miles off, to a woman, to have the "poisonous stuff" washed out of them.

On one occasion, while driving out with his wife and children, he said that they had got along very comfortably for some distance, when all at once the horse became frightened so that he could hardly hold him; shortly, the horse became frightened again. The first time he said nothing to his wife; the second time he spoke to her, and said: "Nancy, child, if you do not quit blowing this poison on me, the horse will run away and kill us and the children; the horse has got the scent of this poison you are blowing on me, and is frightened." She answered, of course, that she had blown no poison on him; but it was impossible to turn his mind from the diseased bent it had taken.

He would bore holes all over his house, through which to watch the motions of his wife. One day he suddenly took his departure from home and went to Wil-

mington, for the purpose of consulting a fortune-teller as to the fidelity of his wife and legitimacy of the children. While there he called upon an eminent lawyer to draw up his will, disinheriting his children, as bastards, etc. It would be impossible, in this brief sketch, to follow him amid all the crooked, erratic paths of his disordered intellect. Each day his monomania took a deeper, deadlier hold upon him, until finally he frequently and publicly threatened to destroy the lives of his wife, Osborne, and some three or four others, to whom his suspicions had attached.

About this time, Mrs. W. was cautioned by her friends to beware of her husband, but, as he had frequently threatened, without doing her any injury, she expressed herself not to be afraid of him. His conduct to her was very changeable; at one time he would say, "Nancy, I have told you, that you would some day tremble in my presence, and I intend to kill you." Again, he would tell her, "I never shall hurt you, unless in self-defence." A few days before the homicide he was found shut up in his store, lying on the counter, with new muslins sewed together for a covering. His own clothes and bed linen, he said, were all sprinkled with poison. Being asked whether he had taken any nourishment, he replied, that he was afraid to take anything but hot water and crackers. A day or two after this, he wrote out a long account of his suspicions of his wife's infidelity, and referred fully to the contemplated crime.

The next day after he had written the letter, he loaded his gun and left the house, saying to a person that he met, "If you should hear of anything serious happening at my place, don't disturb me." In a short time after this he returned home, went to the garret, where his wife was weaving, told her that he had often said to her, that the time would come when she would tremble in his presence; bid her prepare, as her time was short, and then drawing out a pistol, shot her mortally. He then went down stairs, and taking his gun in his hand, took his position at his door, and levelled the weapon at a man who was passing by. At this moment an acquaintance coming up, said, "Captain, what's the matter?" He replied, "Where is the d—d son of a b—h? I have shot my wife—go up stairs and see her, if you choose." At this moment it would appear that Windsor was in a state of high excitement. The man accordingly went up stairs, and found Mrs. Windsor lying upon the floor, very pale, with a child of some eighteen months sitting by her, crying. She at once requested to be carried down stairs; said that her husband had shot her, and that she should die in a few minutes. Immediately before her death she sent for her husband, who at once went to her. She desired to be lifted in her bed, and said to him, "Take care of your children; I have but a few moments to live; before God, and on my dying bed, they are yours, and I want you to do a father's part by them." She

then requested him to look at her wound; he began to cry, and said he would not have done it for a thousand worlds, and then hurried out of the room.

Mrs. Windsor died about three o'clock that afternoon. In her dying moments she expressed no anger or reproach towards her husband, but begged that he should not be hurt or removed from the house. On his part, he exhibited deep grief for the act he had committed; exclaimed that he had done a very wicked deed, and, as for his children, he hoped God would bless them, and declared that he would not hurt them for the world. Soon after the murder he took a half gill of laudanum, and then locked himself up in his store. When found there, he was lying on the counter with a pistol in his hand, which, being requested to deliver up, he did so in the most passive manner. He then rolled up his sleeve, exhibited his bare arm, and remarked that, yesterday it was full and fleshy, but now most strangely shrunk; mentioning at the same time, something about that "cursed stuff." In a short time after the murder he seemed to forget all about it, and rarely, if ever, referred to his wife again, but his delusion concerning the poisonous stuff that was thrown upon him, still remained. He imagined now, that every one who approached him was blowing this poison upon him, and when visited in his cell by the physician, who asked him how he had slept during the night, replied in a low whisper, "They put it in the water, and I could

not close my eyes." He seemed particularly to suspect the sheriff and the keepers of the jail, and said that they were constantly "blowing on him."

On his trial, which took place some two months after the commission of the murder, he was defended by Messrs. Robinson, Houston, James A. Bayard, and David Paul Brown. In its progress he appeared to take little or no interest, and as to the case and all its circumstances and consequences, seemed to be the most unconcerned man in the room. Not so, however, with regard to the subject of his hallucination—from the first moment he entered the court until he left it, he sat with a newspaper covering his head, to shield it from "the poison;" watching every man who approached him with an insane quickness of eye, crouching under the fear of injury, and presenting really the most painful spectacle of a wrecked and ruined mind, that could possibly be imagined.

Notwithstanding all the facts that have been related, and which so clearly proved his insanity, and that there was no evidence of any kind offered by the prosecution to oppose this proof, the jury in the case, after a long and tedious trial, returned a verdict against the prisoner, of "GUILTY OF MURDER IN THE FIRST DEGREE!" The Court speedily proceeded to pronounce the sentence of the law, and the poor old man was condemned to be executed on the 17th day of September, 1851, showing, that while a plea of INSANITY, supported by such

facts as this case presented, would, in enlightened communities, have assured an acquittal of the prisoner, yet, in this particular section, where the minds of the people were so much imbued with the grossest doubts and superstitions, it seemed to have been the weakest of all possible defences. The old man was, however, pardoned by the governor, but still lives in confinement, a monument of the wisdom, intelligence, mercy, and justice of a Sussex county jury.

INSANITY.

A Mrs. D. of Pennsylvania, applied to counsel, in relation to a Deed of Trust, through which her support was to be derived, she living, at the time, apart from her husband. She was a highly respectable woman—but, undoubtedly, demented.

Some months after this application, the counsel being confined by sickness, was informed, by his servant, that there was a strange lady at the door in a carriage, who desired to know, whether he, (the counsel,) would consent to her going to the Pennsylvania Hospital—to which the counsel replied, "That *he* had no objection,

if *she* had none." From this time he heard no more upon the subject, until about six months after, when Mrs. D., who, it seems, was the lady in the carriage, called upon him, muffled up in a very extraordinary way, having just escaped from the Hospital. She complained bitterly of his having allowed her to go to the Hospital, asked his opinion as to the propriety of her visiting her friends in the country, and, after talking wildly for a considerable time, took her leave.

What was the surprise of the counsel, about two months after, to receive a letter from her, stating that she had entirely recovered her health—expressing the hope, that the servants had conducted themselves well during her absence—that the house had been kept in good order—and concluding by saying, that she should return next week, and should be happy, if her husband would meet her half-way on her journey—she then signs her name, Mrs. B.

Some days after this, while in the midst of an argument in Court, Mr. B.'s servant called upon him, and informed him, "that a lady, calling herself Mrs. B., was at the house, with a large quantity of baggage, and had taken possession of the parlor." Mr. B. confided the case in which he was concerned to a professional friend, and at once proceeded to his home. There he found the lady, attired in a sort of wedding-dress; she met him with the greatest tenderness, and begged "that he would not be disturbed—said that she had found the

house in a very good state—that the servants had been very attentive, and had given her her breakfast—and that every thing was right." "No, Madam," said the counsel, a good deal annoyed; "every thing is not right; it is not right, that I should be troubled with another man's wife, and one who is to me a comparative stranger. You have a worthy husband, who lives within a half-dozen squares of this place, why don't you go to your husband?" "Is it possible," says she, "that you deny being my husband!" The counsel, finding it useless to attempt to undeceive her, or to remove this illusion of mind, and his attendance being required elsewhere, called to a gentleman in his office, and requested him "to desire Mr. D., the husband, to come down at once, and take charge of his wife."

Immediately upon this direction being given, the poor woman at once exclaimed—"Is it possible that you would send for him? that you will give me up to him?" The counsel replied: "It is not only possible, but it is certain." Whereupon, the whole demeanour of the woman changed—she exhibited the greatest trepidation—begged "that a coach might be sent for, to remove her and her baggage." This was accordingly done, and, very much to the relief of the counsel, she departed. She has never been seen since, with the exception of once, while passing along the street in a carriage, she encountered the counsel, when, folding her arms and fixing her eyes upon him, she manifested the utmost scorn

and contempt for one who, she no doubt thought, and will continue to think, had treated her with the most unaccountable neglect and cruelty.

REASON AND METHOD IN MADNESS.

WILEY WILLIAMS, a gentleman from the South, had been about a year in the Blockley Asylum. Having made his escape, he wrote to counsel, wishing to know what legal redress could be obtained for his ruined prospects, etc. In his letter he thus reasons: "If I cannot obtain redress, I will shoot Dr. Kirkbride for having imprisoned me; and should I be tried for murder, my defence will be this: If I am mad, as you say, I cannot commit an offence—if I am not mad, you deserve death for having deprived me of liberty, and blighted my hopes." Not receiving an answer, he carried out his threats. He perched himself in a tree in the garden of the Asylum, and as Dr. Kirkbride passed, shot him from behind; but happily the contents of the gun lodged chiefly in the rim of the doctor's hat, and the result was comparatively harmless.

Williams was afterwards tried for an assault and battery, with intent to kill; but his insanity being established, he was acquitted, and ordered into strict custody

in the penitentiary by the Court. There he shortly afterwards died, having never been restored to reason.*

THE CRAFT OF INSANITY.

M., HAVING written a letter from the Asylum, made up of patches of Latin, Greek, French and German, and manifesting most clearly a disordered mind, upon escaping from his confinement, desired counsel to institute an action for false imprisonment, against the Managers. "I shall do no such thing," said the lawyer, (handing him his letter.) "Look at that, and tell me whether a sane man ever wrote such a letter." Upon which, bursting into a laugh, the madman said, "That indeed does look as if I were insane; but I wrote it purposely in that way, because I knew if it had been reasonable, and the Managers had opened it, as they always do, they never would have allowed it to reach its address."

* Upon a defendant's being acquitted on the ground of insanity, the Court is authorized by the act of June, 1836, (Stroud & Brightly's Digest, page 556,) to order the defendant to be kept in strict custody, so long as he shall continue to be of unsound mind.

WALKING ON THE WATER.

THE wife of Mr. H. called upon counsel to obtain a commission of lunacy against her husband, who imagined himself to be the Apostle Peter. This was done. About six months after, she applied to the same counsel to have the commission rescinded, on the ground that the lunatic had recovered his reason. In order that this might be done, it was necessary that testimony should be taken before an examiner, to satisfy the Court of the truth of this allegation.

Upon the examination, it was proved that the insane man had been some time in the Hospital, and was deemed incurable, when the wife asked permission of the Managers to take him a riding in a carriage. This request, as he was not violent, was granted. When they reached Frankford, however, not guarding him sufficiently, he made his escape, and being found, after long search, it appeared that, governed by his hallucination, he had rushed to a neighboring milldam, (ten feet deep,) to make the experiment of *walking on the water*. He plunged in, and, though utterly unable to swim, he succeeded, through faith, in reaching the opposite bank; and whether from the effect of the cold bath, or from the practical proof of the difficulty of the undertaking, he was from that moment entirely cured of his apostolic and aquatic pretensions, and restored to sanity.

DOUBLE INSANITY.

We have all become familiar with the veritable story of a young artist, who, having been engaged in one of the lunatic asylums of England, in taking the portrait of an insane patient, became insane himself, during the progress of the work. We have also read, with interest, in Warren's Diary of a Physician, the case of the Baronet's Bride*—in which, Lord Harleigh led the physician to the belief that his wife was hopelessly insane, while he himself was little short of a raving maniac. But a more extraordinary case, was that of Mr. and Mrs. D., in which counsel—physician—clergyman—and, in short, every one connected with or concerned in the case, were involved in error. The parties were in the highest social position in life—and the lady of uncommon personal attractions. For a time, to use a common phrase, they literally rolled in wealth, and became "the observed of all observers." They had but one child, a little girl about two years old, to whom, it need scarcely be said, they were devotedly attached.

The husband was deeply concerned in very extensive mining companies in Mexico, and had been absent for some months. Upon his return, he launched out into every possible extravagance—purchased a splendid

* Diary of a Physician, vol. III., p. 112. By Sir Samuel Warren; the author of Ten Thousand a Year, and at present Attorney General of England.

house—filled it with the most gorgeous furniture—and sported jewelry upon his person, that was almost a fortune in itself. By his account, his wealth was much more abundant than his outlay; and, strange to say, the gentlemen who were connected with him in his great mining operations, and who were the most prudent and sagacious of our citizens, reposed the most unlimited confidence in every thing he said and did, and imagined that he had secured for them "the whole world in a string." The wardrobe, or paraphernalia of the wife, was of the utmost magnificence; and, judging from externals, there never could have been greater harmony or prosperity in a family.

In this state of things, I was applied to by the wife, and informed "that her husband was deranged—that she had left her home with her child, and taken up her residence in one of the principal hotels in the city—and that her husband had accused *her* of being insane, and had written to her father, a man of high position in a neighboring State, to come on and take charge of her." In addition to this, she mentioned, "that the husband was determined to obtain the child, and had applied to Mr. John Sergeant, in order to procure a *habeas corpus*."

Several conferences took place between Mr. S. and myself. Mr. S. was satisfied with the sanity of *his* client, while I had no doubt, making proper allowance for the excitement of a feeble and delicate woman, of the

sanity of mine. In the midst of the negotiation between the parties, D. contrived to get possession of the child, and remove it to the house of his friend, Dr. Harlan.

The terror and agony of the mother can scarcely be conceived. I was sent for immediately to her hotel, where I found her in the deepest distress, with her physician, the Rev. J. Breckenridge her clergyman, and a number of other sympathizing friends. She also exhibited to me the certificates of Dr. Chapman, Dr. Dewees, and other eminent medical men, who had known her for some years, and who expressed their entire confidence in the soundness of her mind, and her entire competency to take charge of her infant child: they also expressed the opinion of her husband's insanity and unfitness.

On the other hand, certificates, it seems, had been procured of the *sanity* of the husband, and of the insanity and incompetency of the *wife*. In this condition of things, as has been said, the husband had removed the child—the mother was in a storm of maternal grief—to talk to her of a *habeas corpus* was a folly—the delay of an hour was not to be listened to, much less the necessary delays of the law. I endeavoured to console her, but in vain. I told her she could not be better protected than she was—with Dr. Harris to take charge of her health—myself to protect her legal rights and interests—and Dr. Breckenridge to administer, what was above all, spiritual consolation.

It is in vain to attempt to reason with a mother when robbed of her child, and nothing would satisfy her, but that the child should be produced. To relieve her anxiety, I immediately went to the doctor's house, to which the infant had been carried, and ascertained that it was still there. I demanded its immediate restoration to the mother. Both the father and the doctor maintained that the mother was insane, and unfit to take charge of the child, or herself. This was denied by me, upon the authority referred to, and I more than intimated, that the mental infirmity was with the father. However, finding that all this would come to nothing, I closed the conversation, by stating "that, although unwilling to cause any exposure of these lamentable domestic difficulties, as they admitted the child to be in their possession, I would issue a *habeas corpus* forthwith; and, if the child were not delivered to the mother in less than one hour, the writ should be served by an appropriate officer of the law, and the child would be taken by force of judicial authority. This brought the matter to a close—a carriage was called, and forthwith the little innocent was reconveyed to the arms of its afflicted mother—and here the curtain fell upon this act of the drama.

A few days after the occurrences thus referred to, the father of Mrs. D. arrived—a meeting of all the parties and counsel, took place. It was finally agreed, that the husband would settle fifteen hundred dollars per

annum upon the wife—that the father should be the trustee—and that the child should remain with its mother. This arrangement having been completed, the wife returned to the place of her birth, with her aged and afflicted parent.

Nearly a year passed over, and I heard nothing further of any of the parties: when, towards the close of that time—having stepped into the Philadelphia Athenæum—I there saw a man seated at one of the tables, with towering white ostrich feathers stuck into the crown of his hat, and literally covered with golden chains. This was a singular display, and I took an opportunity to inspect the personage somewhat more closely—when I discovered it was my quondam acquaintance, D. I spoke to the librarian upon the subject, and from him learned, "that the stranger had been in the habit of visiting the room, often being followed by groups of astonished boys, and that he laboured under a most extraordinary hallucination. He stated, that he had been to Mexico, where he had been attacked and robbed by the guerillas—he had received thirteen blows in the side from their stilettos—that his life was only saved, from his carrying the manuscript history of his travels around his body, which prevented any fatal effects from the assault—and that he was now on his way to China, for the purpose of enlisting a hundred thousand Chinese, with whom he intended to return to Mexico, drive all the natives out of the country, and repopulate that

region with these men, 'who were,' he said, 'an honest, industrious, and ingenious people, and would, in the course of time, be an ornament and a blessing to America.'" From that moment, I have never seen him.

To turn now to the wife: For a long time she lived secluded from all society, and wrote often to her friends complaining of her hapless condition. Finally it was learnt from an authentic source, that she escaped from, or left her father's house, in the depth of winter, at night, and wrapped up in blankets, like a wandering savage, had betaken herself alone to the woods some miles off, where she remained without any sustenance or protection for three entire days. When found, she was almost dead from exposure and famine, and, for many months after, there was but little hope of her recovery. She, too, proved *to be hopelessly deranged.*

Neither of these parties survives—and their melancholy history serves only to show, that the imaginations of men can conjure up no FICTIONS, that are not surpassed by the sad REALITIES of Life.

VON VLEIT'S CASE.

IN the case of *The Commonwealth* v. *Von Vleit*, (in 1842,) which has been referred to in this volume of The Forum,* a new trial having been granted, on the ground of after-discovered testimony, upon a subse-

* Page 34, *et seq.*

quent trial the defendant was acquitted. An action being afterwards brought against the prosecutrix for malicious prosecution, a commission was issued to England, in order to establish the ownership of the defendant in the gold, which he was charged with having stolen. The commission was returned on the 26th of May, 1843, and taken from the post-office by David Paul Brown at half-past six o'clock, in the evening of the same day, and an indorsement made accordingly on the envelope. It so happened that on that precise day, Moore, the alleged accomplice and witness against Von Vleit, escaped from the prison, where he had been kept in order to secure his testimony.

When the case of conspiracy came on to be heard before referees, two witnesses, Behm and Tallmadge, were called upon by the defendant. They attempted to prove—knowing nothing of the return of the commission—that, on that very day they saw Von Vleit and Moore together, at six o'clock in the afternoon, standing under a lamp-post, in Sixth street above Market; and that they overheard a conversation, which had relation to a reward being paid to Moore, provided he would run away, which resulted in Moore's departure. This was fatal (if true,) to the plaintiff's case, as the entire cause rested upon an alleged connection between the prosecutrix and Moore.

The commission was produced—the exact time fixed by the indorsement sworn to by two witnesses, who

were present—the presence of the plaintiff at the time, also established—the whole of the wicked conspiracy overturned, and a verdict given against the defendant, for three thousand dollars.

Nor did this apparent providential interference end here—the defendant, Mrs. H., appealed. In order that her father might become her bail, she transferred to him her estate, valued at upwards of ten thousand dollars. Shortly after this appeal and transfer, the father, holding the title, took sick, and was supposed to be in a dying condition. Had he died, the property, as it vested in him in fee, would have passed to his other children, in common with the defendant, or by will, she might have been entirely excluded. He refused to reconvey, unless he was released from the liability as bail, so that Mrs. H. was compelled to make a satisfactory arrangement with the plaintiff, in order that his judgment upon the record might be removed. The tables were completely turned upon the original prosecutrix; she prosecuted, in order to obtain three thousand dollars; her prosecution eventually failed, and the defendant's money was returned to him. He afterwards brought an action for a malicious prosecution, and recovered three thousand dollars from his adversary, thus verifying Shakspeare's doctrine, that—

"Even-handed justice
Returns the ingredients of our poisoned chalice
To our own lips."

JULIA MACBETH.

In 1820, just after my admission, Mr. McI——ny, who had been a member of the bar for twenty years—a man of great diffidence, though of great worth and learning, and of the kindest and most philanthropic heart—called upon me, in the greatest excitement, and informed me, that a most interesting and beautiful child was just arraigned, together with her father and mother, for larceny, the first for stealing, and the latter two for receiving, a considerable sum of money—a portion of the money, received of course, by the mother, in the *absence* of the husband, as otherwise no charge could have been legally sustained against *her*. "Well, Sir," said I, "what do you wish me to do?—why did you not take up the defence for the unfortunate group?" "I wish you to do it," said he; "I attempted saying a word or two in their behalf, and I blundered even in that; you will oblige me by going down to the Sessions—the case is to be tried this afternoon before Judge Rush." Of course there could be no refusal, and I accompanied him to the court.

The family exhibited, to be sure, a sad spectacle. The parents appeared to be persons in an humble position in life, and the child, who was a charming little creature, sat with them in the dock, apparently unconscious of all peril, either to them or herself.

In passing her, in her sportiveness she let her mitten fall over the railing, and I picked it up and returned it to her. Judge Rush—with whom I may be allowed to say, I was in some favor, but who was inclined to be suspicious—immediately called me to him, and inquired what it was. I told him it was the child's glove. "O, well," said he, "I thought it was a '*purse!*'" This furnished some opening for further remark, and I asked him, if he seriously thought of allowing that child, scarcely ten years of age, to be tried upon such a charge. The old gentleman's features softened at once, for, with all his external roughness, he was a man of lofty and tender feeling, and he replied: "We will think of it—we will think of it, Mr. Brown." A few minutes afterwards, turning to Charles S. Coxe, (afterwards Judge Coxe, of the District Court,) a humane man, who was at that time the prosecuting attorney, the Judge suggested to him the propriety of entering a *non pros.* upon the bill against the child, which was immediately done. From that moment I felt entirely secure, as regarded the fate of the parents; as the law, as it stood then, would permit no conviction of receivers, without the previous conviction of the principal felon. The law, however, has been since altered in that respect.*

* In April, 1825, at the instance of Recorder Reed, I procured an Act of Assembly to be passed providing for the prosecution of receivers, although the principal felons were not before convicted. This was designed

The child being discharged, the parents were put upon their trial.

The very first witness called was proceeding to state the particulars of the larceny by the daughter; he was stopped at once, on three grounds—first, That the child was not upon her trial; secondly, That her words, or actions, in the absence of her parents, could not be allowed to affect their rights; and thirdly, That if they proved her guilt, without a recorded conviction, they still could not punish the parents. The Judge, who was an excellent lawyer, saw it was impossible that the case could proceed, and a verdict of acquittal at once passed for the defendants; at which, perhaps, no one rejoiced more than the Judge himself. He did not show it, however, but sternly ordered the father to stand up. "Andrew Macbeth," said he, "you and your wife have been mercifully dealt with, and I dismiss you—in the language of the best of books, 'GO NOW, AND SIN NO MORE.'"

PRINCESS CARRABOO.

IN early professional life, upon entering court, I was amazed at beholding in the bar, a very lovely looking woman, attired in quite a costly ball-room dress, with appropriate jewelry. Her thick, black, curling hair

to protect the young and unwary, who may have been employed as agents to accomplish the crimes of principals.—*Vide Stroud & Brightly's Digest*, p. 645, sect. 27.

was somewhat dishevelled, and hung carelessly over her shoulders, and perhaps thereby added to the interest of the scene.

Upon inquiring to what this extraordinary state of things was attributable, I was informed that this young lady passed by the name of the Princess Carraboo; that she spoke many languages, but none very intelligibly; and, in short, she had been arrested at a dance upon a charge of *larceny*.

This was thirty years ago. Like most young lawyers, not being overstocked with business, being attracted by the novelty of the occasion, and finding that the fair dame had no one to defend her, I volunteered in her behalf. The case was rather a difficult one. The prosecutor and all the witnesses were very much enraged against the prisoner. They stated that she had borrowed from them all the articles of dress and jewelry that she wore. That they were borrowed but for a short time, and under various false pretences; and that she had afterwards broken all her engagements, and appropriated them to herself. She had no testimony. The prosecuting counsel pressed the case very ingeniously and ably, the effort being, of course, to show that she had obtained the articles *animus furandi*, or with a felonious intent, and that she was therefore guilty of what is commonly called *constructive larceny*.

This is a kind of case that it is rather troublesome to meet—it leaves so much to the loose imagination of

a jury, called upon as they are to ascertain motives from facts which at the best are often very equivocal. If she had been an ugly old woman the case would probably have been lost; or if the witnesses against her had been prepossessing in their persons and deportment, it might have been lost as it was; but in both those respects, if in no other, the prisoner had greatly the advantage of her adversaries. My speech in her behalf was no great affair; meddling very little with either the law or the reason of the case, but directing the attention of the Court and jury to the forlorn and desolate condition of the defendant—to her youth—her pardonable fondness for finery—and the improbability while thus actuated by motives of harmless enjoyment, that she should have contemplated the commission of a crime that must result in converting her pride into shame—her joy into grief.

The jury listened attentively and sympathetically, (for there were fathers among them,) and the defendant wept in such admirable keeping with the tenor of the speech, that she was promptly and triumphantly acquitted. I never saw her before, and have never seen her since; but she maintained her fashionable and graceful character to the last; for when the jury returned their verdict of "not guilty," she issued from the dock, and making a most becoming courtesy to the Court, retired amidst the applause of the surrounding multitude.

THE UNITED STATES V. ——. BEFORE JUDGE KANE.

An interesting young man was indicted in the Circuit Court of the United States, for the embezzlement of a letter, and the money which it contained, which letter was directed to Mr. Scott, a well known editor of this city.

The young man had borne an unblemished moral character, although he was supposed to be of feeble intellect. He was attended during the trial by his aged parents—and it was a truly pitiable group. There was but one important witness against him, and that was a lad of about fifteen years of age. He swore distinctly that the defendant gave him a written order upon the post-office to deliver to the bearer Mr. Scott's letters; that under that order he (the witness) obtained the letters, and was arrested with them in his possession. The order was produced, and conformed to the above statement. A member of the bar, who witnessed the trial, and felt great interest in it, suggested the following inquiry to the defendant's counsel:

Counsel.—Cross-examination of the witness.—"Can you read?"

Witness.—"Yes."

Counsel.—"Will you read that order?"

Witness.—"Certainly." (And he read it.)

Counsel.—"Can you write?"

Witness.—"Yes."

Counsel.—"Will you copy the order?"

The order was accordingly copied, and upon the two papers being handed to the Court and jury, it became manifest that the witness was the offender; that he had written the original order, and upon being arrested, he had charged an innocent young man that he himself might escape condign punishment.

CASE OF COMMONWEALTH V. RUSSELL.

In the year 1830, the families of Mr. W., and Mr. R., between whom there was a deadly feud, lived in adjoining houses, in Lombard Street, Philadelphia. A delicate-looking servant-girl, in the employment of the former, charged Mr. R. with an assault and battery upon her person, with intent to kill. The charge rested almost entirely upon the oath of the prosecutrix. She swore "that she saw the defendant throw a brick at her, on a given day, from the adjoining yard, while she stood on the back steps of the house of her employer." She stated "that the brick struck her in the breast—that, from that time, she had been subject to spitting of blood, and fainting-fits." During her examination, she several times apparently fainted, and was led out of Court; and, of course, every time she fainted, the hopes of the defence fainted: no cross-examination could be available, and the defendant's coun-

sel got rid of her as soon as possible, to avoid any increased dramatic effect.

The next witness called was the doctor. He swore to the spitting of blood—feebleness of frame—fear of consequences, and all that—but wonderful to relate, although he examined her breast, he never discovered any external injury. There came up the inquiry, "how such consequences could have been produced, without any apparent cause?"—the physician met all these questions, by fine-spun theories and remote possibilities.

The defence rested upon an alleged alibi. It was proved that the defendant was six miles off at the time of the alleged assault—it was shown that his name was attached to an oath taken at Germantown, dated that very day—the magistrate before whom it was taken, swore to the exact hour, upon which the girl had fixed for the perpetration of the outrage; still, in defiance of all this—the blood-spitting—and the simulated fits—and the exquisite acting throughout of the complainant—overbore all resistance, and the defendant was convicted; and, though a decent man, with a large family, was sentenced to a heavy fine, and six or twelve months' imprisonment.

Now, mark the sequel, and profit by it: While the defendant was thus incarcerated, the prosecutrix became dangerously sick, and conscience-stricken. She sent for the counsel of the prisoner, to whom she volun-

tarily confessed, "that she knew of the feud between the families, and desired to gratify her employer's revenge against his next-door neighbor—she therefore invented the whole story. When the doctor was sent for, as she could show no external bruises to support her story, she pricked her gums with needles to produce blood, and thus deceived the physician and the family; and, by feigned debility for weeks, she not only escaped labour, but imparted probability to her nefarious charge." Poor R., at the time of this disclosure, had passed some months in confinement, but, upon a statement of these facts fully verified to the Executive, a pardon was granted, and he was restored to his suffering family. He is now dead—but this explanation is due to his memory; and is not without instruction to the profession and the community.

DEFEATING A ROGUE.

THERE is an anecdote related of Mr. Curran, which, although not strictly embraced by our plan, is so little known, and so remarkable for its manifestation of great professional ingenuity in defeating fraud, that it is well worthy of being known, and remembered.

Early in Curran's professional career, a young Irishman called upon him, stating "that he was destitute

of means, but had been recommended by a friend to obtain Mr. Curran's advice in a very distressing case." The young man, it seems, had, by his hard earnings, acquired and laid by a sum of one hundred pounds, with which he had come to town to purchase a copy-hold estate in a small farm. Being an utter stranger, and unwilling to carry the money about him, he deposited it with his innkeeper for safety, during the pendency of his negotiation. Upon calling for the money, however, the landlord of the inn denied having received it, and there was no witness to prove the deposit. Such was the case as related to the counsel. Mr. Curran's feelings were deeply interested for the unhappy stranger, and he requested him to call the next morning; and, in the mean time, as it was a case of great difficulty, promised he would give it his best reflection. Next morning, accordingly, the client called. Mr. Curran asked him "if he could raise another hundred pounds." The client told him "he might raise a hundred pounds of potatoes, but, as to money, he had none." "Well, but," said Curran, "you are an honest fellow, and I think the gentleman who sent you to me, would probably lend you the money for a few days—try and get it." The client did try, and got it, and brought it to the lawyer. "Now," said Curran, "take this money to the tavern-keeper, and deposit it with him—but be certain to take a witness with you this time." "My G—d!" said the countryman, "that

will never do; I have lost all I have already, and if I am to lose, as I shall, the money I have borrowed, it never can be paid, and I shall be for ever ruined." "Do as I tell you," said Curran, "and then come back to me." This was all done exactly according to instruction. "Now," said Curran, "call on the landlord again, and ask him to return you the *last* hundred pounds—but take no witness with you—he will pay you, for he knows you can prove the deposit." So it turned out—the money was paid—and the countryman again returned delighted to his counsel. "It is all right and sure," said Curran: "Now *take your witness*, and demand the hundred pounds that you left with him, in the presence of that *witness*. The necessity for proof has now changed sides." Upon making the second demand, the faithless landlord discovered that his dishonest purpose had been defeated, and surrendered his ill-gotten spoil—and thus Justice triumphed. Mr. Curran often said, "that he never experienced greater happiness, than in thus aiding an honest man, and defeating a rogue."

GEORGE G——.

A MAN of aged and respectable Scottish parentage, in the year ———, was indicted for the murder of

——— ———. The circumstances that gave rise to his arrest and indictment, were these. George had been a wild young man, and had for many years withdrawn from his parents' house, and lived with a woman whom he called his housekeeper, in the southern part of the city of Philadelphia. How he derived his subsistence was not very well understood, but there he contrived to live; and a companion of his, somewhat older than himself, occupied an up-stairs room in the house. For some time their harmony was undisturbed. One evening, however, a short time before the arrest of George, while at the supper-table, some slight difference took place between them, accompanied with mutual threats—and the next day the companion was missing. Either from rumor, or some more direct and reliable information, the officers of justice were induced to search the dwelling, and upon doing so, discovered that there were traces of blood along the narrow stairway from the garret, in which it was ascertained the missing man had been accustomed to sleep, down into the cellar. The cellar was pretty well stocked with wood, and the body at that time was not discovered. Still, the presumption of G.'s guilt was sufficiently strong, as it was well known there were but these three persons in the house; and, after a brief hearing, G. was committed for trial, and the housekeeper was detained in prison as a State's witness.

It was at this time that I was called upon by the

unhappy parents of the prisoner to take charge of his defence; and in order thereto, I waited upon him at his cell. From early experience I had long resolved never to put the direct question as to guilt or innocence to a prisoner in these circumstances; and, indeed, in this case it would have been useless, as, from the first moment of my seeing him, he asseverated most solemnly his entire innocence. When I spoke to him (as he admitted that he was at home on the night in question,) of the impossibility of such an occurrence having taken place without his participation or knowledge, he answered me by saying that "the house may have been entered by some enemy of the deceased, as the fastenings were not secure;" and also urged the unreasonableness of the suspicion that he should murder his friend—the absence of cause, etc. I listened to him, and, as is my usage, carefully observed his manner, and fixed my eye upon his countenance while he was engaged in rehearsing the facts connected with this dark story. In doing this, I was particularly struck with one thing in his demeanor—his eye seemed always to avoid mine, and when they happened to meet, there was a shrinking or twitching in his glance, that I have never observed before or since; and this always occurred at our interviews. Still, although this left an unfavorable impression upon my mind, it was not a fixed impression. There is always a strange expression in the eye of an individual about to be tried for his life.

It is difficult to distinguish between the effects of fear or shame, and guilt: under the influence of all, the pupil of the eye is dilated, and it has been observed to be so in several cases, where, upon trial, the innocence of the accused has been clearly established. Nevertheless, the expression of the eye of the prisoner manifested, if not a consciousness of the specific crime, an indication of "some crime unwhipped of justice," that took from me the reliance that I should otherwise have felt upon his sincerity and truth. The trial came on; but, in the meantime, I should say, the police discovered the body of the murdered man under the woodpile in the cellar. They also found a bloody axe—the blade of which, when applied to the wound on the skull of the deceased, corresponded with it exactly. They further ascertained that G. had borrowed the axe of a neighbor on the night preceding the homicide; and, moreover, and stronger than all, they found the pocket-knife of G., (proved by his housekeeper,) which was marked with blood, and appeared to have been used in inflicting some of the lesser wounds about the throat of the murdered man. Most of these facts were derived from the housekeeper, but they were strongly corroborated by collateral testimony. The trial occupied nearly two days. Mr. Dallas conducted the prosecution with great ability. The defence, which was nearly desperate, consisted mainly of an effort to discredit the housekeeper, by showing that she had had

a quarrel with G., and further, by maintaining that if this occurrence could have taken place without her hearing it, it might also have taken place without the knowledge of G. That it possibly may have been done by others than an inmate of the house; and that an innocent man ought not to be convicted upon presumption, merely because he could not show how or by whom the offence might have been perpetrated.

When the argument—such as it was—was finished, G. turned to me and said, with great apparent composure, but much to my surprise—"I shall be acquitted in ten minutes." To which I replied: "I should rejoice if it should be so, but my impression is, that you will be convicted in half the time." And so it turned out.

Sentence of death was pronounced, and the warrant of the Governor for the execution, speedily followed.

About a week before the fatal day, late at night, a tall, aged woman, with dishevelled hair, and resembling the picture which Scott has drawn of Norna of the Fitful Head, entered my office, and the first word she uttered was, "I am G.'s mother." I could have confronted G.'s ghost, but to meet an aged mother in such circumstances, was almost beyond endurance. As to consoling or comforting her, that was out of the question; I condoled with her—spoke of everything having been done for her son that was possible—that he might still repent and die happy—and that, if so, as she had

already nearly reached the limit of life—she would not be long separated from him. But all this availed nothing, and she interrupted me, by exclaiming, in a transport of agony—referring to the loss of her children—"Jamie has gone, and Effie has gone, and if they take Geordie from me, I shall be like the patriarch Jacob—wherewith shall I be comforted?"

I was silent for a time—indeed, what could I say—who can argue with a mother's grief? At last, heaving a deep groan, she exclaimed: "And yet it is not so much his *death* as the *manner* of his death, that strikes me with the greatest horror—no one of my kith or kin ever died upon a gallows"—and here she stretched her thin figure to its full height, as from a struggle between pride and maternal feeling—"Can he die no other way—I pray for his death any other way, if he must die—any way but that." I replied, the law knew no other way, and I regretted to say, that there was no hope even of a respite. "Then," said she, "will you see him?—tell him of his condition, and bear my last blessing to him; no one can refuse such a request to a mother." I promised to comply with her wishes; and tottering with age and grief, she withdrew.

Next day I was ushered into his wretched cell; but a little week was the allotted interval between him and a felon's death. As the heavy gratings were removed, and I entered, I saw, in the twilight of his apartment, G., surrounded by a number of clergymen, but appa-

rently, instead of listening to their ghostly comfort, he was vociferously and positively asserting his entire innocence of the offence of which he had been convicted —this was shocking.

I passed through the ranks of these reverend gentlemen, (who, of course, were unable to answer him, as they knew but little of the case,) and said to him: "I expected to find you in a different temper—you may deceive your fellow men, but there is One above, you cannot deceive. Your business is to prepare for your fixed and final doom; it is not too late for you to repent. You at least have some advantage over other men—they know, it is true, that they are to die, but you know your exact *time*, and you should address yourself to preparation at once." "Mr. Brown," said he, "I am innocent." "Beware," was the reply, "how you trifle with your salvation in your last moments; do not add to your offences, by maintaining what is untrue. You admit you were in the house on the night of the death —you admit that you borrowed the axe on that night —you admit that the bloody knife was yours. Now, if you can account for all *these*, consistently with your innocence, I will take your place."

Bringing these matters in their combined influence to bear upon him, seemed to destroy his assumed confidence, and he exclaimed: "Is there, then, no hope?" "Much hope," was the answer, "but none on this side of the grave—your fate is inevitable, and you should

meet it as a man, and as a Christian." I then communicated to him, as kindly as I could, the blessing of his mother, and bade him a sorrowful and last farewell. He never mounted the gallows. He no doubt had deluded himself with the hope of pardon, and with a view thereto, had persevered in the allegation of innocence; but when informed by his counsel that his case was hopeless, the whole man gave way, and he continued to become weaker and weaker, until a few days before the time fixed for his execution—when he died.

There is only one matter in addition to this statement that it is proper should be mentioned, as explanatory of the peculiarity of his conduct at our first interview:—Shortly after his death, the housekeeper, to whom I have referred, called upon me, in great sadness, and expressed a desire to remove from my mind any unfavorable impressions of her, that it may have received. The interview led to the following brief colloquy:—

Witness.—"You seemed, upon the trial, to think that I entertained malice towards G., and that I uttered falsehoods, in order to convict him."

Counsel.—"I said what I thought of you, and I am sorry, if I have done you injustice."

Witness.—"I was compelled to testify—I would have screened him if I could, without perjuring myself; I *had* screened him before, when I knew he had been guilty of crimes, and I will now give you a proof,

in one instance, at least. Had you a very valuable cloak taken from your office, about a month before this murder?"

Counsel.—"I had—but what has that to do with this subject?"

Witness.—"That cloak was stolen by G., and when he brought it home he informed me where he had obtained it."

This explanation gave me at once to understand what had previously been unaccountable. No doubt, when I called upon him in prison, and fixed an inquiring gaze upon his face, he felt as though I detected the crime committed against myself, and naturally shrunk from his own consciousness.

CASE OF CONSCIENCE.

A PERSON by the name of Ray, applied for the benefit of the insolvent law. It was shown that he had had five thousand dollars very recently in his hands, and he only accounted for it, by alleging that he was robbed whilst in a state of inebriation. This was very improbable, nevertheless the applicant was discharged. In about a month after this he died, and a week or two after his death the whole amount was forwarded to the opposing creditors.

The explanation of this extraordinary matter was as

follows: At the time of applying for the benefit, Ray had deposited the money with a relation as dishonest as himself—after his *discharge* he reclaimed it. "What!" says the relation, "do you demand the money from me, when you have just *sworn* that you lost it, and do not own a cent in the world?" Ray discovered he had out-witted himself, and under the effect of remorse for his perjury, and grief for his lost money, as has been said, he did not long survive. Struck with horror at the consequence of his own villany, the relation relinquished "the wicked prize," and, as an evidence of practical repentance, restored the money to the rightful owners, through the medium of an anonymous note.

CASE OF FELIX MURRAY.

In 1831, M. was indicted for murder, and convicted through the force of dying declarations—somewhat equivocal in their character—and which declarations were proved by an avowed enemy of the defendant. When the prisoner was asked what reasons he had why sentence of death should not be pronounced, after assigning several, he concluded by the following remark, illustrative of the natural eloquence of the Irish people: "What was stated by Tommy T. was not true. He is a most deadly enemy of mine. He hates me. His hatred towards me is so great, that if the whole city was on fire, and I stood in the midst of it, and was

burning to death, and he could put out the fire by spitting on it, he wouldn't do it."

While under sentence of death, upon visiting him after one respite, and just before the second time appointed for his execution, he was found in his cell, with the Bible and crucifix before him, devoutly engaged in prayer. He received his visitor with great cheerfulness, and being asked as to his state of preparation, he replied: "I am perfectly ready to die; the priest has been with me, and my peace is made." Upon being told there was still a ray of hope of pardon, it seemed to impart no delight to him. He simply answered, "Well, it is perhaps better as it is—I am now prepared. If I should be pardoned, I might fall off again, and not die with the same hope of salvation." He *was* pardoned, and returned to Ireland, where, when last heard of, we rejoice to say, he was pursuing a respectable course of life.

QUESTION OF PERSONAL IDENTITY.

In 1821, an action was instituted by Mary M'Creth against William Dickinson, administrator to the estate of Captain Talbot, who, as was alleged by him, was an Englishman. Mrs. M'Creth, however, averred that Talbot was her *brother*, and an *Irishman*, and that as his only relative, she was entitled to his estate. On the part of

the claimant, the evidence by writing and parol was exceedingly strong. Mrs. Lee, one of her witnesses, swore to an acquaintance with the Captain for fourteen years before his death, during all which time he had lived in the same house with her. He spoke only of one sister, said her name was M'Creth, and she lived in London; that she was so young when he came away, that she would not now know him. He wished to name Mrs. Lee's child Mary, after his sister. He was in the Liverpool trade; had frequently been there, but said he could not leave his ship to go and see his sister. He never spoke of any other relative. He had a letter in his writing-desk, which he said was from his sister, and requested it to be read to him while on his death-bed. In addition to this, the letter from Mrs. M'Creth was produced, stating where she lived, and how long she had there lived. And a Mr. Leary was produced, to prove her actual residence, and identify her person. A letter in answer to this was also produced by her from Captain Talbot. In Mrs. M'Creth's letter, she states her poverty, writes by way of Liverpool, requests her brother to direct his letters to No. 2, Lombard Street, London, and further states:— "You may not be acquainted with my marriage, since I was, you know, very young when you left *Newport, County Tipperary, Ireland.*" This letter was found among his papers; he declared it to be from his only sister, and showed his sincerity by keeping it for ten

or twelve years. In health, sickness and insanity, he always spoke of his sister, and never of any one else. Upon these facts it appeared to be clear that he was an Irishman.

On the other side, however, they attempted to show that Captain Talbot had always said "that he was an *Englishman*—that he had *four* or *five* sisters—that Dickinson was the son of one of those sisters. A petition by the Captain, for letters of naturalization, in which he states "that he is a subject of the King of Great Britain," was produced, which, however, was a little equivocal in its operation, as Ireland might be considered as embraced by the term "Great Britain." But to strengthen the defence, a number of sea-captains testified "that Talbot had repeatedly *told* them he was born in England." A portrait was also produced by Mrs. Lee, at whose house the Captain died, which was said to bear a strong resemblance to the deceased; but even this did not remove the difficulty; for while one half of the witnesses swore that it was the very counterpart of the English Captain Talbot, the plaintiff's testimony was just as strong to show, that it was an admirable likeness of the plaintiff's brother, whom they professed to know, and that it even bore a strong family resemblance to the sister, (the plaintiff.)

Mr. John K. Kane, (the present judge of the District Court of the United States,) was the counsel for the defendant. He enforced the testimony for the defence with

great ingenuity and ability, and manifested no less skill and power in his assaults upon the evidence for the plaintiff. His theory was, that loose impressions, derived from thoughtless conversations of Captain Talbot, many years ago, had been misunderstood, or misrepresented, by the plaintiff's witnesses: that it was exceedingly improbable that Captain Talbot should sail to Liverpool for years, and never visit his only sister, who was in London, but about two days' journey: That the letter received by him, was supposed by him to be from the mother of the defendant, whose name was also Mary, a favorite sister—whose husband's name he probably supposed to be M'Creth—that he had written *his* letter under that impression—and that the letter intended for one of these women fell into the hands of the other, and produced all this confusion. He dwelt, also, upon the want of credibility of some of the plaintiff's witnesses, and the bias and interest of others: he adverted to the fact, of many years having elapsed without the plaintiff's asserting her claim: and he planted himself firmly upon the petition for naturalization, signed by Captain Talbot, and stating himself to be *a native of Great Britain:* he also maintained, that the portrait itself bore strong marks of English peculiarity of feature: and, lastly, that the defendant, being in possession of the property, was not to be deprived of it, but by conclusive, or, at least, most satisfactory proof on the part of the plaintiff, who could not be entitled to recover upon a doubtful title.

The answer, on the part of the plaintiff, by David Paul Brown, was, that it was not more remarkable, that Talbot should not visit the plaintiff, than that he should not have visited the mother of the defendant, whose residence was proved to be nearer to London than Liverpool: that if he had not been born in Ireland, he never could have recognized the truth of the letter found in his possession, "referring to the time when he left his sister Mary, in Newport, Tipperary, Ireland:" that, if the *witnesses* were doubtful, the *letter* was unquestionable: that Captain Talbot could not have supposed that the letter was from the defendant's mother, consistently with the notion that he was an Englishman—and, if he was not an Englishman, there was no defence. The credit of the plaintiff's witness was maintained, and that of the defendants impugned: the fact of the mother of defendant being rich, and the plaintiff poor, was referred to, as corroborative of the relationship of the latter to the deceased, who had said "that he had but one sister, and that she was *poor*, though respectable:" this poverty was also relied upon, to explain her not having earlier instituted legal proceedings. As to the petition for naturalization, its apparent inconsistency with the plaintiff's claim was accounted for, by its equivocation—by its having been loosely filled up—and carelessly signed—and instances confirmatory of this notion were cited: the matter of place of birth, as indicated by the portrait, was also minutely discussed, with very opposite

deductions from those drawn by Mr. Kane: and, in conclusion, the plaintiff's counsel maintained, that, although he had not established an unquestionable claim, his proofs far outweighed those of the defendant, and, that the principle which obtained in criminal cases, that a reasonable doubt should discharge a defendant, did not prevail in civil suits. The case, nevertheless, resulted in a judgment for the defendant—and the poor plaintiff passed the remainder of her days in penury and misery, maintaining to her last moment, her claims to the Talbot estate.

We have thus furnished a few instances of "*causes celebre*," in the *criminal* courts, interspersed with one or two from our *civil* list. Our space will not permit a more extensive collection. Volumes would not contain the experience of a few short years, to say nothing of a long and active professional life. Can it be wondered at, in perusing these brief and imperfect annals, that the criminal practice of the country should be invested with so much interest, and present such fruitful opportunities for the study of human nature? But, remember, it is attended with still greater advantages. Almost every instance of rapid advancement in the profession has originated in some important and interesting criminal cause. Let others decry criminal jurisprudence as they may, there has rarely been an eminent advocate in this

city, who did not first date his celebrity and success from cases partaking of the nature of criminal trials. —Lewis, the Ingersolls, Rawle, Dallas, Hopkinson, Sergeant, Binney, Z. Phillips, P. A. Browne, and Randall, to say nothing of younger men; all flourished in this arena, and its influence is still more remarkable in Great Britain.

The reason that such cases contribute largely to forensic advancement, is plain. The community take but little interest in mere questions between individuals upon promissory notes,—land disputes between A. and B.—controversies relating to principals and factors—or accounts render among partners. In *such* cases nobody is *interested* but the parties and the lawyers. Not so in treasons, homicides, forgeries, conspiracies, libels, etc. They furnish matters of *general* interest—of deep public concernment, and consequently bring into play the faculties of head and heart, involve every variety of human motive, and ensure the success of those to whom their discussion is confided. The Criminal Court, therefore, is the best school for young lawyers. If they possess the elements of greatness, this is the stage upon which they should first appear. We know many CRIMINAL lawyers that could not try a *civil* case, it is true; we have known more CIVIL lawyers that could not manage a CRIMINAL one; but a well-read lawyer should be able to do *both*, and will perform the duties of EITHER better, from comprehending BOTH.

CHAPTER XVII.

LITERATURE OF THE BAR.

It was announced, as part of our plan, that we should furnish a list of the literary productions of the bar, but, after diligent research, we are compelled to say, that the members of the legal profession have always been necessarily so much engrossed by the labors of their own peculiar pursuits, as to afford but little leisure and few opportunities, whatever may have been their abilities or inclination, to indulge in the delights of general literature. The old are almost entirely absorbed by the cares and duties of their vocation, and the young are engaged in studious and laborious efforts, to lay the ground-work for their future fame. And although both classes have, from time to time, largely contributed, by the exercise of untiring industry, to the acquisition and diffusion of sound legal knowledge; yet, the scientific field which they have cultivated, improved and embellished, has been so ample, and we may say, limitless, as to afford no leisure for practical devotion to classical erudition. Re-

ports and treatises, or notes upon the laws—eulogies, speeches, opinions, essays, lectures, reviews, and addresses upon every variety of subject, can hardly furnish a legitimate claim to the character of literature; they may manifest great study—philanthropy—beauty of composition, and power of thought, but they are casual, temporary, and ephemeral; and whatever may be their influence upon the *present*, have but a slight hold upon the *future*. It may be well said of them, as was said by Voltaire, when informed that the works of Rousseau were dedicated to posterity, "It is very doubtful whether they will ever reach their address."

This is much to be deplored, and we regret to say, it is not confined to the present times, or to *this* country. The only eminent advocate of antiquity that passed beyond the lines of his profession, and shone as much in classic literature as in law, was Cicero. You have no works of Demosthenes—of Anthony—of Gracchus—of Crassus—or Hortensius—and no memorials of them, except those which are strictly forensic. Cicero's fame was drawn almost as much from his literary as his oratorical excellence: he did not possess more knowledge than many others, but he *displayed more* in his productions—he seemed to look more to posterity.

These remarks are also applicable to the English bar. With the exception of Bacon, Clarendon,

Jones, Brougham, Talfourd, and Warren, we remember, amongst the regular ranks of the profession, no literary lawyers—Coke, Hale, Holt, and even Mansfield and Erskine, have left us no evidence of their comprehensiveness of mind and extensive general erudition, beyond what is to be gathered or gleaned by following them through their illustrious professional, official, or public career.

And passing to our own country, our eminent lawyers and statesmen have scarcely ever indulged in anything beyond political and legal science—Duponceau, Rush, Charles Jared Ingersoll, and a few others, present the only exceptions. Henry, Jay, Hamilton, Marshall, Story, Kent, Bushrod, Washington, Lewis, Ingersoll, Rawle, Dallas, Ames, Pinckney, Webster, Binney, and Sergeant, all with minds richly stored upon almost every subject, and abundantly qualified to impart instruction, have been so engrossed by their legal or official duties, as to be deprived of the opportunity of diffusing the benefits of their experience, and their invaluable accumulations of intellectual treasure. Men may accomplish *much*, but they are not equal to *all things*—they are but finite beings, and all their works are finite, except those that are directed to another and a higher state of existence.

Impelled by necessity or allured by hope, we pass on from one stage of human life to another, employing and exhausting all our energies—our three-score years

are past—confirmed habit becomes the substitute for inclination, and we still toil on, apparently without aim or object, until "the last scene of all, that ends life's strange, eventful story." How unwise is all this—There should certainly be an interval between the termination of the cares of *this world* and our preparation for the *next*. Let it always be borne in mind, even in our chief earthly glory, as well as in our deepest degradation and affliction, that "*there is another and a better world.*"

There is a simple, but beautiful German allegory, that furnishes an impressive lesson upon this subject, which we earnestly commend to our readers, and which runs thus:—

"An aged husbandman was working in his rich and wide-spread fields, at the decline of day, when he was suddenly confronted by a spectral illusion, in the form of a man. 'Who, and what are you?' said the astonished husbandman. 'I am Solomon, the wise,' was the reply, 'and I have come to inquire what you are LABORING for?' 'If you are Solomon,' said the husbandman, 'you ought to know that I am following out the very advice you have given. You referred me to the ant for instruction, and hence my toil.' 'You have,' said the apparition, 'learnt but half your lesson; I directed you to LABOR IN THE PROPER SEASON FOR LABOR, IN ORDER THAT YOU MIGHT REPOSE, IN THE PROPER SEASON FOR REPOSE.'"

Conclusion.

THIS work is now ENDED—not COMPLETED. Its value, if it possesses any, certainly does not consist either in style or literature. To neither of these does it aspire or pretend. It is dependent altogether upon a few faithful and interesting memorials of the past, all of which, in despite of professional traditions, would, in another generation, be buried or irrecoverably lost, leaving no trace of the men of the present age, and supplying no example, or encouragement, or means, for a future History of the Legal Profession.

The most of these pages have been written during the progress of the printing—some amid the bustle and vexation of juridical trials—and all within the limit of the present year. The announcement in January last was founded upon the design, and not upon its execution—a design, long entertained, though its

fulfilment was always prevented or postponed by difficulties not necessary to be revealed, being of no public concernment. But I do not regret the undertaking, however imperfectly the task assumed may have been discharged. Though attended with some labor, it has been a labor of love, and has recalled to the mind a thousand youthful reminiscences, which, although they could not prolong life, have renewed and increased its enjoyments. I have lived over again in thought—in companionship—in the charms and delights of a glorious profession—in victories and defeats—in social and convivial intercourse, the long lapse of forty entire years,—more than half the allotted duration of human existence. During all which time, to the credit of the bar be it spoken, I never had a personal quarrel with courts, counsel, or parties. In conformity to my advice to others, I have allowed no man to be master of my temper but myself; and, in the full consciousness of the difficulty of self-control, I have endeavoured to make just allowances for those who may not have obtained the same mastery over themselves, though, in all other qualifications, they may have been immeasurably my superior.

I cannot take leave of my professional friends, in this my first, and, perhaps, my last work, without once more acknowledging their kindness in aiding my researches, and supplying me with some matters of interest, that might otherwise have been overlooked. I

return to them ALL (for it would be invidious to discriminate), my sincere thanks—and now, asking my brethren of the BAR to receive this humble offering as the legacy of a departing friend, I bid them all an affectionate FAREWELL.

Finis.

Although it is presumed that most of our readers can readily correct the verbal or literal errors of these volumes, still, as there are some inaccuracies, (for which the author, not the printer, is responsible,) we have thought proper to append the following

ERRATA.

Volume I.

Page 293, seventeenth line from top, for "*without* enemies," read "*not* without enemies."
" 320, tenth line from top, for "*benefits*," read "*blessings*."
" 326, fifteenth line from top, for "1757," read "1737."
" 349, note, second line from close, for "*he*," read "*his*."
" 497, for "*Burlington, N. J.*," read "*Philadelphia County*."
" 498, for "*died* 1832," read "*died* 1836."

Volume II.

Page 147, next to last line, for "*Common Pleas*," read "*District Court*."
" 246, last line, for "*or*," read "*nor*."
" 250, sixteenth line from top, for "*or*," read "*nor*."
" 301, twenty-second line from top, for "*gaunt*," read "*'gainst*."
" 306, fourth line from top, for "*sheen*," read "*stream*."
" 517, fourteenth line from top, for "*Bushrod, Washington*," read "*Bushrod Washington*."