The Forum.

THE

FORUM;

OR

FORTY YEARS FULL PRACTICE

AT THE

Philadelphia Bar.

BY

DAVID PAUL BROWN.

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

VOL. I.

PHILADELPHIA:
ROBERT H. SMALL, LAW BOOKSELLER,
NO. 21 SOUTH SIXTH STREET.
1856.

Entered according to Act of Congress, in the year of our Lord 1856,

BY DAVID PAUL BROWN,

in the District Court, for the Eastern District of Pennsylvania.

Robb, Pile & M'Elroy, Prs.
Lodge Street.

TO

MY WIFE AND CHILDREN,

FROM THE ENJOYMENT OF WHOSE SOCIETY,

THE TIME EMPLOYED IN THIS WORK

HAS BEEN CHIEFLY WITHDRAWN.

THE WORK ITSELF IS AFFECTIONATELY

INSCRIBED.

DAVID PAUL BROWN.
Sept. 28, 1856.

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Praem.

Auto-Biography, though sometimes necessary, is rarely agreeable, either to the Author or the reader. Even when written, as Cæsar wrote his Commentaries, in the third person, the *first* person is always reflected in the *third*, and imparts an egotism to the work that cannot be disguised. It has been thought proper, therefore, in order to avoid as far as possible this objection, to precede the present Work by a Sketch of the Life of the Author, chiefly taken from "Livingston's Biographies." But, it may be said, why not omit the Sketch altogether? the answer simply is, that as the publication relates to a professional experience of Forty years, the public has a right to know what opportunities or advantages were enjoyed by the Author, calculated to qualify him to speak of those occurrences which he professes to describe. This motive is offered as a candid apology, for what otherwise, would have been properly, and willingly avoided.

BIOGRAPHICAL MEMOIR

OF

DAVID PAUL BROWN.

The subject of this Memoir was born in the City of Philadelphia, on the 28th of September, in the year seventeen hundred and ninety-five, and is now sixty-one years old.

It matters little "to whom related or by whom begot;" it will, at all events, be sufficient to say, that his ancestors, who belonged to the Society of Friends, and who were rather remarkable for their piety than any worldly accomplishment, came from England with Lord Berkley, upon the first settlement of New Jersey, and resided at Berkley, in Gloucester county.

The father of Mr. Brown, whose name was Paul, and who was born in 1767, removed to Philadelphia in the year 1790, and there, shortly after, married Rhoda Thackara, a native of Salem.

David Paul Brown was the only son of this mar-

riage; and his parents being blessed with an abundant fortune, and what is much more to the purpose, with a spirit of the most unbounded liberality, spared no expense in the education, and mental and physical improvement of their child.

It must not be understood, however, that like a hot-house plant, he was hurried in his growth to premature ripeness; upon the contrary, nature was left to her own gradual development, with her sluggishness sometimes stimulated, and her exuberance sometimes checked, as the season or occasion might appear to require.

Until the age of eight years, the education of the boy was exclusively the business of his fond parents, and more especially of his *mother*.

To her was mainly referred his intellectual and moral and, above all, his religious instruction; and he has often, in more advanced age, been heard to declare that the lessons of his mother were more deeply impressed upon his mind, and exercised a more powerful influence upon his life and fortunes, than all the other instruction, imparted by the host of teachers to whom his education was from time to time confided.

By her, he was taught to read with the greatest precision—not in the whining slang of the schools—not coldly and artificially, but in conformity with the spirit and design of the authors to whom his early attention was directed. With the mother and the

son, instruction was a work of love—of maternal and filial love; and the advancement was in proportion to the holy influence by which it was stimulated.

No rigid and unbending rules—no chastisement—no fears—all was voluntary: and, therefore, all was successful. Family hopes being centred upon the boy, and the cares of the world not encroaching upon the indulgence of parental attention, it will not be a matter of surprise to learn, that, when he had passed into the hands of other teachers, though at an early age, and though he knew, of course, but little, what he *did* know, was *better* known, more perfect, than usual under the ordinary courses of instruction.

He wrote well, for a child; read admirably; composed his doggerel rhyme, sketched and painted; talked accurately, and with a nice discrimination in language; and, above all, was taught, while at his mother's apron strings, to think, to reason, as a child to be sure, but still as a happy and an ambitious child.

The time at last came when he was to be handed over to sterner teachers. Still, however, his instruction may be said to have been domestic.

Private teachers, upon all branches, were employed; an Italian for drawing in crayons and oil colors—English artists for landscape and flowers—a Frenchman for fencing (more for the exercise than the art,) and for mathematical instruction, one of the

first professors in the country—the late Mr. Delamar.

To prevent, however, his being an *entirely* home-bred youth, his affectionate parents, under the impression that their son was sometime to mingle in society, caused him also to be sent to some of the best schools, where, there are those now living who can witness, that he was always at the head of his class; and that too, with apparently but little effort or study.

The evenness of his temperament, indeed, seemed always to give him full command of his faculties; and when they did not embrace a subject, he was never afraid or ashamed to acknowledge, instead of attempting to excuse it, and thereby afforded the best opportunity for improvement, in that in which he was deficient.

His memory, though not otherwise remarkable, was perfectly clear and distinct. He either remembered or did not remember—there was neither doubt nor hesitation about him; and although he stood first in his class, and was willing to help others, he never relied upon his class, but upon himself. He was of course, the pride of his father, and the delight of his mother's heart.

Every possible indulgence was lavished upon him; every recreation not only freely furnished, but suggested. He drew upon his father's exchequer at pleasure and without limit; and the extent of his purse, would have shamed the matured magnificoes of the day.

In after life he has often been heard to say, that he was never so rich and happy as in his early youth; for then, in the language of Socrates, he wanted least, and therefore approached nearest to the gods, who want nothing.

With him, money seemed to have utterly lost its value—it was too common to be impressive—its receipt gave no pleasure—its expenditure no annoyance. Neither seemed to cost anything; and from that time to the present, though his professional income has exceeded a quarter of a million, the same indifference, the same carelessness, the same recklessness in regard to wealth, has characterized his career.

On this subject we have heard a characteristic anecdote, which we cannot do better than relate, although the occurrence took place some fifteen years after Mr. Brown's admission to the Bar.

The late William Rawle, with whom Mr. Brown was a favorite student, towards the close of life, made Mr. Brown a visit, and found him engaged in balancing his books.

After some conversation, Brown turned to his venerable preceptor and said: "My dear Mr. Rawle, fifteen years ago I gave you my check for $400, in return for your valuable legal instruction; since that time, I find I have received in my professional career, upwards of $100,000." "I know," replied the preceptor (himself a most liberal minded man,) "you

have been very busy, and it is necessary to be very busy, for a young man to make such a sum in so short a time." "O, but," rejoined Brown, "you don't know how busy I have been, I have spent it all; there is not a dollar left. Yes, I have spent it upon *principle*. There are two kinds of extravagance. That which arises from a love of display, and that which springs from contempt of mere wealth. *Mine* is the last. If I could become rich, I should become indolent, and lose in fame what I gained in money. This is not the case perhaps with all, but it is with me." The old gentleman laughed heartily, and they passed to other subjects more agreeable to both.

To show the high estimation in which the pupil was held by his revered preceptor (than whom there never was a purer man, or more accomplished gentleman,) we cannot do better than insert in this rambling sketch the following letter, written by him to Mr. Brown, some ten years after his admission; surely the censure or applause of such a man, is worth more than that of a whole theatre of ordinary critics.

"MY DEAR SIR:

"You borrowed of me, some time ago, the first volume of Guthrie's Quintillian, will you allow me to send you the second, with the request that you will receive them both into your library.

"The plain binding will not affect the internal merit of an author, who, the first that is known to us, systematically and fully laid down the precepts, not only of Forensic, but of general oratory; and who, were he now living, would be delighted to perceive a full illustra-

tion of what he requires to form an accomplished orator, in yourself.

"With unfeigned respect and esteem,

"I am, dear sir, your affectionate friend,

"W. RAWLE.

"*March* 31*st*, 1828.

"To David Paul Brown, Esq."

But we have wandered from our task—let us return:

At the age of fifteen, in the year 1810, the subject of this memoir lost, after a protracted illness, his devoted mother. She died, leaving him her blessing; and what was, if possible, even better, the benefits of her instruction, and the example of a life of Christian piety and practical virtue.

This was a sad blow to domestic happiness and filial hope. But though cut loose from his moorings in a mother's bosom, he, nevertheless, enjoyed the fostering care and tenderness of an affectionate father; yet who at such an age can supply a mother's, and such a mother's, loss?

The shock for a long time seemed to have paralyzed the boy. He became moody, confined himself to the house, resorted to no exercise, engaged in no amusements, moped over his books day after day, and month after month, until at length he dwindled into a mere anatomy of himself.

The father naturally became alarmed—the physician shook his head—all books were condemned—all studies prohibited; yet the prohibition only strengthened

the appetite for the forbidden fruit. At last, in order to a change of scene, it was determined that the invalid should be sent to Massachusetts, to the Rev. Dr. Daggett, a distinguished scholar, in order that he might advance himself in the knowledge of the classics.

Apparently indifferent, he bade farewell to his surviving and sorrowing parent, and took up his abode with the reverend clergyman, where he remained several years, receiving all the time his former ample pecuniary allowance. It was during this absence, while enjoying the benefits of a vacation, that he wrote the "Sandemanians," a short extract from which may be pardoned, as exhibiting his style of composition, and expressing his views at that early period, on the subject of simplicity in the worship of the Most High:—

"How great is the error of the supposition, that ornament and splendor are calculated to increase the attractions and solemnities of Religion! Never is she so impressive, so awe-inspiring, so lovely—so altogether heavenly, as when exhibited in her most artless simplicity. The work of man may be improved and adorned by the inventions of man—its defects may be concealed and its beauties heightened; but the works and emanations of the Deity are beyond the reach of human art, and are impaired in their effect in proportion as they are either decorated or disguised. Neither the sun nor the stars can ever be delineated by the most perfect artist. The works of the Almighty are not to be counterfeited—far less are the principles of Divine grace to be recommended to regard and veneration by the glare and glitter of magnificent altars, or temples towering to the skies. These are the outward habiliments and flourishes

of piety, and not its *soul;* they contribute to disturb and distract, rather than to subdue and concentrate the thoughts of the worshipper; they subject man to look at his Creator, as through a glass, darkly, instead of viewing him face to face, and bowing at once in abject nothingness, before the dazzling and awful effulgence of eternal glory. I do not know that I have succeeded in these brief remarks in furnishing the reasons for a preference of unostentatious worship, but I know upon the occasion referred to, those reasons were so deeply felt as never to be forgotten."

At the expiration of his term of studies, he returned with the highest honors to his paternal home, feebler in body than at the time of his departure, but strengthened and enlarged in mind.

Upon being received into his father's arms, that tender parent, unable to subdue his emotions, exclaimed, "My dear boy, you are reduced to a skeleton." "Yes, father," returned the boy, "but you will, I hope, find that in one sense I am much more substantial than when I left you;"—of course referring to the improvement of his mind.

Everything was again made tributary to his comfort. He had his horses at command, but never rode; was visited by others, but rarely went into society; rose early; retired invariably before ten o'clock; and lived in the most frugal and abstemious manner in the midst of luxury.

Having now reached his seventeenth year, it became necessary that he should make choice of a profession.

He seemed rather inclined to the law, (being at that early age a ready declaimer,) but so indifferent was his choice, that he at once relinquished it in favor of medicine, at the mere suggestion of his father; and was accordingly introduced to Dr. Benjamin Rush, as his pupil.

This was an unlucky choice of a profession. Nothing is more pernicious to a feeble and nervous frame, than the study of disease. We are apt to imagine that we are afflicted with almost all the physical ills that "flesh is heir to." Hypochondria not unfrequently is the result; and in the preparatory effort to cure others, we often destroy ourselves. Like a confirmed dyspeptic, we most crave the very food, that most contributes to perpetuate or strengthen our complaint.

In about six months the student was reduced to the condition of an almost hopeless patient; but how eventful is life! Just at this time,* full of age and honor, Dr. Rush died, and as the attachment was rather to the physician than the science, an entire revolution in the career of our subject was at once produced. Prior to this, some doubts of the propriety of the selection glanced into the father's mind. Now these doubts worked an entire change.

The pupil was at once withdrawn from the science

* Dr. Benjamin Rush died 19th of April, 1813, in the sixty-eighth year of his age.

of physiology and pathology, and his original inclination to the law having been somewhat strengthened, he was placed under the instruction and in the office of one of the most distinguished lawyers in the Union, the late William Rawle, a man at that time of princely fortune, and whose fame was co-extensive with the country.

It is unnecessary to carry our reader through a law student's studies. Let it suffice, that for the first year our student read for twelve hours a day. After that time, by the advice of his preceptor, he reduced the time to eight hours, and finally settled down upon six hours. He, in addition to this, regularly attended the courts for several hours in the day, during the last two years of his novitiate, and thereby became not only familiar with the usual form of business, but was better acquainted with the former and elder members of the bar, than most members of the legal profession, who were many years his senior. Indeed, his intercourse was chiefly with the aged men of the profession—Lewis, Ingersoll, Tilghman, Dallas, Binney and Sergeant, were then in their full vigor, and he enjoyed the benefits of their forensic example; and truly the country never witnessed a more glorious example.

In the latter part of the year 1815, a year before the termination of his course of study, a second shaft from the insatiate archer deprived him of his father,

and left him alone in the world, possessed, it is true, of a competent fortune, but cut loose, as it were, from all those kindred ties that make life most precious. But he that has suffered the greatest evil in life, can suffer no more; like *death*, it cures every thing.

This last blow, struck from him his last dependence, and from that moment, though he stood *alone*, he relied only upon himself, and stood firmly. "My chief grief," said he, in after days, while in the full tide of success,

"My chief grief is, that those who watched over my spring and my summer with such untiring affection, should have never lived to behold the harvest of their own parental care. I should have been most happy just to show that their attentions were not entirely undeserved and unrequited.

"'Man proposes and God disposes.' Ambition at length took the place of filial love; time cicatrized the wounds of the heart; but I shall never forget, that those for whose good opinion I was most solicitous—those to whom I was bound most deeply in gratitude and filial duty, received no other repayment than from the tears of affection and sorrow, that were shed upon their graves. In short, my ambition was divested of its chief pride; and to this moment, in my greatest professional triumphs, my mind still recurs to the past, and cannot but acknowledge that its enjoyment is incomplete."

In the month of September, 1816, at the age of twenty-one years, Mr. Brown having read law for nearly four years, and undergone the usual examination, was admitted to practice in the District Court

and Court of Common Pleas in the City of Philadelphia, and soon after he was admitted to practice in the Supreme Court of the State, and in the District, Circuit, and Supreme Courts of the United States. (We cannot do better, perhaps, by way of offering some notion of his difficulties, than to introduce here into our hasty sketch a description of his first cause, from his own pen entered in his diary, some years afterwards.)

"After toiling through the usual term allotted to students of the legal profession, on the day on which I completed my twenty-first year I submitted myself to the necessary examination, and was admitted to practice as a member of the Philadelphia bar. No very distinct impression of the emotions then felt remains to me now, after a lapse of many years. Neither my prospects nor my hopes were the brightest, and although a devotee to my profession, mine was a devotion not founded of course in experience; and therefore liable to be much impaired, if not utterly destroyed, by encountering obstacles not anticipated, or neglect, still more difficult to be endured. Yet from neither had I any claim to exemption, at least so I think, in more matured reason, in birth, in fortune, or in talents. For the most part unknown among the members of the bar, with a moderate patrimony, and with the benefit of the best education which the times could afford, I still felt, in presenting myself before the public, that everything must depend upon two contingencies; first, whether the opportunity would be afforded for a favorable display of the limited abilities which I might possess; and secondly, whether I should be capable of employing that opportunity to advantage. Doubts like these must more or less influence every rational being in entering upon the prosecution of every sci-

ence, and in none more than the arduous science of the law. My office was opened; but in despite of the allurements of a well-executed sign, and a tolerable location for business, weeks and months, I had almost said years, rolled over my head, without improving my pocket, brightening my prospects, or increasing my affection for the object of my choice. Indeed, I am not certain that my ambition was not a little chilled, and I *am certain*, that without the slightest inclination actually to abandon my forensic career, I, nevertheless, occasionally looked with something like loathing, to some half a dozen books which decorated a solitary shelf in my study. I found that the notion entertained prior to admission, that when my 'calling and election' had been made sure, I should be disposed to enjoy in delightful composure the companionship of the sages of the law, was *but* a notion, and that it was totally unable to resist the superior interest and attraction with a youthful mind, which was furnished by a flood of poetry and romance, daily issuing from the press, and literally flooding the land. And why should it be considered remarkable? No man, in his senses, ever pretended that in itself alone, the acquisition of any science could be matter of delight. It is in the vista which it is supposed to open to professional elevation —to worldly advancement—phantoms which too often vanish as we approach them—that its charms chiefly consist. My eyes were already closed upon these illusions, and the mind, in the effort to relieve itself from despair, turned to other subjects, if not more substantial, still more fascinating for the time. The end of the first year found me occupied with everything but law. The tranquillity of my office, had I think, never in a single instance, been disturbed or invaded by the foot of any obtrusive client—I was about to say, of any individual—for even courtesy shrinks from and shuns the unfortunate; when, on the first morning of the ensuing year, a fellow-student of mine, who was admitted about the same time, and who has since risen to considerable eminence, stalked into my office, as he said, to offer his condolence;—and who could have been more

sincere in his sympathies? He had also had, *not a single client*—'Not a client!' said I; and I am afraid there was a lurking satisfaction in the inquiry. 'Not one, by all that is wonderful!' said he; 'that is, not a solitary fee; and yet, I don't think I have any right to complain.' 'No right to complain!' I rejoined; 'that may be, but you have nevertheless a clear chance of starving!—to starve and not complain—this is an ungrateful world:' and I was going on to say something more, when he requested me to listen to him a moment, and I should perceive that his remarks were perfectly just. 'I have been,' said he, 'like yourself, a year at the bar—I have never received a farthing, or been retained in a single suit. This morning, for the first time, my door opened to a visitor, an old lady, who called upon me—she being the widow of a Revolutionary hero—for the purpose of receiving instruction as to the measures necessary to be adopted in order to procure a pension or bounty from the United States. If she had asked me the readiest cut to the moon, I should not have been more confounded. I had no book at hand that contained the necessary information, and I should have been ashamed to turn to it, if I had. I faltered and floundered for some time, but the question was too direct to be evaded, and I waited upon her to the door, while I honestly confessed—what she must previously have discovered—that I really did not know.' 'Now, sir,' said he, in a tone of mingled mirth and sadness, 'what right have I to complain? the moment I shall be satisfied that I am a thorough-paced lawyer, ripe and ready for every ordinary inquiry, I shall feel myself authorized to pass my maledictions upon the blindness and stupidity of the world, by which my attainments are treated with unmerited contempt! But not now—not now;—heaven forbid! The old lady has satisfied me that the fault is in myself.' Notwithstanding these were no laughing matters, my risibles were not a little provoked by this occurrence, and my despondency—such is our nature—somewhat alleviated by the equality of our conditions. We parted—both in a better humor than when we met—and I also

came to the conclusion, that it was quite as probable that I was not right, as that the world was entirely wrong. Acting under the influence of this idea, I determined to appear again in the busy haunts of life—from which I had long been closely secluded—to betake myself to the courts, where I was an entire stranger; and in short, to find out from ocular proof, how it was possible that 'the great globe' should move, without apparently the slightest consciousness of the loss which it sustained in my person and endowments.

"One day, shortly after arriving at this determination, passing through the avenue between the courts, my attention was attracted by a crowd assembled on the steps, where an old woman—for women, it would seem, are ever connected with the greatest good and evil in life—with a sort of inspired phrenzy, like that of Norna, of the Fitful Head, was haranguing the wondering, gaping multitude, upon the cruelty and barbarity of some one, whom she did not very clearly designate. This arose, perhaps, either from her having named the individual before my arrival on the margin of the assemblage, or from her resembling some orators, who think it quite enough to speak, and therefore leave you to find their subject by your learning. Her manner—and in this also she was governed by high authority—was more effective and intelligible than her matter, and directed by that, I was induced to peer more closely into the crowd, in the very centre of which I at last discovered a sight much more than sufficient, to excite a female heart, or move a female tongue.

"In the very centre of this crowd, I say, stood, or rather bent, a little girl, whose suffering, it seems, formed the subject of the philippic to which I have already referred, and to whom the aged sybil ever and anon pathetically pointed. She appeared to be about eight or nine years old, wretchedly attired, the back part of her dress torn open, and her body exposed. Gracious heaven, what a sight! Her little limbs were covered with welts and extravasated blood—her

eyes were streaming with tears, and her youthful heart throbbed as though it would burst. Who could behold such suffering and be silent? I ventured to inquire to what this shocking spectacle in a civilized community was attributable?—an unlucky question. Attention was directed immediately to me, and whether there was anything professional in the mode of inquiry, or whether some individual in the large assemblage knew that I was somehow connected with the law, I know not, but it was at once insisted that I should point out the road to redress. Although it would be base to say that my feelings were not deeply enlisted, the idea of being suddenly thrust into an argument, was very much like looking a lion in the mouth; and I really think I would rather have taken a beating, equal to that of the little sufferer, than to have been called upon to utter those frightful, those appaling words: 'May it please your Honor.'

"What could be done? There is something in the helplessness of childhood, that appeals most strongly to the heart. I was not a parent, it is true, but nature ever prepares us for those affections which, when they arrive, are the most despotic and resistless in their sway. The age—the sex—the tears—the blood of the sufferer, might have moved a savage—but, added to all these, the accounts of her inability to communicate by language the extent of her calamity, rendered it doubly impressive and affecting—what, I say, could be done? Who could resist such an appeal? Even if the nobler emotions of the heart could have listened unmoved to her untutored grief, the sense of shame which every man must experience in refusing his aid, when thus strongly and publicly appealed to, could not be overcome. I took the little stranger by the hand, ushered her into the office of the chief magistrate of the city, and there endeavored—for it was my first appearance, as well as her's, before the awful face of justice—there endeavored so to collect my scattered thoughts, as to present something like a connected detail of the injuries she had endured at the hand of her master. It seems that the child—a matter of which my readers have not been apprised—

was one of a large family of German Redemptioners, as they are usually called, recently arrived amongst us. She, together with her entire family, had been sold or bound to different individuals throughout the State, for a certain number of years, for the purpose of discharging the amount of their passage money. Her father and mother, as I succeeded in gathering, were purchased by some gentlemen in the interior of the State. Her brothers and sisters had also been purchased by persons far removed from the city, and she, the youngest of the little flock, cut off and estranged from her native support, fell into the hands of the individual whose causeless barbarity was the subject of complaint. The case was returned to court, and in fearful suspense I awaited the trial.

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"My fears, however, had no effect other than to lend their own wings to the flight of time, and the morning of the eventful day of trial arrived—the day that was to decide upon my destiny forever. How deceitful is this world! To visit our temples of justice, and to listen to the aspirants for fame—what is more delightful, what is more fascinating? What a sad reverse, however, does reflection present, while she traces them step by step, through the thorny and perplexing mazes of intricate science—bartering their tranquil slumbers for the illusions of fame; wasting their lives frequently in unavailing efforts to enjoy or to grasp what hope had so long promised, until at last the lights of life and hope are extinguished together. How dearly purchased; and alas! how vain are the charms of ambition!

"What a miracle is the mind of man! shrinking even from the thought of past terrors. At this day, when the records of time are impressed upon my brow, and I feel his icy fingers at my heart, I can hardly bring myself, without too much emotion, to review the scene of my earliest professional struggle. Haggard and worn-out—not with preparing for my cause, but with thinking of it—on the appointed day, not induced by ambition but impelled by dread of shame, and yet hardly certain whether the greater shame pursued

or awaited me, I entered, for the first time professionally, the chambers of justice—the chambers of death would not have been more gloomy, scarcely less welcome. The hall was crowded to the very ceiling, either actually or by my peopled imagination. Yet I saw nothing distinctly; there was a general buzz—not of applause—but, as it seemed to me, of consternation, at seeing the approach of counsel and client; the former, if possible, evidently more terrified than the latter. I sat down beside the complainant, scarcely knowing how; got up without knowing why, and, in the very endeavor to appear composed, must have satisfied every practiced observer, that composure was no inmate of my distracted mind. When sufficiently collected to embody the shadowy forms around me, I perceived, seated immediately opposite to me, the defendant and his counsel—two experienced and distinguished members of the profession, men who had been accustomed to sway the sceptre of the mind with kingly hand, not only composed, but eager for the encounter. When I saw this, strange as it may seem, I confess I felt relieved—there was something, it seemed to me, like a contemptuous smile playing around the lips of the gentlemen, and I felt for a moment as though my soul was in arms; it was but for a moment—the feverish excitement subsided, and left me, if possible, more languid than before. The case was called—the jury sworn—when, as if I were doomed to be tested by every affliction, the attorney-general, a gentleman of distinction in the profession, though but little older than myself, privately stated to me that it was not his design to assist in the prosecution, but that having opened the cause, it would be left entirely to my management. Ambition, pride, shame, had alternately ruled in my bosom; their voice, though heard for the time, was soon lost in the tumultuous clamor of fear that pervaded their kingdom. This, however, was the last blow, and the result was despair—deep, unalloyed, unmitigated, unresisted. From that moment my whole character was changed, and 'every petty artery in the body swelled with a giant's strength.' I had often heard of the

stillness and calmness of despair, but never felt it before or since. How salutary a lesson did I derive from the sufferings of the occasion! How intense is the commiseration I feel upon the professional debut of one of my young friends! and although it rarely happens to them, to make their first appearance, or launch their little bark upon so stormy a sea as that by which mine was tossed, nevertheless, to a sensitive mind, the first public essay, whatever may be its character, and whatever its occasion, is attended by the most horrible anxieties, and perhaps it is necessary that it should be so. He who commences his career with composure, will prosecute it with indifference, and terminate it in disgust. I acquit the gentlemen opposed to me of any design to increase my difficulties. Scarcely, however, had the case been opened, when it was suggested that the defendant had the right to insist upon the indorsement of the name of the prosecutor, and some authorities were referred to in support of the privilege. Those who were friends before, seemed to shrink from responsibility. I had no authorities to oppose them; my scanty supply of legal lore hardly furnished me with the definition of the offence about to be tried, much less with that practical knowledge, without which the acquisition of legal principles becomes rather an incumbrance than an assistance. I simply suggested to the court, that the application appeared to me to be too late, after the jury had been sworn; that the jury might themselves afford to the defendant all the advantages to which he was entitled, by finding the prosecutor in the verdict; but if neither of these grounds was considered sufficient by the court, I begged, in behalf of a friendless child, to be allowed the honor of recording my own name as the prosecutor, and thereby at once removing all preliminary questions upon our right to proceed. This was partly sincere, no doubt, but I dare say it was chiefly attributable to my having, at the time, more ready money, than ready reason. The court, fortunately for us, adopted the ground first suggested, refused to direct the name of the prosecutor to be indorsed, and the cause was accordingly ordered to pro-

ceed. The counsel for the defendant then publicly called upon the attorney-general to adopt or reject the case as a public prosecution. With a magnanimity for which he deserved, and received credit, he stated that although disposed to leave the matter entirely to me, he did not think his official duty would justify him in throwing reproach upon a case, founded, apparently, in a desire of public justice, by declaring it unworthy of public support; and that if it were insisted upon that he should either repudiate or assist in, the prosecution, he would elect the latter, which he accordingly did, very much to my gratification and the benefit of my client, and unquestionably to his own honor.

"The cause then proceeded. The facts already adverted to, were distinctly proved. The defendant chiefly relied for his acquittal upon his general character, which was irreproachable—upon alleged misconduct of the child, and particularly that she had, upon one occasion, been found in possession of a small sum of money, which, she said, had been given to her by the defendant's brother, and which the brother denied. The cause lasted nearly four days, the excitement daily increasing, until at length, the period arrived, when it became my duty to address the court and jury.

"Terrified and trembling I arose. The temporary agitation of the multitude, and then the dead silence that succeeded—the imaginary importance of a first effort—its probable effect upon my future life—but above all, the desire to vindicate the principles of humanity, which had been outraged, all contributed, by their claims upon my exertion, to impair those feeble talents which might have been effectually exercised, if less powerfully put into requisition.

"As though seeking consolation from every quarter, and anxious to conciliate the opinion of my opponents, the moment before commencing my speech, I turned to one of my antagonists and said, 'This is awful; it is very much like facing a full-mouthed battery,'

in the expectation that he would cheer me by the reply, that my fears were imaginary—a few words, and I should be relieved from anxiety, or something to that amount. But, on the contrary, my anxiety was redoubled by his remark, that it was truly a great day for me, as I should probably date my rise or ruin from it. All further intermission was here luckily cut short by a direction from the court to commence the discussion, and I began. For some minutes I remembered nothing, with the exception of one circumstance, which showed that I was not entirely deprived of consciousness. Having, while speaking, thrown out my hand, I was shocked to perceive that it trembled like an aspen leaf, and immediately withdrew it until the acquisition of greater courage should render it more confident in the cause. When I once got fairly started, the reaction of nature upon the system was most powerful. The excitement into which I was wrought, presented too, most boldly to my mind, all that I ever read or knew. The audience, bore away by the occasion, and only requiring that the prominent features of it should be discreetly exhibited to them, broke in upon my speech with loud and long-continued applause; and after haranguing the public rather than the jury for about three hours, I sat down amidst the most tumultuous acclamations that ever disturbed the serenity, or shocked the dignity of a court of justice. The whole effect of the speech was dramatic. The introduction of the child, whom I apostrophized in the course of my tirade, was electrical; the entire assemblage melted into tears; in short, rage, indignation, sorrow and compassion ruled the tumultuous throng by turns. My antagonists followed. They managed their cause with infinite address and ability; but in such a case, and with such an audience, it was not in the power of man to succeed. The case was closed by the attorney-general with great force and pathos, and the defendant was convicted.

"This may be said to be a strange world—there is nothing in romance equal to the realities of life. My office, which, as I have

said, before that time was deserted, now, by this sudden and unexpected chance, became thronged with clients, anxious to unload their griefs and their pockets. My seclusion and tranquility were forever exchanged for public display and ever-changing scenes of noise and strife. With all the delight attending upon flattering hopes, is there not room to doubt here, whether the change, favorable as it appeared, really contributed to increase the actual balance of human happiness? My means, it is true, were extended, but my expenses were necessarily much increased. My pleasures were of a more positive character, but so were my pains. Daily I inhaled the buoyant gale of popular favor, but I was also daily subjected to perils and penalties which nothing but untiring ambition could endure. I am even surprised, that I should ever have rejoiced at a change which condemned me to unremitting and interminable toil; and with the characteristic capriciousness of man, I look with anxious and desiring eyes upon the retirement and solitude which at *that* time was as much abhorred, as it is coveted at *this*."

In 1819, Mr. Brown, then about twenty-four years of age, was honored by the Washington Benevolent Society with the appointment of Orator, to deliver the Annual discourse upon the birth-day of the Father of his country. This duty was performed at the Hall, with an audience of more than five thousand persons; and without the aid of any manuscript. When it is remembered that this high post had previously been conferred upon such men as Judge Hopkinson, Mr. Ingersoll and Mr. Chauncey, veterans at the bar, the distinction will not be deemed inconsiderable, or unworthy of notice. From year to year, popular favor

seemed to accumulate upon the subject of this memoir; shortly after, he was engaged in some of the most exciting of the Roman Catholic disputes, (arising out of dissensions between the body of the clergy and the late Mr. Hogan,) which difficulties agitated the city for several years, and employed some of the first talents in the country. In 1822, he conducted the prosecution against Boyer, Seitzinger and others, before the Court of Quarter Sessions in Berks county, of which the Hon. R. Porter, was president. The case was one of great importance, arising out of an extensive conspiracy to defraud the merchants of Philadelphia. The trial occupied upwards of ten days, and the defendants were represented by some of the ablest men in the State—Marks John Biddle, Charles Evans, James Buchanan, Samuel Baird, and several others, all of whom exhibited great zeal and consummate skill. Mr. Brown was at this period but twenty-six years of age, and it is sufficient to say of him, that he maintained his composure and his ground, against such fearful odds.

In 1824, Mr. Brown was engaged by the Honorable Robert Porter, President Judge of the Common Pleas, in his defence upon an impeachment before the Senate of Pennsylvania, which impeachment partly arose out of the trial for conspiracy just referred to. Upon the trial, Mr. Brown was the only counsel for the respondent; and in defiance of a powerful opposition by the

attorney-general and the committee of the Lower House, succeeded, after a laborious trial of several weeks, in a most honorable acquittal of his client. The difficulties encountered by him upon this occasion, considering his youth, were such as are rarely undergone; and no young lawyer can fail to sympathize with him, while perusing the following anecdote, which we have heard related by himself, and almost in the very words:

"On the fourteenth day of the trial, the evidence being closed, the attorney-general summed up his case, and finished about the usual hour of the evening adjournment. I was to follow the next morning for the defendant. I, of course, returned to my lodgings, brim-full of anxiety, and as is my wont, expecting a night of laborious examination and study. It has been my habit, always to reserve my main preparation until after the evidence has terminated —but, in the present instance, that delay was rendered inevitable from the pressure of the trial, and protracted sessions of the Senate. After taking my dish of tea, I locked my chamber door, drew the strings of my satchel, and pulled out, as I thought, the recorded labors of the last fortnight. But to my astonishment, the bag only contained the journal of both Houses—not a particle of my notes, the charges, or the evidence. I confess this appalled me—it was now ten o'clock at night, and with all appliances and means to boot, I had no time to spare. I immediately rushed to the Senate chamber, opened my desk in search of my notes, but it was empty. I next hastened to Judge Porter's lodgings, but he knew nothing of the stray papers. Finally, I turned my disconsolate steps again towards my own apartments, and I confess I think would have been happy if any one had blown my brains out on the road. The

reflection, or rather the visions that passed through my mind, were of the most painful and distressing character. I felt as if all my past life was to go for nothing; as if this was the crisis of my fate. To appear before the representatives of the entire State—heralded by proud anticipations, and break down in the very centre of a vast community, 'where either I must live or have no life,' was certainly enough. But there were matters beyond these. The respondent, a man of high character and fortune, and with an interesting, large, sympathetic family, was to be utterly ruined in his fame and prospects, by confiding his defence to a thoughtless and improvident young man, who had not only neglected the reasonable preparation of the case, but had actually lost the documents, and the evidence, so vital to the defence.

"As to asking the Senate to extend any indulgence in the way of a postponement of the argument, that was out of the question. What then was to be done? The die seemed to be cast, and my very apprehensions served only to redouble the difficulties, to which I was actually subjected. There is a courage, however, in despair, that nothing else can match. I felt like the leader of a forlorn hope, who, in the extremity of danger, loses even the sense of fear. I remember it as if it were yesterday. I entered my wretched study, which I had prepared for a night of toil, blew out the lights, and attired as I was, sprang into my hapless bed, to pass a feverish, a sleepless, and a restless night. It was the only night's rest I ever lost; yet, in its influence upon my professional character, it was the best night of my life. With closed eyes, and a perfect concentration of all the faculties of my mind, I reviewed, in their order, the occurrences of the trial, so far as they were essential to the defence; an immense effort of memory, the greater for my having at all relied upon the notes, in the progress of the cause. The charges were fourteen in number; I began of course with those. I then turned my mind to the answers to the specifications, by which I arrived at the exact points in issue, either in fact or in

law. I next passed to the names of the different witnesses, amounting to one hundred and fifteen, examined on the part of the State, and the defendant; I then recalled the respective testimony upon the different accusations; the discrepancies, contradictions, motives, the means of knowledge, and the respective weight of the witnesses, in regard to the points in controversy. This was followed by a discussion of the legal principles, applicable to the relative condition of the prosecution and defence. And lastly, I reviewed the public services of the respondent from the time he was an officer in the Revolution, at the age of eighteen years, down to the moment of the present trial. I had barely reached thus far, when the bell of the Capitol sounded, and I was summoned, half dead, to my argument. At all events, I didn't require to dress, and I was quite *ready*, if not entirely *prepared*. As I walked up the middle aisle or avenue to commence my argument, my client, who, with all his merits, was the most absent man in the world, hastily approached, and said, 'My dear friend, I have found your papers, having locked them up safely in my desk.' I had merely time to say, with some impatience I fear, 'It is of no consequence now;' and the argument, which occupied the entire morning, at once proceeded, and on the next day, eventuated, as has been said, in the honorable acquittal of the defendant.

"I refer to this, not simply for the story, but for its moral; for the encouragement which it is calculated to impart to the youthful advocate in similar circumstances. Depend upon it, what must be done, can be done. 'The gods are ever with the brave.' To be resolved is every thing.

"All the composure that I have ever since enjoyed in the most anxious struggles, has been readily traced to the early events which I have thus described. No circumstances could be more unfavorable; and therefore, having encountered the greater evil, I am not to be taken by surprise, but feel ready to combat with the less. A

rough youth makes a calm old age. Adversity is a severe teacher, but its lessons are rarely forgotten."

During the pendency of this very important case, Mr. Brown became engaged to Emmeline Catharine Handy, the accomplished and only daughter of Sewell Handy, late of the United States Navy, and granddaughter of James Hutchins, Esq., of the Eastern Shore of Maryland.

This marriage took place at Philadelphia, on Christmas eve, in the year eighteen hundred and twenty-six, and has been blessed with the birth of five sons and two daughters, all of whom are still living.

The new relation into which he had entered was, of course, an additional incentive to professional exertion. Still, although business increased, his labors were rendered comparatively light, from having become habitually familiar. In his own language, "he could now sleep upon his laurels," or make speeches with impunity, which would have ruined him if he had been ten years younger. Such was his just estimate of the patronage and judgment of the world. The trial lists of the courts will show, that for years his business took a conspicuous part, in the number of cases brought in the civil courts; and when it is remembered that his engagements were of the most varied character—that he was a leader, too, in the heavier business of criminal proceedings, and was not unfre-

quently employed in four other States of the Union; it may well be believed that the duties of his profession afforded him but little time for relaxation. When upon one occasion a friend kindly inquired, "How is it possible that you can do so much business?" he simply answered, "Because I have got so much to do." "But," rejoined the other, "How can you indulge in poetry and general literature?" "Because," replied he, "it enables me to return to my more rugged pursuits with greater alacrity and renewed strength. The mind takes its direction from habit; if you wish to strengthen it, you must direct it, for a time, into other channels, and thereby refresh and improve it. A mere lawyer is a mere jackass, and has never the power to unload himself; whereas I consider the advocate—the thoroughly accomplished advocate—the highest style of man. He is always ready to learn, and always able to teach. Hortensius was a lawyer—Cicero an orator, the one is forgotten, the other immortalized."

Shortly after his marriage, Mr. Brown was engaged with Mr. Binney, and the elder Mr. Rawle (his preceptor,) in the Circuit Court of the United States, in the highly important case of Snyder v. Zelin, involving the chief part of the estate of the late Governor Snyder. It was an ejectment to recover Zelin's Grove. Mr. Bellas, Mr. Kittera, and Mr. Chauncey, were the counsel for the defendant. This case is introduced partly to show the promptitude of Mr. Brown in

an emergency, and partly to exhibit the perils of printing.

As the junior counsel, Mr. B., of course, opened the case for the plaintiff. When he commenced, the witnesses to prove the fact of possession, were all in court; but when the opening was finished, and the witnesses were called, they had all in some mysterious manner disappeared. The matter was stated to the court, but after waiting a few minutes, Judge Washington ordered the case to proceed. "Well, then," said Mr. B., "I will call Mr. Bellas, one of the defendant's counsel, who resides near Zelin's Grove." "I decline being examined," said Mr. Bellas, "being counsel, I cannot be asked to betray the confidence reposed in me." "But," said the Judge, "you are compelled, notwithstanding, to state your knowledge of a fact which is supposed to have been known to you, independently of your employment." He was therefore examined, and the object accomplished. The peril of printing was this:

During the trial just mentioned, which was a protracted one, Mr. James Madison Porter (afterwards Secretary of War, who was a brother of Judge Porter,) had procured the proceedings and arguments upon the impeachment, to be published, and he forwarded the proof-sheet to Mr. B., while immersed in the difficulties of the trial, in the Circuit Court. Mr. B. had merely time hastily to glance over his speech, strike out some

of the objectionable parts, by passing his pen through them, and return the proof forthwith. But upon the publication of the book, what was his surprise to find that the stupid printer, instead of omitting the objectionable passages, probably supposing they were intended to be underscored, had printed them all in italics, thereby inviting attention especially to the most offensive parts of the argument. If the speech was ruined, the joke at least remained; and we have often heard the victim say, that he would not give much for any man's literary or professional reputation, that a printer's blunder could demolish.

Shortly after this he reviewed, for Mr. Walsh, "Joanna Baillie's Poetical and Dramatic Productions;" Colonel Hamilton's work upon the "Men and Manners of America;" and Lord Brougham's Speech upon the "Reform of the British Laws." In the year 1830, he wrote "Sertorius, or the Roman Patriot," a tragedy; and the "Prophet of St. Paul's," a melodrama, which were followed by the "Trial," another tragedy; and a farce, called "Love and Honor, or the Generous Soldier;" the first two of which were performed and published, and, if we remember rightly, reviewed by Mr. Paulding, Secretary of the Navy, in "Walsh's American Quarterly Review." Well may we admire, says an author of considerable distinction, speaking in regard to these literary labors, that a lawyer, overwhelmed with an infinite variety of busi-

ness, whose ante-room resembles that of Charles the Bold, should recreate his harassed and exhausted faculties, even amidst the passion, invective, and noise of litigation, with the beautiful dreams of poetry. He well knew that the purest and loftiest intellect is least esteemed among us; else why are the authors of "Prometheus" and "Hadad" thrown backward into darkness, while the tamest mediocrity often triumphs over the genius which scorns all subterfuge and notoriety. But Mr. Brown recks not of these things. Amidst the severe toils and agitations of his profession, he summons around him the lovely castalides—breathes in the thick atmosphere of a court, the pure air of Parnassus; and retires with a serene spirit from the fury of forensic contention, to celebrate his competalia among the shadowy and beautiful beings of the mind. We delight to behold such a mind; it soars beyond the indurating influences, the scepticism, the worldliness, which the law too often engenders, and clothes even the bitter animosities of men with the light of a humanizing and exalted spirit. Mr. Brown most amply merits the reputation he enjoys in jurisprudence, and if his fame is not surpassed by his literary renown, it will be solely because letters are to him, not a profession, but an enjoyment; not an aspiration after immortality, but a recreation and solace in his hours of abstraction from the more severe conflicts of the mind.

In a work upon the "Dramatic Authors of Ame-

rica," by James Reese, Esq., published in 1845, there is also a notice of some of these plays, together with a professional anecdote, that may not be unworthy of insertion in this hasty and imperfect sketch. It is written by a comparative stranger, and is, perhaps, the more valuable or impartial on that account; at all events, it will form one of the links in the chronological chain of Mr. Brown's career.

David Paul Brown, "Sertorius;" "Prophet of St. Paul's." The first of these was printed in 1830, and acted by Mr. Booth, in his palmy days, with great success. It possesses considerable merit, and has nobly withstood the test of severe criticism. The latter has been played thrice, but not with the same success. "The Prophet of St. Paul's," like the dramatic productions of Byron, is better calculated for the closet than the stage; it is obviously not intended for representation. A critic of the period alluded to, speaks of the author thus:

"Mr. Brown's poetry is generally smooth and harmonious. Besides a familiar acquaintance with the best models, he has a delicate ear, nicely alive to discord; and he reads with a correctness which would be likely, if applied as a test, to prevent all harshness of rhythmical construction. In 'Sertorius,' it would be difficult to find a single jarring line. Mr. Brown is one of our most popular lawyers. He possesses, in an eminent degree, those qualities which acquire and secure favor. His manners are frank and courteous, his conversation is sparkling and vivacious, and his temper is amiable and benevolent.

"As an advocate, he has few superiors. He enters thoroughly into his case—identifies himself with his client—and his warmth and energy always secure attention, and awaken interest, even when they fail to produce conviction. His declamation is bold and impassioned; his diction uncommonly free and felicitous, and he possesses a readiness, self-command and tact, which never forsake him. It is not surprising, then, that his clients should be numerous, and his business extensive; and hence it has happened, to use the language employed in his simple, but sincere dedication, that his 'dramatic sketch' was hastily 'drawn in the scanty intervals afforded by an arduous profession.'

"A general criticism upon the literary merits of any native production, would be foreign from our purpose. In accordance, however, with the plan laid down, we give extracts whenever the opportunity offers, with such remarks as have appeared on or about the time of the representation of the pieces. We wrote to David Paul Brown, Esq., for copies of his plays, that we might make such extracts as would tend to give our readers some idea of their literary merit. We cannot resist the temptation of publishing the following letter from this admirable dramatic writer; it is written in his usual style of excellence, and when we add, that we have no personal acquaintance with him, his open, candid, and familiar style will convey to our readers a much better idea of Mr. Brown's character, than would whole pages of fulsome flattery, from some crawling sycophant, who, 'to win and wear favor,' would write anything at the expense of truth.

"'Philadelphia.

"'DEAR SIR,—I received your kind letter, dated the first of this month, and hasten to reply. I am, perhaps, unlike most dramatic writers of the present, or any other, day—for although neither of my dramas has met with much success, I think both have met with

much more than they were entitled to. This impression of mine may be ascribable to my utter indifference to their fate. They were written rather as matters of relief from the cares and toils of an arduous profession, than with any view to their representation upon the stage. And if I may speak frankly, I must say, they derived greater celebrity from their author, than their author will ever derive from them. In other words, it was not so remarkable that with vast professional engagements, I should have written two bad plays, as that I should have been able to write any at all. 'Sertorius' has been performed nine times, and with the aid of Mr. Booth, was well received. The 'Prophet of St. Paul's' has been thrice performed, and by the aid of good luck, has not yet been *damned;* but for my own part, I should be unwilling to run so narrow a chance. In the worst possible result however, I should have been totally unaffected, as I confess to you; although I have much pleasure in the composition of such matters, I have no interest in their fate. I am an advocate, not a dramatist.

"'I have attended to your request, and deposited with Messrs. Carey & Hart, a copy of 'Sertorius' and the 'Prophet,' which I hope you will shortly receive.

"'Very respectfully yours,

"'David Paul Brown.'"

Anecdote of David Paul Brown:

"Some fifteen years ago, when the duties of a juror required my regular attendance at the courts, the peculiar manner and style of this gentleman's pleading struck me as being highly dramatic—not an affected, theatrical manner, but one the result of much study of human nature, the effect of which was startling and almost overpowering, particularly to the poor devil about undergoing the ordeal of cross-examination. One case, while I was an empaneled juror,

left an impression on my mind that time can never erase. The witness was a respectable looking man, with a calm, settled countenance, as placid as are the deep waters when the storms have passed in their fury away. There was not in any one of his strongly marked features, the least indication or index to a volume of crimes, which lay hid in his breast. I had noticed this man particularly, and in a former case, had received as gospel his evidence. But Mr. Brown, the attorney in the case before the court, objected to his evidence; it should not, he observed, be received. The reasons were demanded by the court—they were promptly given: the man was a convict, unpardoned, and thus placed beyond the pale and privilege of the law by his crimes, and not to be admitted at the bar otherwise than as a criminal. Much excitement ensued; the witness looked surprised; he rebutted the charge with indignation, spoke of character, law and justice—his eyes flashed as he boldly stated to the court that he never was in prison, had never been subject to the lash of the law in any shape. Injured innocence, insulted pride, wounded honor, all seemed to rise up in vengeance against the bold accuser. Mr. Brown arose from his chair, where he had seated himself at the commencement of the witness's declaration of innocence, and walked up to him. There was determination in his look; his soul-searching eye was fixed like that of a basilisk on the witness. The effect was almost the same, for his victim's gaze was also as fixed; the one, however, was that of power—the other that of fear. Mr. Brown spoke; 'I have objected to your evidence, sir; this objection is founded upon a knowledge of your character. Answer me, sir, were you not convicted and punished in the State of Delaware, for a heinous crime?' 'No, sir.' This was uttered with an evidently assumed boldness. 'Never!' 'No, sir.' 'If I were to strip up the sleeves of your coat, and point to the letter R, branded on your right arm, near the shoulder, and say this was done in New Castle, Delaware, what answer would you make?' The poor wretch was

crushed—his artificial courage melted away before the fire of an intellectual eye. It is scarcely necessary to add, Brown gained his cause. From that moment I admired him; and when his tragedy of Sertorius made its appearance, I read it with additional interest, from the fact of associating a highly intellectual scene in real life, with the many which so frequently occur in dramatic existence."

In addition to the preceding notice, we cannot, perhaps, do better than present to our readers the following sketch, by a distinguished member of the Bar, (still in practice,) some few years afterwards.

Extract from the private journal of a member of the Bar, dated September 15th, 1836:

"A word of Mr. Brown, whose accidental presence in the box with me this evening, and devotion to Shakspeare, suggests a remark or two in this connection. Some persons, as was once said of him, have the good fortune to be called by all their names at once; it is so with this gentleman; it is never Mr. David Brown, or Mr. Paul Brown, or Mr. David P. Brown, or Mr. D. Paul Brown, according to a modern fancy, but David Paul Brown, all three at the same time—an entire triumvirate—like certain illustrious names of antiquity, or John Quincy Adams, to come down to our own day. But with or without all three of his names, he is a remarkable man. He stands, in many things, at the head of the profession, in my humble judgment, if eloquence be a test of professional strength or distinction—for eloquence he undoubtedly has, and of a high order. That godlike gift, which likens man to angels in its sublimest flights, is his, to an extent unsurpassed by any one here in daily practice, whom I have yet heard. There may be others equally eloquent,

others who have ceased to mingle in daily contests—I am told there are such, whose style of speaking is as classic, as powerful, but I have not heard them. Of those whom I have listened to, I should say, that the gift of oratory, in some of its highest departments, is assuredly Mr. David Paul Brown's, by title indefeasible and beyond dispute. I have known him carry a whole court room by storm. This may give an idea of his style—it is storming of entrenchments with him from beginning to end, a charge of bayonets, downright cut and thrust work—the battle axe and battering ram, from the moment he rises till he takes his seat. We hear of the sword and the pen; with him it is the sword and the tongue; his manner of speaking resembling often the power of the sword, for he slashes about him, right and left, cutting down every thing—sparing nothing—galloping headlong over dead and dying, till he accomplishes the one great object of beating and prostrating the enemy's lines, bearing down his defences, and planting his victorious standard upon the ruins, it may be inferred that he is equally powerful to resist; evading, with equal dexterity, the blow himself would aim. With all this, he has the high merit of self-possession, which he retains at all times, in the midst even of a torrent in which other men would be lost. He speaks a good deal like McDuffie, of South Carolina, using the same fire and force, and would be a Hercules in the field of stump oratory; and yet I would not convey the idea, that his style is exclusively of the boisterous, headlong order—on the contrary, the steel is often as polished as the arrow is barbed, and it appears to be his aim, and he succeeds in it too, to be distinguished not less for the graces, than the power of his oratory. He has a fine command of language; and then, you can always hear what he says, for he speaks with remarkable distinctness, even in his most animated moments, and gives a clear, open sound to every word that he utters.

"As to 'action, action, action,' his is the action of the mind and the soul—the head and the heart—the hands and the feet, at one

and the same moment of time; and if his movements are sometimes a little too sudden, and if he does sometimes walk about a little too much, let those who would criticise, emulate his success, and try to do better. He has the art of carrying you along with him from the beginning to the end of the chapter, retaining his hold all the time. Hence, he never fatigues; and this is one secret of his success. I must not omit to speak of his uniform courtesy to his opponents, and constant equanimity of temper; virtues in which younger men, and some who are not younger, would do well to imitate him. He has certainly the art of making the most of his case, and the worst of his adversary's. He is playful as well as sarcastic, but I never heard him indulge in low or coarse jokes. On questions of evidence he has great power, and when taken suddenly in the midst of a cause on exceptions started, I have known him argue them with extraordinary ability and force. I heard a distinguished lawyer, himself an accomplished speaker, who is still occasionally to be seen in court, commend him highly on this head. In the examination of witnesses, his skill and power have elicited praise from tongues and pens, abler than mine, and I pass by that great field of his success.

"I am not aware of objections to his style—it may be that he is sometimes over zealous, and that a little more variety would enhance the effect of his speeches. The first is, at least, that which leans to the side of excellence in oratory, and belongs to genius, and in his case, is connected with, and arises from a quality the noblest of any that an advocate can possess, and which this gentleman eminently possesses, the 'sacred duty' which Brougham so eloquently described and enforced, and which needs only to be named, to meet a ready response in the heart of every member of the profession who rightly appreciates his high calling—the sacred duty he owes his client. In this respect, Mr. Brown is entitled to the highest praise, for he goes for his client through and through—his client first, his client last, his client always.

"A word of his industry; and if this rambling sketch has already extended itself to greater length than I had at first contemplated, it is at least a reason that I should not leave it incomplete. With every just admiration for the qualities of learning and high professional attainments, united with personal accomplishments, which I have witnessed at this bar, I have been disappointed in the style of speaking. Hence, I have dwelt the rather upon one who seems to have made the eloquence of the bar his ambition. But his industry is equally the subject of praise. His practice is very large—involving, of course, daily and hourly occupation at the bar, and with his clients early and late, yet he gets through it all, without ever appearing to be discomposed, or even seeming to be in a hurry. His success speaks for itself. You meet him everywhere, almost at the same moment, making speeches, I had almost said every day in every court; yet he is perpetually at work at something else; writing addresses for the 'Artist Fund Society'—delivering orations before the 'Phi Beta Kappa Society,' or lectures upon 'Hamlet,' or writing plays or essays upon all subjects, besides being prominent at many a convivial party. The only way for accounting for it all is, by referring it to great and unceasing industry, and I am told that his is very great. And after all, how can men hope to succeed in any thing without it? 'The mind of man is a mine of labor.' So said a distinguished gentleman in my hearing not long ago—distinguished for high professional reputation not less than social eminence. One of the commentators on the Old Testament remarks, on the first chapter of Genesis, that 'to man, moreover, it is enjoined to subdue the earth; to subject it to his own and his posterity's dominion by due labor and industry, so that it is plain, man, even in his perfect state, was designed for industry and toil.' Let us profit by the precept."

The habits of Mr. B. are most abstemious, and he has often been heard to say, that he never dined

when he expected to speak in the afternoon, upon any case of importance, as the dinner would cost him more mental effort than it was worth, and contribute to lose the cause besides. In no circumstance, however, does he ever omit his breakfast—it is his great meal, and sometimes the only one for the entire day. Few men of the age of forty have his activity and elasticity of body; and since his boyhood he has never been known to be sick except upon one occasion. Before he was twenty-five years of age, water was his only drink, and he rarely retired to bed after ten o'clock. To this he imputes his entire freedom from aches, and pains, and disease of every sort. His mind is as sound as his body—never depressed, never unduly excited, preserving always a cheerful and an unbroken equanimity, and exhibiting none of the effects of care, of time, or of study. In colloquial intercourse he has no superiors—gay and sparkling, or grave and meditative, as occasion may require. He can adapt himself to all conditions of life—kind to all, neither overbearing nor obsequious; a friend to the poor, and no foe to the rich—considering himself on a level with the loftiest, and not above the level of the humblest; without courting the favor of either, he seems to enjoy the sympathies and friendship of both. With no political attachments or antipathies, while he has always been a federalist, in social intercouse he harmonizes entirely with the democracy of the country, and makes no

distinction between, the *black*, and *red* and *blue* cockade.

In speaking, as has been said, he uses considerable gestures, but his action is suited to the thought. He changes his position frequently, moves backwards and forwards—appeals to court, jury, counsel, and sometimes even to the general audience. His pathos melts and subdues, his invective startles and dismays every one. The full master of the choicest and the most powerful and abundant language, he is never at a loss for the best words in their best places; and with a voice that, for compass and sweetness, has no equal in the United States, he seems to sport rather than to labor, even in the severest professional efforts. He speaks without notes, or any apparent preparation—relies entirely upon his memory for the evidence of a case, however long or complicated—reads few books during an argument—cites principles rather than cases—seldom speaks more than two hours in any case, and runs through his time and his task so smoothly, that you wonder, when you are told he has spoken so long.

His examination of witnesses is as remarkable in its line as his speeches, and perhaps manifests, even superior mental powers; it is perfectly *sui generis*. His eye is never removed from the witness—he rarely takes a note; he puts his question so plainly, and so directly, as to admit of no equivocation, and never

leaves it till he gets an answer. With the mild, he is always mild; with the timid, forbearing; shrewd with the crafty, and resolute with the refractory. Whether it is his great fame, or his innate power, as a cross-examiner, it is hard to say; but it is certain that from the moment he takes up the witness, he never lets him go till he exhausts him, or wields a power over him that astonishes every one, and none more than the witness himself. An examination of a witness is generally a dry matter with the multitude—not so in his case; every eye and every mind are fixed upon it, with the most intense interest and anxiety; and it is sometimes left in doubt whether his triumphs are most to be attributed to the fervor, and brilliancy, and beauty of his elocution, or the quickness, acuteness, and power of his examination of witnesses.

In his literature, his mode of composition is somewhat borrowed from his forensic habits. It is peculiar—he never writes himself, but leaves it to his amanuensis, while he walks the room, and sometimes dictates an entire lecture in a single night, without finding it necessary to correct a point or a syllable. He never pauses for, or alters a word. This feature, as has been said, imparts naturally to his written productions somewhat of the character of his speeches; it takes from their simplicity and smoothness, but adds largely to their boldness and vigor. It need scarcely be said, that he composes or writes with great ease.

"Sertorius" was written in two weeks, and the "Prophet of St. Paul's" in less than a month, and that, too, in the midst of heavy professional engagements. One circumstance connected with the former play, deserves to be mentioned. At the time when it was written, Mr. Brown's little family were spending the summer at a watering place, some thirty miles from Philadelphia. He had occasion, from being employed in the Aspden case, to be daily in Philadelphia. He left the city every evening at dusk, on horseback, and arrived at his journey's end about midnight. To beguile his night's ride of its dreariness, and thus shorten his journey, he employed himself in composing the play, and impressing it upon his memory, and upon his arrival at the Yellow Springs, he committed the result of his agreeable labor to paper. Such was the origin of "Sertorius." Upon one occasion a gentleman having said to him that his play contained some very rough lines. "There is no doubt of it," said the author; "they were concocted, I suppose, while I rode Mr. Sergeant's horse, which was an exceedingly hard trotter, and frequently blundered a little, and unlike Pegasus, was certainly no favorite of the muses. This composing upon all fours is sometimes expedient, but seldom very agreeable or profitable."

The prologues to both the plays referred to, were written by the Hon. Joseph R. Ingersoll, (to whom one of them was inscribed,) a highly accomplished

scholar—a gentleman of the most refined literary taste, and one of the soundest lawyers and most brilliant advocates at the bar. And here, in passing, we may be permitted to mention to the credit of both these gentlemen, that although during a quarter of a century, they were frequently engaged with or against each other in cases of great popular interests and acrimony, they never, during their joint professional career, had the slightest personal difference or displeasure.

In 1832, he was engaged in the celebrated case of Mrs. Chapman, charged with the murder of her husband, which lasted two weeks, and resulted in the acquittal of the defendant. And on the 22nd of February of the next year, he delivered the Address before the city authorities and a vast assemblage in the Washington square, upon the occasion of laying the corner-stone for the monument to be erected to the memory of the Father of his country. This speech was prepared upon twenty-four hours notice, and occupied nearly two hours in the delivery—of its merits, as it has been published, nothing further need be said.

In the year 1836, he lost his legal preceptor, the venerable Rawle—and by appointment of the Pennsylvania Abolition Society, (of which the deceased had been president,) delivered an eulogy upon his memory and his virtues. This production, whatever may be its defects, at least manifests great affection and reverence.

The disposition and deportment of Mr. Brown, at the bar, are perhaps best summed up in the last of his "Golden Rules" for lawyers: "Be respectful to the court and jury, kind to your colleague, civil to your antagonist, but never sacrifice the slightest principle of duty to an overweening deference towards either."

One of the most marked features in Mr. B.'s professional life, is his tender regard for his younger brethren at the bar. *Their* interests and concerns are *his*. Is a colleague required—he always recommends a young man, though it sometimes adds to, instead of diminishing, his labor. Are his young friends in difficulty—he is their advocate. Are their privileges invaded—he is their defender. Having known the difficulties of rising in the profession, he waits not to be solicited, but freely and promptly takes youthful and struggling merit by the hand, and makes its cause his own. He never withholds either advice or assistance, whatever may be the sacrifice. And there are scores of men, at the Philadelphia bar, who can date their rise from an association or connection with the subject of this memoir.

The consequence of this liberal, sympathetic, and disinterested course, may be readily conceived. Mr. Brown at court, is in the heart of his own professional family—treating every one with kindness, and receiving kindness from every one in return. He takes advantage of no man, and no man takes advantage of him—his life is happy, and he reflects the happiness,

that he derives from those by whom he is surrounded. Why, then, in contemplating these multiplied enjoyments, should discontented cavillers talk of the asperities and dissensions of the bar?

The man who is first to make that discovery will find the cause in himself.

As one of the practical manifestations of regard for the advancement of his young friends, at the request of some of the most distinguished among them, in the year 1835, he threw together his twenty "Golden Rules" for the examination of witnesses, which, as they have been through three editions, and are now in demand through the whole of the United States, and as they convey clear indications of the character of the author, we take leave to present in this connection.

Golden Rules

FOR THE EXAMINATION OF WITNESSES.

"There is often more eloquence, more mind, more knowledge of human nature displayed in the examination of witnesses, than in the discussion of the cause to which their testimony relates. Evidence without argument, is worth much more than argument without evidence. In their *union*, they are irresistible!

"The trial of a cause may be aptly compared to the

progress of a painting. You first lay your ground-work; then sketch your various figures; and finally, by the power and coloring of argument, separate or group them together, with all the advantages of light and shade. But if the ground-work be imperfect, or the delineations indistinct, your labor will frequently commence where it ought to conclude—and even after all, will prove unsatisfactory, if not contemptible; or perhaps it may more justly be likened to a complicated piece of music, wherein a single false note may destroy the entire harmony of the performance.

"*First.*—As to your own witnesses: If they are bold, and may injure your cause by pertness or forwardness, observe a gravity and ceremony of manner towards them, which may be calculated to repress their assurance.

"*Second.*—If they are alarmed or diffident, and their thoughts are evidently scattered, commence your examination with matters of a familiar character, remotely connected with the subject of their alarm, or the matter in issue, as, for instance, Where do you live? Do you know the parties? How long have you known them? &c. And when you have restored them to composure, and the mind has regained its equilibrium, proceed to the more essential features of the case, being careful to be mild and distinct in your approaches, lest you may trouble the fountain again from which you are to drink.

"*Third.*—If the evidence of your own witnesses be unfavorable to you, (which should always be carefully guarded against,) exhibit no want of composure; for there are many minds that form opinions of the nature or character of testimony, chiefly from the effect which it may appear to produce upon the counsel.

"*Fourth.*—If you perceive that the mind of the witness is imbued with prejudices against your client, hope but little from such a quarter—unless there be some facts which are essential to your client's protection, and which that witness alone can prove, either do not call him, or get rid of him as soon as possible. If the opposite counsel perceive the bias to which I have referred, he may employ it to your own ruin. In judicial inquiries, of all possible evils, the worst, and the least to be resisted, is an enemy in the disguise of a friend. You cannot impeach him—you cannot cross-examine him—you cannot disarm him—you cannot, indirectly even, assail him; and if you exercise the only privilege that is left to you, and call other witnesses for the purpose of explanation, you must bear in mind, that instead of carrying the war into the enemy's country, the struggle is between sections of your own forces, and in the very heart, perhaps, of your own camp. Avoid this by all means.

"*Fifth.*—Never call a witness whom your adversary will be compelled to call. This will afford you the

privilege of cross-examination, take from your opponent the same privilege it thus gives you, and, in addition thereto, not only render everything unfavorable said by the witness, doubly operative against the party calling him, but also deprive that party of the power of counteracting the effect of the testimony.

"*Sixth.*—Never ask a question without an object—nor without being able to connect that object with the case, if objected to as irrelative.

"*Seventh.*—Be careful not to put your question in such a shape that, if opposed for informality, you cannot sustain it, or, at all events, produce strong reason in its support. Frequent failures in the discussion of points of evidence, enfeeble your strength in the estimation of the jury, and greatly impair your hopes in the final result.

"*Eighth.*—Never object to a question from your adversary, without being able and disposed to enforce the objection. Nothing is so monstrous as to be constantly making and withdrawing objections—it either indicates a want of correct perception in making them, or a deficiency of reason, or of moral courage, in not making them good.

"*Ninth.*—Speak to your witness clearly and distinctly, as if you were awake, and engaged in a matter of interest; and make him also speak distinctly and to your question. How can it be supposed that the court and jury will be inclined to listen, when the only strug-

gle seems to be—whether the counsel or the witness shall first go to sleep?

"*Tenth.*—Modulate your voice as circumstances may direct.

"Inspire the fearful, and repress the bold."

"*Eleventh.*—Never begin before you are ready—and always finish when you have done. In other words, do not question for question's sake—but for an answer.

CROSS-EXAMINATION.

"*First.*—Except in indifferent matters, never take your eye from that of the witness. This is a channel of communication, from mind to mind, the loss of which nothing can compensate.

"Truth, falsehood, hatred, anger, scorn, despair,
And all the passions—all the soul is there."

"*Second.*—Be not regardless, either, of the voice of the witness; next to the eye, this is perhaps the best interpreter of his mind. The very design to screen conscience from crime, the mental reservation of the witness, is often manifested in the tone or accent, or emphasis of the voice. For instance, it becoming important to know that the witness was at the corner of Sixth and Chestnut streets at a certain time, the question is asked—were you at the corner of Sixth and Chestnut

streets at six o'clock? A frank witness would answer, perhaps, "I was near there." But a witness who is desirous to conceal the fact, and defeat your object, (speaking to the letter rather than to the spirit of the inquiry,) answers—no; although he may have been within a stone's throw of the place, or at the very place, within ten minutes of the time. The common answer of such a witness would be—I was not at the *corner* at *six* o'clock. Emphasis upon both words plainly implies a mental evasion or equivocation, and gives rise, with a skilful examiner, to the question, At what hour were you at the corner? or at what place were you at six o'clock? And in nine instances out of ten, it will appear that the witness was at the place about the time, or at the time about the place. There is no scope for further illustrations; but be watchful, I say, of the voice, and the principle may be easily applied.

"*Third.*—Be mild with the mild—shrewd with the crafty—confiding with the honest—merciful to the young, the frail, or the fearful—rough to the ruffian, and a thunderbolt to the liar. But in all this, never be unmindful of your own dignity. Bring to bear all the powers of your mind, not that you may shine, but that virtue may triumph, and your cause may prosper.

"*Fourth.*—In a criminal, especially in a capital case, so long as your cause stands well, ask but few questions, and be certain never to ask any, the answer to

which (if against you,) may destroy your client, unless you know the witness perfectly well, and know that his answer will be favorable equally well; or unless you be prepared with testimony to destroy him, if he play traitor to the truth and your expectations.

"*Fifth.*—An equivocal question is almost as much to be avoided and condemned, as an equivocal answer. Singleness of purpose, clearly expressed, is the best trait in the examination of witnesses—whether they be honest or the reverse. Falsehood is not detected by cunning, but by the light of truth, or if by cunning, it is the cunning of the witness and not of the counsel.

"*Sixth.*—If the witness determine to be witty or refractory with you, you had better settle that account with him at first, or its items will increase with the examination. Let him have an opportunity of satisfying himself, either that he has mistaken your power, or his own. But, in any result, be careful that you do not lose your temper. Anger is always, either the precursor or evidence of assured defeat in any intellectual conflict.

"*Seventh.*—Like a skilful chess-player, in every move fix your mind upon the combinations and relations of the game—partial and temporary success may otherwise end in total and remediless defeat.

"*Eighth.*—Never undervalue your adversary; but stand steadily upon your guard. A random blow may

be just as fatal, as though it were directed by the most consummate skill—the negligence of one often cures, and sometimes renders effective, the blunders of another.

"*Ninth.*—Be respectful to the court and the jury—kind to your colleague—civil to your antagonist—but never sacrifice the slightest principle of duty to an overweening deference towards either."

In the year 1850, actuated by the same philanthropic spirit that induced his "Golden Rules," Mr. Brown prepared what he calls "Capital Hints for Capital Cases," mainly intended for the instruction of his sons, just then admitted to the bar, but also designed for the benefit of all those whose attention might be directed to the higher order of criminal practice. As these instructions are brief, and the edition has been exhausted, they are also presented to the reader and to the profession.

Capital Hints in Capital Cases.

INSTRUCTION FROM A FATHER TO HIS SONS.

I. "Firmness and decision are as necessary as knowledge and talents; the heart can do almost as well without the head as the head without the heart.

There can be no cold-blooded defence. An appropriate and becoming manner is scarcely less necessary, than appropriate and becoming matter. A judicious and clear development of the facts of a case, is as important as the ablest and most eloquent argument. In a doubtful case, a skilful examination alone may secure a verdict; but the best argument, without such an examination, will generally result in a failure. An artist cannot paint without his colors; and the facts derived from the testimony, are the colors or materials for the speech.

II. "There is what may be called an argumentative cross-examination, which exhibits to the jury the reasoning of the counsel, in immediate direct connection with the testimony of the witnesses. For instance, suppose the following cross-examination of a witness:

"Have you had any dispute or difference with the defendant?—No. Have you been upon friendly terms with him for many years?—Yes. Have you been under obligations to him?—Yes. Well, then, having had no difference, but being for a long time upon friendly terms, and being also under obligation and bound in gratitude to him, how did it happen that you were so vigilant and active in your efforts for his detection and conviction?

"An examination of this character can scarcely fail justly to produce most unfavorable impressions of the witness.

III. "Again, it is sometimes judicious to compel him to exhibit his own unworthiness of belief, by bringing before him direct and unequivocal contradictions in his testimony, and then asking him to explain and reconcile them if he can. I have seen a witness struck dumb by this mode of cross-examination; and in many cases it is much better thus to present it, than to reserve the contradiction for after discussion;—it is fresher, fairer, more candid, and more efficient.

IV. "Before you venture upon the trial of a capital case, be well assured in your own mind, that you are competent for the hazardous duty you are about to assume. Remember the blood of the defendant may be upon you, if your task be feebly performed; and do not, therefore, allow a feverish desire for premature notoriety—in a case of great popular excitement—to blind you to the difficulties and dangers by which you will inevitably be surrounded. The trumpet of fame cannot drown the small still voice of remorse.

V. "Being well assured that you are able, in point of intellect and knowledge, be equally well convinced that your feelings are deeply enlisted for the hapless being you are called upon to defend, and that these feelings, instead of impairing your efforts, will contribute to strengthen and enforce them. You should feel as though you were defending yourself, which you will naturally do, by constantly holding in view the life of

the prisoner, the gibbet, and his forlorn and heart-stricken survivors.

VI. "You must know no fear but that of failure; and even that, you must permit nobody else to discover through you. Waive no right that you possess that may affect the defendant—yield tribute to no authority that is illegitimately exerted to his injury—recollect, you guard the citadel of human life—be wary, and be firm. The judge and the jury, it is true, may take the life of the prisoner, but you are not to give it away. They must reach it over your own prostrate body.

VII. "In all you think, and say, and do, remember *your* strength is nothing; there is but one arm that is powerful to save, and in relying upon that arm you derive a support, the mere consciousness of which is both a sword and shield in the hour of extremest peril. You may not acquit the guilty; nay, you may not acquit the innocent; but you will, at least, by a firm, faithful, and fearless discharge of your duty, acquit yourself. I have said, that manner is scarcely less necessary than matter; indeed, rightly considered, it is matter.

VIII. "You must enter upon the trial of a capital case, as a physician should enter the death-bed scene—calmly, gravely, solemnly—all eyes are upon you—all hopes are upon you—all fears are upon you. There is no time for flippancy, agitation, or irresolution—much less, for smiles or merriment; sport would as well become a charnel-house.

IX. "Stand by the prisoner while he makes his challenges; advise with him—comfort him and sustain him. When you repeat his challenges, do it in a mild and inoffensive way, lest you may create enemies, while your chief object is to secure friends. If you ever challenge for cause, and the challenge fail, be certain that you have not exhausted your right to a peremptory challenge, and invariably exercise it. Never challenge the twelfth juror, unless you are reasonably certain that he who may be called in his place, will be more favorable to the prisoner.

X. "The jury being complete, deliberately proceed to the trial of the cause. I say deliberately—no hurry—no confusion—no gossip—no levity—no divided attention; note everything with the 'very comment of your soul;' and while you look at all, bear in mind, the prisoner and all connected with him, look at you. If prosecuting witnesses do not affect your defence, don't cross-examine them at all, unless you are certain they can, and *will*, prove something affirmatively for the defence. In trying a case, if the character of the defendant be strong and his facts weak, introduce character first. If his facts be strong and his character weak, either introduce character at the last, or not at all. Never despair—I have known the best case in the beginning to prove the worst in the end; and the worst at first, to be the best at last.

XI. "If the unhappy man have a family, much as it

may cost, the family should be present in the hour of his extremest need. He will suffer more, and they will suffer more, by their absence. Their presence gives a proper tone and complexion to the awful scene. It is worth a thousand fancy sketches of domestic, parental, conjugal, or filial agony. When the verdict shall be returned, take your post by the prisoner, calm, collected, prepared for, and equal to, either fortune.

XII. "If your efforts should be crowned with success, be grateful to that power which controls all things, but exhibit no vain spirit of triumph. If the defendant be convicted, nerve yourself to receive and bear the blow, and still do not despair; much yet remains to be done. After a verdict of guilty, if you doubt the sufficiency of the evidence or charge of the court, or the decision of the judge upon the points of law, or fairness of the jury, move for a new trial; if none of these grounds exist, or if you should urge them unsuccessfully, enter a motion in arrest of judgment, provided there is any actual or supposed error upon the face of the record.

XIII. "If this effort should also fail, the next awful step will be the judgment. Here, too, you must be present, and when the judge inquires of the prisoner, what he has to say why sentence of death should not be pronounced against him? if there be any such reason, be careful that it be supplied.

XIV. "The sentence having been passed, the death warrant issues—your application for a pardon has been

refused, the drop falls—and then, and not till then, your duties are done.

"To conclude:—the condition of an advocate for a defendant, in a capital case, may be aptly compared to that of a commander of a ship in a storm; the cordage snaps, the masts go by the board, the bulwarks are carried away, the hull springs a leak—every dependence from time to time fails, and ruin appears to be inevitable; but still, amidst the 'wreck of matter,' sustained by the immortal mind, with a resolved will, the gallant commander stands by his helm to the last, determined either to steer his shattered vessel into port, or to perish gloriously in the faithful discharge of his duty."

At the April Sessions of the Circuit Court of the United States, a case of absorbing and terrific interest was brought to trial—it was a prosecution against William Holmes, for the murder of Francis Askin, and arose out of the following circumstances: The American ship, William Brown, left Liverpool on the 13th of March, 1841, bound for Philadelphia. She had on board seventeen of a crew, and sixty-four passengers, Scotch and Irish emigrants.

About ten o'clock of the night of the 19th of April, when distant two hundred and fifty miles south-east of Cape Race, the vessel struck an iceberg and filled so rapidly, that it was evident she must soon go down.

The long-boat and jolly-boat were lowered; the captain, second mate, seven of the crew, and one passenger, got into the jolly-boat; the first mate, eight seamen, of whom the prisoner was one, and thirty-two passengers, got indiscriminately into the long-boat; the remaining thirty-one passengers were obliged to remain on board the ship. In an hour from the time when the ship struck she went down, carrying with her every person, who had not escaped to one or other of the boats. On the following morning, the captain, in parting company with the long-boat, gave its crew directions to obey all the orders of the mate, as they would obey his, (the captain's,) which they promised should be done. The long-boat, however, leaked, and all on board were in great jeopardy. The gunwale was within from five to twelve inches of the water, and was supposed to be too unmanageable to be saved; in a moderate blow she would have been swamped very quickly. The people were all crowded together like sheep in a pen, and the least irregularity in the stowage would have capsized the boat; and as was sworn, if she had struck any piece of ice, she would have inevitably gone down; at the best, her chances of living were much against her. Notwithstanding all this, she did survive until ten o'clock on Thursday night, the crew rowing by turns, and the passengers bailing. On Tuesday morning it began to rain, and continued till night; at night the wind freshened, the

sea grew heavier, and splashed over the boat's bow; pieces of ice still floated around, and during the day icebergs had been seen. At length the mate exclaimed, "Help me, God! men, you must go to work, or we shall all perish!" About ten o'clock on Tuesday, the prisoner and the rest of the crew began to throw over some of the passengers, and did not cease until they had thrown over fourteen male passengers: among them was Askin, to whom this indictment related. Holmes was one of the persons who assisted in throwing the passengers over. He was a Finn by birth, had followed the sea from youth, and his frame and countenance were models of decision and strength. He had been the last man of the crew to leave the sinking ship; his efforts to save the passengers at the time the ship struck, had been conspicuous, self-forgetful, and most generous. He was a most skilful and obedient sailor, kind and obliging in every respect to the passengers and crew; he finally became the only one whose energies and hopes were not prostrated; and it was through his means that the remnant of the crew and passengers were saved. The case was conducted for the United States by Mr. Meredith, Mr. Dallas, and Mr. Hopkinson; the defence, by David Paul Brown, Mr. Hazlehurst and Mr. Armstrong. Our space does not allow us to go into the minutiæ of the case, or a detailed account of the argument of the counsel. The trial was one of great excitement, and

the court room was crowded for near a week with much of the beauty, fashion, and intelligence of the city. We have given the general outline, as introductory to an extract from the speech of Mr. Brown in his defence, chiefly drawn from Wallace's Reports of the Circuit Court of the United States:

* * * "This case should be tried in a long-boat, sunk down to its very gunwale, with forty-one half-naked, starved, and shivering wretches; the boat leaking from below—filling from above; a hundred leagues from land; at midnight; surrounded by ice; unmanageable from its load, and subject to certain destruction from a change of the most changeable of the elements—the winds and the waves. To these, superadd the horrors of famine, and the recklessness of despair, madness, and all the prospects, past utterance, of this unutterable condition. Fairly to sit in judgment on the prisoner, we should, then, be actually translated to his situation. It was a conjuncture which no fancy can image. Terror had assumed the throne of reason, and passion had become judgment. Are the United States to come here now, a year after the events, when it is impossible to estimate the elements which combined to make the risk, or to say to what extent the jeopardy was imminent—are they, with square, rule and compass, deliberately to measure this boat, in this room; to weigh these passengers; call in philosophers; discuss specific gravities; calculate by the tables of a life-insurance company the chances of life; and because they, these judges, find that, by their calculation, this unfortunate boat's crew might have had the thousandth part of one poor chance to escape, to condemn this prisoner to chains and a dungeon, for what he did in the terror and darkness of that dark and terrible night? Such a mode of testing men's acts and motives, is monstrous!

"We contend, therefore, that what is honestly and reasonably believed to be certain death, will justify self-defence in the degree requisite for excuse. According to Dr. Rutherford, (Inst. of Nat. Law, book I., chap. 16,) 'this law'—i. e., the law of nature—'cannot be supposed to oblige a man to expose his life to such dangers as may be guarded against, and to wait till the danger is just coming upon him, before it allows him to secure himself.' In other words, he need not wait till the certainty of the danger has been proved, past doubt, by its result. Yet this is the doctrine of the prosecution. They ask us to wait until the boat has sunk; we may then make an effort to prevent her from sinking. They tell us to wait till all are drowned; we may then make endeavors to save a part. They command us to stand still till we are all lost, past possibility of redemption, and then we may rescue as many as can be saved! 'Where the danger is instantaneous, the mind is too much disturbed,' says Rutherford, in a passage heretofore cited, 'to deliberate upon the method of providing for one's own safety, with the least hurt to an aggressor.' The same author then proceeds: 'I see not, therefore, any want of benevolence, which can be reasonably charged upon a man in these circumstances, if he takes the most obvious way of preserving himself, though perhaps, some other method might have been found, and which would have preserved him as effectually, and have produced less hurt to the aggressor, if he had been calm enough, and had been allowed time enough to deliberate about it;' (Rutherford, Inst. of Nat. Law, book I., chapters 16, § 5.) Nor is this the language of approved text-writers alone. The doctrine has the solemnity of judicial establishment. In Grainger v. The State, (5th Yerger's Rep. p. 459,) the Supreme Court of Tennessee deliberately adjudge, that 'if a man, though in no great danger of serious bodily harm, through fear, alarm, or cowardice, kill another, under the impression that great bodily injury is about to be inflicted on him, it is neither manslaughter nor murder, but self-defence.' 'It

is a different thing,' say the Supreme Court of the United States, in the Mariana Flora, 'to sit in judgment upon the case, after full legal investigations, aided by the regular evidence of all parties, and to draw conclusions at sea, with very imperfect means of ascertaining facts and principles, which ought to direct the judgment;' (11th Wheaton's Rep., p. 51.) The decision in the case just cited, carried out this principle into practice; as the case of Le Louis, decided by Sir William Scott, had done before, (2nd Dodson's Admiralty Rep., p. 264.)

"The counsel cited Lord Bacon, likewise, (works by Montague, vol. 13th, p. 160: London, 1831;) and 4th Blackstone's Com., p. 160. But the prospect of sinking was not imaginary; it was well founded. It is not to be supposed that Holmes, who, from infancy, had been a child of the ocean, was causelessly alarmed; and there being no pretence of animosity, but the contrary, we must infer that the peril was extreme. As regards the two men cast over on Wednesday, the presumption is, that they were either frozen or freezing to death. There being at this time no prospect of relief, the act is deprived of its barbarity. The evidence is, that the two men were 'very stiff with cold.'

"Besides, this indictment is in regard to Askin alone. There is no evidence of inhumanity on Tuesday night, when this throwing over began; though it is possible enough, that having proceeded so far in the work of horror, the feelings of the crew became at last so disordered, as to become unnatural. [The learned counsel then examined the evidence, in order to show the extremity of the danger.]

"Counsel say that lots are the law of the ocean. Lots in cases of famine, where means of subsistence are wanting for all the crew, is what the history of maritime disaster records; but who has ever heard of casting lots at midnight, in a sinking boat, in the midst of darkness, of rain, of terror, and of confusion? To cast lots when

all are going down, to decide who shall be spared; to cast lots when the question is, whether any can be saved? is a plan easy to suggest—rather difficult to put in practice. The danger was instantaneous—'a case,' says Rutherford, (Inst. of Nat. Law, book I., chap. 16, § 5,) 'where the mind is too much disturbed to deliberate;' and where, if it were 'more calm,' there is no time for deliberation. The sailors adopted the only principle of selection which was possible in an emergency like theirs; a principle more humane than lots. Man and wife were not torn asunder; and the women were all preserved. Lots would have rendered impossible this clear dictate of humanity.

"But again: the crew either were in their ordinary and original state of subordination to their officers, or they were in a state of nature. If in the former state, they were excusable in law, for having obeyed the order of the mate; an order twice imperatively given. Independent of the mate's general authority in the captain's absence, the captain had pointedly directed the crew to obey all the mate's orders as they would his, (the captain's,) and the crew had promised to do so.

"It imports not to declare, that a crew is not bound to obey an unlawful order; for to say that this order was unlawful, is to postulate what remains to be proved. Who is to judge of the unlawfulness? The circumstances were peculiar. The occasion was emergent; without precedent or parallel. The lawfulness of the order, is the very question we are disputing; a question about which the whole community has been agitated, and is still divided; the discussion of which crowds this room with auditors past former example; a question which this court, with all its resources, is now engaged in considering—as such a question demands to be considered—most deliberately, most anxiously, most cautiously. It is no part of a sailor's duty to moralize and to speculate, in such a moment as this was, upon the orders of his superior officers. The commander of a ship, like the commander of an army, 'gives des-

perate commands.' He requires instantaneous obedience. The sailor, like the soldier, obeys by instinct. In the memorable, immortal words of Carnot, when he surrendered Antwerp, in obedience to a command which his pride, his patriotism, and his views of policy all combined to oppose: 'The armed force is essentially obedient; it acts, but never deliberates.' The greatest man of the French Revolution did here but define, with the precision of the algebraist, what he conceived with the comprehension of a statesman; and his answer was justification with every soldier in Europe! How far the principle was felt by this crew, let us witness the case of this very mate, and of some of these very sailors, who, by the captain's order, left the jolly-boat, which had ten persons, for the long-boat, with more than four times that number. They all regarded this, as going into the jaws of death; yet, not a murmur! It is a well-known fact, that in no marine on the ocean is obedience to orders so habitual and so implicit, as in our own. The prisoner had been always distinguished by obedience. Whether the mate, if on trial here, would be found innocent, is a question which we need not decide. That question is a different one from the guilt or innocence of the prisoner, and one more difficult.

"But if the whole company were reduced to a state of nature, then the sailors were bound to no duty, not mutual to the passengers. The contract of the shipping articles had become dissolved by an unforeseen and overwhelming necessity. The sailor was no longer a sailor, but a drowning man. Having fairly done his duty to the last extremity, he was not to lose the rights of a human being, because he wore a roundabout instead of a frock-coat. We do not seek authorities for such doctrine. The instinct of these men's hearts is our authority; the best authority. Whoever opposes it, must be wrong; for he opposes human nature. All the contemplated conditions; all the contemplated possibilities of the voyage were ended. The parties, sailors and passengers, were in a new

state. All persons on board the vessel became equal; all became their own law-givers; for artificial distinctions cease to prevail, when we are reduced to the equality of nature. Every man on board had a right to make law with his own right hand; and the law which did prevail on that awful night, having been the law of necessity and the law of nature, too, it is the law which will be upheld by this court, to the liberation of this prisoner."

Upon the trial of the case of the State against Cranmer, for homicide, Mr. Brown introduced one of those simple, and yet powerful figures, for which his style is so remarkable. The defendant, who was a captain of a vessel, was assailed while in port, by a body of Schuylkill rangers, and threatened to be deprived of his command; seizing a handspike, he inflicted a terrible blow upon the head of the ringleader, which, in the language of one of the witnesses, "*crushed his skull like an egg-shell.*" In the defence, upon this portion of the case, the advocate, in the highest pitch of excitement exclaimed:—

"The general, at the head of his army; the king upon his throne, is not more absolute than the commander of his vessel—from a shallop to a seventy-four. What, then, would you have had this man to do—what weapon should he have used? While surrounded by a gang of reckless, ruthless rascals, bent upon outrage and upon blood, was he right to maintain his post? to vindicate his authority by commensurate means—or would you have had him rush to the *hen-coop for a feather, to sweep these ruffians from his deck?*"

In the year 1835, a case of the Commonwealth against Starg, was tried—it was for murder.

The death was clearly proved, attended by circumstances indicating malice, and no inconsiderable deliberation. The only deficiency in the proof was in regard to the person by whom the offence was perpetrated. After all the other testimony was closed, the Hospital physician was called. Mr. Brown, who was waiting anxiously the denouement, and who saw clearly that the identity of the prisoner was the only thing to be feared, promptly demanded what the doctor was to prove? "Dying declarations," was the immediate reply. "Before we come to that," said Mr. Brown, "I have something to say; I am prepared to prove that the deceased was an atheist—an avowed infidel! who denied a future state of rewards and punishments—who denied the truth of the Holy Bible, and declared it to be a romance; and who disbelieved in the existence of the Almighty." This proof was accordingly made, and it resulted in the exclusion of the declarations and the acquittal of the defendant. Upon the argument upon this question, Mr. Brown contended that dying declarations were admissible only, when they were founded on the consciousness of, and approach to, the judgment seat of God. The solemnity of that moment being equivalent to an oath—nay, more than equivalent to an oath, for no exparte oath could possibly be received.

"But how," said the counsel, "is this principle available, when a man lives as a beast and dies as a beast? looking to no hereafter. Such a man, if living, could not be allowed to be a witness; he would not be permitted to contaminate the Book of Eternal Life, with his unhallowed and sacrilegious lips. If, then, he could not be sworn—acknowledging no obligation that binds him to the truth—how can his declarations, living or dying, be received in a court of justice, in a case involving human life? An avowed or admitted infidel, is divested of all his franchises; the Constitution tolerates all religions, but does not tolerate NO RELIGION—does not sanction blasphemy or a blasphemer. No man can hold a public office, who is an infidel; from the President of the United States down to a tipstaff in this court, every officer is compelled to be sworn. No atheist can be sworn, and therefore no atheist can hold an office, however high or low. There is no injustice in this—the man who denies his God, should be prepared to be denied by his fellow-man."

Such was the general course of the argument—the result is known. A few months after this, a minister of the Baptist church called upon Mr. Brown, and imparted to him the following gratifying intelligence, tending to show, that while saving the neck of one man, he had probably saved the *soul* of another. "Last week," said the clerical gentleman, "a person applied to be received into our church—our rules require that prior to such reception, the candidate or applicant shall relate his experience, as it is called—that is to say, communicate—the course of his life—his faults and his omissions. 'I have,' said the candidate, 'until some few months ago, lived a very irregu-

lar life, and endeavored to relieve myself from its penalties, by arguing myself into the notion, that there was no hereafter to fear—no Almighty power to punish; in short, I became a confirmed infidel. It happened, however, that I was present at the trial of William Starg, for homicide, and upon that occasion the perils of infidelity were so forcibly portrayed by the counsel, Mr. Brown, as connected with this world and the next, that my eyes were at once so opened to my lost condition, as to bring about an almost instantaneous and entire reform. From that period I date my conversion, to a thorough faith in the sublime truths of the gospel.'" "This communication," said Mr. Brown, "is most gratifying, indeed. I trust the convert was sincere. But there were two positions in my argument; one was, that infidelity kept a man out of *heaven*, and the other was, that it kept him out of *office;* to which consideration do you suppose the conversion was most to be imputed? If he was not an *office-seeker*, he no doubt was a christian."

In the year 1843, the case of "Farkin" for murder, was tried in the Court of Oyer and Terminer, of Philadelphia County. For the history of this case, we are indebted to the following sketch from the pen of one of Mr. Brown's opponents in the trial. We give it the more at length, as its extraordinary features will doubtless render it interesting and instructive, not only to the legal profession, but to the general reader.

Among the very many and important causes, involving life and liberty, which it has fallen to the lot of Mr. Brown to carry triumphantly through the ordeal of a court of criminal law, perhaps no single one was more remarkable, than the case of the Commonwealth of Pennsylvania against John Farkin, tried for murder in the Court of Oyer and Terminer of Philadelphia, in April, 1843. If the "quiddam honorarium" now-a-days in the profession, has become almost the invariable condition precedent for the appearance in the judicial forum of professional talent of the first order, to Mr. Brown's high honor be it spoken, that the destitute and oppressed ever find in him, in the midst of lucrative and important business, a kind and generous protector. Commanding business of the highest class, he will turn aside from it, with cheerfulness and kindness, and exercise his fine abilities, in the trial of a criminal cause, where, believing that the law opens an honorable defence for his client, he can hope for no other reward than that derived from the consciousness of relieving a fellow-being in distress. It is this generosity of heart, moved by the impulse of genius, which has ever characterized those most eminent for forensic eloquence. Mr. Brown's career, like that of every distinguished advocate, abundantly proves, how rich in principle are the causes of the lowly and the poor, and how the creative powers of genius are able to call forth from them images and

even truths, which never present themselves to the mind of ordinary power.

The case of John Farkin was one of that class. He was a poor Irishman, who had emigrated to the United States in 1841, and for two years had picked up a precarious subsistence as an itinerant clock vender. On a pleasant Tuesday afternoon, in April, 1843, there was a happy little family collected around an humble meal, at a house in the neighborhood of Fairmount, in the county of Philadelphia. James Lehaman, his wife, and five young children, with a female relative, were assembled at the supper-table, and the work of the day was over. A knock at the door roused their attention, and a man, subsequently, and soon after to make that circle one of mourning and death, presented himself. He was ragged and dirty, but, beyond this, there was nothing remarkable in his appearance or manner. He inquired if the family had any clocks to mend, and an agreement was made that he was to repair a clock, and if it went well for four days, was to receive his pay, and, for that purpose was to call on the fourth day. These preliminaries being settled, he was taken to an upper room by James Lehaman, where he commenced his work, and Lehaman returned to his family. In a short time Farkin returned, saying he had mended the clock. He picked up his tools, and asked permission to board in the family, as he was very poor, and had no home. This was objected to by the wife,

although with entire consideration for the feelings of Farkin; the reason given being that the house was small, and the family large. He complained of having lost his knife; it was looked for; but he stopped further search, remarking, that he had found it in his pocket. He then told James Lehaman to be at home on Saturday at four o'clock, and he would call to receive his money. It was thus, and within the brief period of about a quarter of an hour, that Farkin first came into and left the house of his subsequent victims. An open common stood opposite the house of Lehaman. As soon as Farkin reached it, he was seen to return, and, approaching, he entered, without knocking, the house he had just left. His manner was composed, but determined, and the following dialogue took place between himself and Lehaman:

Farkin.—"I want my money, or I'll break the clock."

Lehaman.—"This was not our bargain. Where do you keep your establishment, that, if the clock is spoiled, I can find you?"

Farkin.—"I keep my establishment in my pocket, sir."

Farkin became enraged at the last remark of Lehaman, or acted on his determination to carry into execution his threat of breaking the clock, unless he was paid; for he instantly rushed towards Lehaman, who was standing near the staircase, pushed him violently

aside, and proceeded to go up stairs. Lehaman followed—endeavored to stop him—got on the stairs first; his wife followed, and Farkin came up last. As he ascended, he was seen to take his knife out of his pocket, open, and hide it up his sleeve. Jane Lehaman (the wife) held her arm against the wall of the staircase, to impede the progress of Farkin; but he pressed forward, and putting his head under her arm, stabbed her husband, who fell instantly dead on the staircase. The deceased's eldest son, a little boy not more than nine years old, seeing his parents in that situation, not aware that the spirit of one had already fled, ran up to the murderer with a broom-stick in his little hands, to aid in their defence. It was the spirit of infantine heroism, kindled by the instinct of filial love, that moved the heart of the brave boy to that unequal contest. The murderer turned, and looked at him, with the remark, "Eh, you've come to help your father;" and seizing him with one hand, he stabbed him with the other, and the noble child fell bleeding to the floor. Fortunately, that stab proved not to be fatal. The female relative now approached him, to aid in rescue of the child; and at her, too, he plunged his murderous weapon. She escaped him, and hid up the chimney. Farkin next rushed, knife in hand, at the wife of the deceased, but she fled through a back door. He then hastily turned towards the front door, opened it, returned to pick up his hat, and then left

the house. Jane Lehaman instantly followed: death was in her household, terror in her countenance, and agony in her heart. She followed now,—far more an object of observation than the unhappy murderer; for he walked calmly and deliberately along the pavement, stopped at the corner of a street, and the woman approached him. No words of repentance, no explanation escaped him. He said sternly to her, "Come one step further, and I'll treat you as I've treated the rest." So calm was he, that the neighbors, when first told by her of what had happened, could not believe that *he* was the man who had done such dreadful deeds.

But the cry of murder had gone forth, the widow charged him boldly, and blood was on his face. He ran, and the hue and cry was raised upon him. He ran fearfully; his knife was open in his hand; he struck at one, and another, who tried to arrest him, and finally, seeing a man making mortar in the street, rushed at him, and endeavored to seize his mortar hod. At this point he was arrested; he instantly threw his knife away, and said, "I give up." After his arrest, he said on his way to prison, "I pray God he is dead; it was a fair contract;" and while in prison, "I didn't give him half as much as I ought to have given him." Such is a brief synopsis of the facts. The indictment was soon presented, and the prisoner arraigned.

Mr. Brown was sent for.

By the Court.—"Mr. Brown, this prisoner is charged with murder; the officers of the government inform us that the case is one of great importance; the prisoner is unable to employ counsel, and we desire to know, if you will represent him in the cause?"

Mr. Brown.—"May it please your Honors, I am much pressed with professional engagements, but the peril of the prisoner and the suggestion of the court induce me to put them aside, and to undertake the duty the court is pleased to assign me."

Junior counsel is associated with him, two days are given to prepare the cause, and on Friday, the 24th of May, it is called up. Mr. Brown, during no part of the trial, is more remarkable, or happy than in the preliminary skirmishing which precedes the main duty of grappling with his adversary in argument.

It is not the intention of this notice to enter upon the details of the case of Farkin, as they appeared in evidence, under the plea of "insanity," which was entered by his counsel. The case was selected as illustrative of the ardor and devotion with which Mr. Brown clings to the cause of a destitute client, who confides to him in the hour of peril, and in jeopardy of life; and how little the dark features of the darkest criminal cause appal him. The court sat from ten o'clock, Friday morning, until near midnight of the same day; and from ten, on Saturday morning, until half-past two on Sunday morning; when the prose-

cuting officer made his closing speech, and the judge charged the jury.

Mr. Brown, as usual, took the exclusive examination of the witnesses. The government had not known, or omitted to prove the fact of the prisoner's assailing with his knife every one whom he met in his flight.

Mr. Brown brought it out on cross-examination. The tyros of the bar smiled and whispered to each other, signifying, that with all his eminence as an advocate, and his special reputation in the examination of witnesses, he had missed it in eliciting these startling and unwelcome facts. Not so with the counsel. He boldly insisted upon exhibiting the whole of that bloody drama. Every scene in it he depicted with fidelity and power. If the facts of his defence made out insanity to the satisfaction of the jury, then every homicidal act by the prisoner was but the stronger proof of the theory of the defence. If the plea of insanity failed, the counsel sagaciously determined that he could deduce from all this most unusual and ferocious conduct of the prisoner, a strong argument, to show that he had committed the homicide under a violent burst and tempest of passion, rather than deliberate malignity of heart. The case was so desperate, no boldness of interrogation could make it worse.

It was shown that the prisoner was a poor outcast from happiness and home. He had deserted, or had been deserted by, a wife and children. Those who

had known him in earlier life in his own country, testified that he had always been an isolated, desolate person, moody in temper, uncertain in habits and pursuits.

Many idle, extravagant things, done and said by him, as bearing upon the state of his mind, were introduced into the defence, especially (and but under one view, it was clearly irrelevant evidence,) his declarations and conduct after his imprisonment—one of the prison keepers testifying that the prisoner told him, "it was a fair bargain, to be paid when the clock was done; and then he would'nt pay me for four days. I went to go up stairs, to break the clock, or put it out of that; he stopped me—threw an otter skin at me, and I then thrust a screw-driver into him."

It was on this theory that Mr. Brown based an ingenious and powerful appeal to the jury. He rose to speak at about ten o'clock on Saturday night; it was past midnight when he sat down. His speech on that occasion was one of great power, and infinitely honorable to him, as a man of kindly and generous feelings, as well as professional merits. Never having seen the desolate prisoner before—never, perhaps, to see him again, his exertions in his behalf are most favorably remembered by all who were conversant with the facts at the time; the opening of his argument for the defence, (which in substance ran thus,) will never be forgotten by those present.

"If, when the court did me the honor to appoint me to defend the unhappy prisoner, they supposed that, in obsequious gratitude for the favor thus conferred, I should acquiesce in any judicial encroachment upon his legal rights, they did both *him* and *me* injustice; and to convince them of their error, I take leave now to deny the correctness of three-fourths of their decisions upon the points of evidence presented upon this trial. When I received your appointment, as I understood, it was to aid in *defending* him—not to assist in *hanging* him."

Again: The Presiding Judge having proposed to the counsel, (after an ineffectual motion for an adjournment,) that they should be limited in their speeches, on account of the lateness of the night, to one hour each, the counsel replied:

"I acknowledge no limit in defence of human life, and I should scorn myself were I to submit to any. I tell you, therefore, gentlemen of the jury, if allowed by my strength, and required by my own sense of duty, I shall speak till the cock crows, in defiance of all arbitrary judicial restraint."

Mr. Brown, though making the most of the evidence, seemed conscious that the plea of insanity was not sustained, and he exerted all his ingenuity and power to mitigate the degree of homicide, and reduce it to manslaughter. He pressed upon the jury, how the training of the heart and temper is affected by man's physical condition, how prone to angry passions are those, whose minds and feelings have expanded under the rigors and bitterness of ignorance and want,

and how unequal are even equal laws, as applied to the different tempers and conditions of men.

The attack of the prisoner upon the harmless child, he used with fine effect; and urged upon the jury, that if, under a full view of all the facts of the case, they should be of opinion that the fatal blow was given to the deceased in a moment, of even the most unprovoked passion, they must spare his life, and return a verdict for manslaughter. On the conclusion of the address of the officer of the government, the judge proceeded to charge the jury at two o'clock, A. M.

By Mr. Brown.—"I object to your Honor's charging this jury, unless your colleague is on the bench."

By the Attorney-General.—"Can we not consent to the charge in his absence? it is a very unseasonable hour, and his Honor, the Associate Judge, has gone home."

By Mr. Brown.—"I consent to nothing, in a capital case; it is as much his Honor's duty to be here as mine, and I shall take advantage of his absence; as to the unseasonable hour, that is not my fault; no hour is seasonable for the violation of law."

The absent judge was sent for, who lived two miles off, and who had gone quietly off at about eleven o'clock. He was roused from his bed, and came in about half an hour. The jury received the charge at half-past two o'clock and retired; at nine o'clock on Sunday morning the prisoner was brought up, the jury returned to their box and rendered a verdict of guilty of murder in the second degree. Thus, by Mr. Brown's

devotion and abilities, may be said to have been saved the life of the unhappy prisoner; for certainly, no ordinary advocate could have turned aside the current which was bearing him towards death.

The case of Morgan Hinchman against sixteen defendants, persons all of great respectability, and some of them of wealth, and influence, and position, which was tried in the Supreme Court of Pennsylvania, in March, 1844, though a civil case, was also one of a very remarkable character, and called out, with distinguished success, the peculiar forensic talents of Mr. Brown. The case excited great attention; it commenced on the ninth of March and continued until the seventh of April. The facts of the case were very original; a crowded auditory thronged the court-room from the beginning to the end of the trial; the first talent of the bar was engaged, and the result of the verdict proved abundantly that the defendants had cause to approach the investigation with anxiety and ample preparation. As it is designed to give some extracts from Mr. Brown's address, to throw before the reader a correct impression of his style and matter, a brief statement of the case may be necessary.

Morgan Hinchman was a young man of respectable connexions, a member of the Society of Friends, residing with a wife and a young family of children, in a neighboring county, apparently prosperous and happy. On the evening of the fifth of January, 1847,

he left his farm to attend the market in Philadelphia. Before his departure he arranged many little domestic affairs with regularity and care, and when in Philadelphia, after disposing of his produce, attended to some business relating to a loan of money, by a mortgage on his farm. On the morning of the seventh, the transactions occurred which gave rise to the subsequent suit. At the same hour of that morning, the hour previously fixed upon by Morgan Hinchman for concluding the negotiation about the mortgage, several of the defendants assembled at the same place and arrested Morgan Hinchman, after informing him that they were about to take him to the Frankford Lunatic Asylum. Without repeating the details of the case, it is sufficient to state, that in pursuance of their plans previously laid, and spite of the resistance of the alleged lunatic, he was carried to the Asylum and restrained of his liberty for several months, as an insane person. It was for a conspiracy, accompanied by the overt act of his imprisonment, that an action for damages was brought, the parties charged being not only those actively combined in the arrest, but others, by whom it was alleged, a less active, but equally culpable part, was taken in the proceeding against the plaintiff. It is just to this statement of the case to remark, that the defendants, one and all, denied, in every way and form, the charge against them. They alleged that Morgan Hinchman was

taken to the Asylum at the request of his wife and mother, upon the certificate of a very competent medical adviser, and that he was, at the time of his arrest, and had been for a long time previous, a lunatic. It was admitted that he was apparently quiet, intelligent and rational; but that he was, for the most part, and with reference to his domestic relations, uniformly of unsound mind; that on one occasion he had beaten his own mother in his orchard, while she was his guest; that he was always very restless and unhappy in his family; that his worldly affairs were in confusion; and particularly that his wife's property, of which he had obtained the control, was disappearing under his management. It was further alleged that he had been declared a lunatic, by an inquisition of lunacy, and that all the acts complained of by the plaintiff were authorised by law, and intended for his benefit.

That the issue involved may be fairly presented on both sides, it must be stated, that many of these allegations by the defendants were denied, others, though in part admitted, were brought forward in connection with other facts, which gave to the whole case features of aggravation. It was a circumstance in the plaintiff's case, that one of his children had died during his imprisonment, and that he had always shown skill in the management of his affairs. The plaintiff's counsel, in a word, contended that there was a malicious

intention to confine Morgan Hinchman, and take his property out of his own control, in order to gratify either a lust for power or the vindictive feelings of professed friends. Much strong and conflicting evidence was offered on each side. Three counsel preceded Mr. Brown, in speeches of great power; and on Good Friday he commenced as follows:

"Upon this day, Gentlemen of the Jury, this HOLY day, while the great masses of the Christian community are devoutly engaged in a public manifestation of pious gratitude for the priceless and free sacrifice, which redeemed the fallen family of man from the miseries of eternal death, it is a melancholy and painful duty to be compelled to force upon your attention, the persecution and oppression, the cruelty and barbarity, practised, or alleged to be practised, (for I take nothing for granted,) by a body of professing Christians, lovers of peace, and followers of a meek and lowly Saviour, against an unoffending fellow man.

"My learned friend, though professional adversary, has ventured, in the close of his remarks to appeal to you, and to attempt to enlist your sympathies in behalf of the defendants in this case, closely connected together as they have been, from the first to the last, as a solid phalanx, in an unsparing opposition to Morgan Hinchman. Instead of casting an eye of pity or commiseration upon the helpless condition of the plaintiff, upon his destitute and disgraced condition, all his humanity seems to be absorbed by a sympathetic regard for those whom he professionally represents, and who are the actual offenders.

"When Pilate—and it is an apt illustration upon the present occasion—meanly yielded to the clamors of the multitude, and washing his hands in their presence, surrendered the Saviour of

mankind to an unholy and infuriate combination, consoling himself by exclaiming, 'I am innocent of the wrongs of this just person,' he adopted, by anticipation, some portion of the argument resorted to by this defence. He only stood by, forsooth, and did nothing! He was innocent of the blood of the accused! But let me tell you now—and it will be a subject of elaborate descant hereafter—let me tell you now, that that man, however elevated or respectable, who stands by patiently, and acquiesces in a wrong that is about to be, or has been committed, imparts to the wrong-doer the aid and support of his presence, and thereby participates in the offence. Although, like Pilate, he may console himself with the operations of washing off external guilt, he shares in that evil, shares in that crime, which he neither endeavored to prevent, nor was disposed to resist or redress. That is my doctrine, and we shall soon see how it will abide the test, when I come to apply it in requisite connection with the different portions of this case, in which that point of inquiry is involved."

After this appropriate reference to the day, in connection with the case, and an allusion to some of the incidents of the trial, Mr. Brown proceeded to the court:

"May it please your Honor, I never had more occasion to entertain confidence in a judicial officer, than I have now. I never felt more distinctly, or more deeply, the necessity for entire reliance upon the integrity of a judge. I think, during the progress of this cause, your Honor's mind may have wavered, as is proper it should do, in relation to certain legal points; yet I have not observed, and I am certain, in relation to the discharge of your duties, I never shall observe, the slightest vacillation or unsteadiness, in regard to

the immutable principles of justice. It will be my duty, as far as within my power, to relieve you of any doubts hitherto entertained, and if I do not settle, beyond question, the entire fallacy of the whole doctrine of the defendants' counsel, and show that at most it is a mere castle in the air, resting upon no other foundation than fancy or error, then I will submit, as a philosopher ought, and calmly encounter the consequences."

Mr. Brown is never a very long speaker—on this point he remarks:

"I am not, allow me to say, one of that class of advocates—though I speak in no disparagement of others—who seem to conceive the length and strength of a speech to be synonymous; I shall, therefore, if I have measured myself rightly, occupy comparatively but a short time in discharging the duties that have fallen to my allotment. If my argument be to the purpose, it cannot be too short, and if it be not appropriate to the cause, and calculated to aid you in your deliberations, and secure your arrival at just results, it must certainly be too long."

From the previous great respectability of the parties to this action, and the influence and position which many of them enjoyed, it was argued with great confidence, and some force, that the plaintiff had the weight of probabilities against him, upon the question of malicious intentions, in the excellent previous character of the defendants. To these points Mr. Brown, before entering the heart of the case, alluded in the following forcible strain:

"This, as my learned friend has justly told you, is a most im-

portant case. Not, as you will perceive at a single glance, with reference to the stupendous magnitude of the pecuniary amount involved; not that it embraces any considerations directly affecting human life, but because it is unparalleled by any proceeding recorded in the annals of American jurisprudence; and because it comprehends those momentous principles, without the sanctity, protection and vindication of which, even life itself would be a burthen, and the world a waste. Let me conjure you to think well of this—don't suppose that the question here is merely, whether forty thousand dollars are to pass from the pockets and coffers of the wealthy and respectable, into the pockets and coffers of the poor and destitute. I scorn to put this case on any such footing. I am not here as a pauper, to beg; and if I were, the last men to whom I would apply to relieve the wants or the necessities of the plaintiff, would be his heartless persecutors and oppressors. I am here for justice; answer—shall I have it? That is the question. I don't come to steal it! I don't intend—borrowing an example from the defendants—to take it by force. I don't come with my corporal's guard, or armed myrmidons, for the purpose of wresting it from you. I come here to demand it; here, in this court of justice; and I present to you the basis upon which I build my claim. My learned friend has said—and whatever he says he says well, and skilfully too—that if you give a verdict for the plaintiff, you deeply affect these defendants in the estimation of the community. These respectable men! I dare say, you will suppose it rather strange to call them so, in connection with this case; but whether they are respectable, powerful, wealthy, or otherwise, matters nothing to me, and should matter nothing to you. Those are not the vital considerations here. I don't ask them to share their wealth, unless we are entitled to it, as an indemnity for our wrongs. I invoke no prejudices. I don't desire to oppress them; on the contrary, the whole philosophy of this case is reared upon a very different doctrine.

"If, instead of a legitimate defence, they talk of respectability, I give my answer in the words of Samuel Beans, the venerable individual who has been so much censured here, because he ventured to encounter this self-created autocracy, if I may call it so. I answer them in his simple, though powerful language: 'Your characters must be very good, if they will resist the flood and current of proof in regard to this transaction, which sets against and overwhelms them.'

"Why, these sage, grave men, attempt to make character a mere marketable commodity, not that priceless jewel that my learned friend has spoken of. It is to be a mere shield and protection for iniquity and outrage; for that is what I understand to be the practical end and application of the argument. I agree that character is everything; I agree that the human frame is but a tawdry, empty, worthless casket, when that jewel's gone. But where shall this doctrine land us? That's the point. Had Lord Bacon no character? 'The wisest, brightest, meanest of mankind!' Had he no intellectual, no moral, no national, no universal character? broad and expansive as nature itself; yet all this did not save him, when he had comitted an atrocious wrong, and sullied the pure ermine—the judicial and national glory, of his country. Was not Dr. Dodd a man of high character? Yet all his character could not save him from the gallows! Nay, if you will pardon me—it is pertinent to the time, and I introduce it with becoming reverence for its association—was not Judas, one of the disciples, a man of character, until he traitorously betrayed his master with a kiss, and basely sold the Redeemer of the world, for thirty pieces?

"Character, so far from being a defence, so far from being matter of vindication or protection, where the testimony is calculated to enforce the claims of the plaintiff, is matter of aggravation, disgrace and confusion. What is there—while I admit and maintain the elevated position in which character places man—what is there, I

say, that degrades him, even below the lowest depth of odium and contempt, more than its willing and wanton sacrifice? Why, was not Lucifer—surnamed the Morning Star, before his fall—one of the brightest spirits among the angelic hosts? He then stood the highest and the purest; and for that plain reason, now stands the lowest and the blackest. I wish this subject of character distinctly understood; it is a sort of mawkish sentimentality, too often introduced to lend grace to a desperate defence. It is like a moon-beam on a thunder cloud, making the gloom more dreadful. I repeat it, I am disposed to pay as warm a tribute to the regard in which reputation is held, as any man. But I have no notion, no idea, sir, that gentlemen like these, or any other persons, should imagine that there is any personal hostility on my part towards them, because I take leave to speak of them as they deserve."

No professional mind, especially one conversant with the practice and principles of criminal jurisprudence, will fail to appreciate this just reference to the evidence of character, when offered as a substantial part of a defence at law.

Reference was made by the opposite counsel to the Frankford Asylum, to the beauty of its external, and the comfort of its internal arrangements. On this, as a minor point of the case, the speaker proceeded as follows:

"Let us turn to the beautiful picture prefixed to the accompanying history, written by Dr. ———, upon the moderate compensation of six hundred dollars a year, for one or two flying visits a week. That history has been read here by the counsel, almost in extenso;

and certainly 'ad nauseam;' he tells you it is a perfect paradise;—don't let him ensnare you with 'mere springes to catch woodcock.' Would you not now suppose, from this poetic, and romantic, and rapturous description of the Frankford Asylum, that it was a perfect Arcadia? See how well it appears in the engraving and in print! Only behold the terraces, the lawn, the gravel-walks, the flower-gardens, roses, deer-parks, and everything of the most attractive and alluring character! And all these luxurious indulgences, says our learned friend, are supervised and secured, without even the equivalent of a salary. Amazing philanthropy! How is this? It seems very wonderful! But that wonder disappears, when you are told that it is not the fact. Philip Garret, Dr. Worthington, Dr. Evans, and a whole retinue of keepers, are all abundantly paid. I don't mention this as a matter of complaint, but in refutation of their pretensions, which have been introduced as a part of the defence. And I beg leave to say, with all respect and deference to the learned counsel, that it was an abuse of the patience and time of the court and jury, to press so elaborately upon us, the very equivocal and somewhat meretricious attractions of a private mad-house. I wish, when you can be brought to think yourselves insane—though, according to the Doctor's notions, you will never be sane until then—you would take up your lodgings in this most magnificent boarding-house; making, however, the special provision, that you shall have the benefit of the Habeas Corpus Act, in case it so turn out that you should be awakened from your slumbers every hour of the night, or nearly beaten to death by some of its civil and courteous inmates.

"Why, Gentlemen of the Jury, this outward parade of comfort is only calculated to sharpen the agony of the sufferer. Do you—can you suppose, that the free bird that has been accustomed to scale the blue vault of heaven, when entrapped and consigned to a costly cage, is consoled by the consideration, if I may ascribe consideration to a bird—rather let me say its instinctive emotional feel-

ings? (to borrow something from the doctors,)—Do you suppose, I say, it is comforted by the fact of the cage being of gold; or, will it not rather beat its fluttering little life out against those golden bars, that shut it in from liberty? It is useless, therefore, nay worse than useless, to resort to these empty lures. I don't care if this Asylum were made of 'one entire and perfect chrysolite.' What does it come to? What is all that to the famished soul? the degraded and debased spirit, the humiliating sense of a two-fold bondage—bondage of the body, attended with imputed bondage, at least, of the immortal mind."

With one other extract, relating to the examination of the plaintiff before the inquisition of lunacy; and which produced, on its delivery, a general outburst of applause from the assembled multitude, we shall close our notice of this remarkable case—thus it runs:

"They call it an INQUISITION. How appropriate, though how terrible the name. MERCIFUL HEAVEN! Let Spain no longer be abused—no longer revile that benighted region for her folly and fanaticism—no longer reproach her for her chains, her racks and her tortures, and all the accursed machinery of human wretchedness and human degradation—since here, in this boasted land of equality—here, in this hospitable asylum from persecution and oppression—here, in this thrice glorious and sacred sanctuary of enlightened liberty and equal rights—if principles like these are to be tolerated, advocated, or allowed, every doctor is a spy—every lawyer an inquisitor—every superintendent a jailor—every citizen a victim, and every domicil a dungeon." (Loud applause, which his Honor could scarcely restrain.)

Mr. Brown is of the middle height, compactly made,

with a full, round chest; his forehead is high and broad; eyes black; mouth large, and filled with the finest teeth imaginable; a gift almost essential to an orator. His voice is of great compass: it ranges from the lowest notes of the flute to the highest blast of the bugle. He has an admirable temper. No one ever saw him lose his self-possession, even in moments of the greatest anxiety, tumult and consternation; nor can it be discovered from his deportment during a trial, whether it is prosperous or perilous. If there be any difference, it consists in this—that he steers his bark more boldly in a rough sea. We have often seen him, in forensic conflicts, involving considerations of life and death—where even the by-standers seemed terrified and appalled—calm and collected, and firm as a rock, amid the wild and wasteful ocean.

In rising to address the court and jury upon any matter of deep concernment, he almost invariably becomes pale, and continues so until the reaction in the system takes place; then his eyes sparkle or melt; his voice varies according to the theme; all his features are in full play, and the most accomplished actor, in his attempts at dramatic effect, never was more true to nature.

Mr. Brown is said to quote a great deal from Shakspeare; this, we think, is a mistake. That he is a devotee to the immortal bard, no one can doubt, but still he draws from him less, than many members of the

bar, and much less than he quotes other authors. No man, it is true, is more familiar with the "myriad-minded" poet. The reason assigned for it is this: Mr. Brown's parents were Quakers, and by them, the reading of Shakspeare by their son, was strictly prohibited; nevertheless, though it does not speak well for his obedience, he sought "the sealed book," and at the early age of ten years made himself master of its treasury, and built upon this best of all models, the entire structure of his language. And now, as Chief Justice Gibson once said, "He does'nt quote Shakspeare, but speaks Shakspeare."

Mr. Brown is not a flippant speaker, nor what is generally called a fluent speaker. He is an eloquent speaker. His manner, his matter, his language, all cohere together, and are all directed to the enforcement of his argument. In his management of a cause, he is like no one else, and although he has many imitators, the copies have not the slightest resemblance to the original; the one springing from nature, the other from art. In his most rapid declamation he never halts or stumbles—never drops one word, and picks up another—never falls into false grammar or incorrect pronunciation—never, in quoting, departs from his text, but blends the most scrupulous exactness with the most overwhelming energy. Blessed with a clear and distinct memory, he rarely resorts to notes, either for evidence or arrangement; but having,

as it were, everything in his own mind, his great effort seems to be to transfuse it into the minds of others.

Notwithstanding these admirable qualities, some of his notions are peculiar. Great men, with few exceptions, are said to be indifferent to mere externals—to despise costly or gaudy apparel, and the display of tinsel and finery. Not so, however, with the subject of this memorial. He is, perhaps, too much devoted to dress, though apparently regardless of it; and instead of attempting to excuse, he vindicates his propensity to display. Upon a recent occasion, when rebuked by an adversary who was of an opposite taste, he promptly replied, that "he had never known a man to speak well in clumsy boots, nor to have a clean mind, with dirty hands and face; but that he had known many a fop that was not a fool, and many a *sloven* that was not a SOLOMON." "A becoming decency of exterior," said he, "may not be necessary for ourselves, but it is agreeable to others; and while it may render a fool more contemptible, serves to embellish inherent worth. It is like the polish of the diamond, taking something, perhaps, from its weight, but adding much more to its brilliancy and attraction."

In endurance, and what may be called the alacrity and facility of labor, as well as the ability to make sudden transitions from one mental employment to another, without any signs of distress, he stands alone. We have seen others do this, but never with so much ap-

parent ease. Mr. Brown has been known repeatedly to be engaged upon trials going on in four courts at the same time, and to give the necessary attention to all, and to argue all, without confounding facts and names of parties or witnesses in the course of the discussion. It is not so remarkable that this should be done, as that it should be so well done.

In explanation of this faculty, we have seen in his Diary, a passage from which we have been permitted to make an extract, and which runs thus:

"I am conscious of the ability to think of what I *please*—to abstain from thinking of what is painful or disagreeable; or to avoid thought *altogether*. The first of these mental powers seems to depend upon *superiority* of attention; the second, upon *concentration* of attention upon one subject, which, while it lasts, necessarily excludes all others; and the *last* is what may be called *diffusion* of attention, which, while it sees everything, leaves no definite or distinct impression upon the mind—no consciousness of any *one* thing, to the exclusion of *others*. The last of these faculties, as opposed to the natural character of the mind, is the most difficult of attainment, and the most difficult to shake off. It is for the time a mental dreamy chaos, where every thing exists, but nothing *plainly* or in *order*."

For the last quarter of a century he has been incessantly employed, and spoken almost daily; and after labors such as we have mentioned, in the different courts, he will proceed, without interval or refresh-

ment, to his three or four arbitrations or audits, and finally, in the evening close his toils, by delivering a discourse for hours before some college class, or literary, or political association. Thus passes his life. It is nearly closed—and it may be truly said, that there have been few lives of greater labor, or greater pleasure. No man has ever seen him angry or discontented. In prosperity and adversity he is unchanged, apparently unaffected, and the elements are so mixed in him, that he seems to take with equal favor, fortune's buffets or rewards.

A lawyer's life, it may be said, without intending any play upon words, is emphatically a life of trials. He has scarcely any domestic existence; and the more extensive his business, the more applicable is the remark. He neither rises nor falls with political dynasties,—shuns legislative honors, and disdains official dignities; he moves and breathes, and has his being almost solely amidst the crowds and clamors of diversified litigation. There he often encounters abilities of the first order, and sometimes perhaps of the worst order. There his temper and his talents are both daily and hourly tested. His triumphs and defeats are so interwoven, or the one follows the other so closely, that they almost lose their distinctive identity, and blend the pleasures and pains of life so together, as to render it difficult to determine which is the more prominent and prevalent. One day is like another in this—

that all are busy—all are anxious—all are made up of hopes and fears, clouds and sunshine; and so continuous and unvaried is this truth, that this uninterrupted variety actually becomes monotony, still running as it were, in a circle, travelling over the same ground, and knowing no end.

INTRODUCTION.

THE reason why there are supposed to be so many *new* things in the world, notwithstanding the doctrine of Solomon, that "there is nothing new under the sun," is, that so much that is *old* is lost sight of or forgotten. When we are told that every thing that existed in the beginning is, perhaps under new phases, in existence still, and that though the affinities of matter be destroyed, the elements remain, and no atom has been lost in the various mutations of the universe; what natural philosophy thus teaches, we implicitly believe. But when any thing in the form of a novelty presents itself, in moral, social or intellectual life, we are prone to think that the countless years that have passed, never furnished its precedent or parallel. Weak and vain man! Those very novelties existed in years "long since numbered with those

beyond the flood,"—and were forgotten, renewed—renewed and again forgotten; and such will continue to be the course of events until time shall be no more.

In order, therefore, that men while living for the present and future, may be permanently instructed in the lessons and experience of those who have gone before them, and inherit the benefit of their example, it is certainly commendable, that the old in passing to their heirs or successors their well earned fame or fortune, should transmit to them also, that knowledge of the nature and character of men and things, without which fame and fortune can neither be appreciated nor secured.

As, without the recollections of its youth, age would be debarred of its greatest pleasures and enjoyments—so, without the precepts and examples of age, youth would be deprived of its chief knowledge and protection—of the salutary guidance which the hard earned experience of others may have supplied. The memorials, therefore, of men who, after a life of labor and deserved honor, have in the fulness of time, "like the sun, showing their greatest countenance in their lowest estate," sunk into the grave, are appropriate and instructive lessons to those who are about entering upon the busy and thronging scenes of a tumultuous and precarious world.

Every man forms for himself his own horizon, and he sees nothing but that which is above it—but if that

which is seen or known by those of one age, were transferred to those of succeeding ages, the scope of man's mental vision would be incalculably enlarged, and thus by avoiding the errors and faults, or emulating the wisdom and virtues of the *past;* the *present,* instead of being an age of experiment, would be an age of comparative certainty and security.

The knowledge of life that forty years supply, even with the wisest and keenest observer, is comparatively nothing—still, when connected with antecedent and subsequent history, it may impart valuable lights and shadows to the picture, which the hand of time impresses upon life's canvass. Nothing that relates to man, in his temporal or eternal conditions, should be indifferent to man. The experience of others furnishes our cheapest instruction, and to despise or disregard it, often condemns us to the heaviest penalties.

There are few subjects more gratifying than family traditions. Ancestry and heraldry derive all their interest from the noble emotions, impulses and actions with which, while we perpetuate ourselves, we inspire our descendants. But how much more instructive and beneficial must be the record of a large professional family, consisting of the choice and master spirits of the era in which they lived, when honestly handed down to their descendants. How emulous must the son be, not only of sharing, but rivalling or even improving the glory of his father. How careful should

he be, if he cannot *increase*, not to *diminish*, his inherited fame, but to pass it unobscured and unimpaired as a rich legacy to his issue.

Nor is this consideration less important to those who have no forefathers' feet to stand upon. They have at least posterity to look to, and like Napoleon, they may be the founders of an illustrious race. Or like Banquo though no kings themselves, still their children may be kings. The golden round is before them—the power to grasp it is theirs, and if they fail, the curse of failure will be theirs. Nay not upon them only will it fall, but upon those whom they represent, or who may follow them. Remember, the Almighty never created a man whom he did not endow with the ability to sustain himself, and to discharge the obligations imposed upon him. And remember also, in the language of Richelieu, "That in the lexicon of youth, whom fate reserves for a bright manhood, there's no such word as FAIL!"

"All things are ready if the *mind* be so."

This, as intimated in the prospectus, is the first work of the kind that has been presented to the public in this county. Indeed there has been no publication, so far as known to the author, in any country, that presents Forensic Life so minutely and prominently to the reader. Cicero, Quintillian, Pliny, and other illustrious ancients, have furnished

us with abundant instruction in regard to the moral, intellectual, literary and scientific qualifications of orators and advocates: Le Tellier, Pasquier, and D'Agesseau, of the French *Noblesse de la Robe*—"who were not born to die"—have added largely to the stock of knowledge derived from the theories and practice of antiquity. The Lives of the Chief Justices and Lord Chancellors of England, by Lord Campbell, invite no special attention to the Members of the Bar—their habits, their learning, or their eloquence; yet most, if not all the authors referred to, have omitted those details of professional life and those personal delineations and sketches, which unite the present with the past, and tend more, perhaps, than any thing else, to bring us into companionship with the founders and sages of the law, and thereby enable us to associate those who adorned the earlier systems of Jurisprudence, with their less venerated and distinguished successors.

It must not be understood, however, from these remarks, that it is my purpose to write the biography of those illustrious men to whom attention will be invited. The design is merely to exhibit general, and, it is to be feared, imperfect outlines of their professional character and position.

The peculiarities of men, which are the distinctions between men, are entitled to be noticed; because, without them the portrait is as flat as the

canvass, and would scarcely be recognized by any one, as a likeness or copy of the original. Those peculiarities are not presented for the imitation of others, but may be adopted, approved or rejected, as taste or judgment shall direct. Plutarch in his Lives, and Baker and Hollingshead in their English Chronicles, did not deem it unworthy of their respective tasks, after a general description of the scenes through which their heroes passed, to bestow some little attention upon their persons, their manners, their habits and comparative merits; and we therefore, may be pardoned for an occasional and humble imitation of the example.

My business is more with men than things. The speeches of any one of those whom I shall describe, would form almost a professional library in themselves, and of course be inconsistent with the limits of this work, but some of the occasions upon which they were made—their character, and the effects produced by them—form interesting and important items in the formation and history of the Bar, which certainly ought not to be disregarded. For they supply the foundation upon which rests the entire structure of our present Forensic Fame, and our future professional Hope.

This work is designed chiefly to exhibit the public lives of the members of the Legal profession,—indeed a Lawyer in full practice can scarcely be said to have any private life. The community seems to form his

family, and amid the cares and distractions and employments of business, he has no leisure but that which is constrained. The members of the Bar are, it is true, admirably qualified for society—they are full of information and anecdote; the whole volume of human nature seems to be open to them—the delights of literature and the charms of science, are at their command; but still it is obvious, that being so perpetually engaged in their arduous professional pursuits, it is difficult for them to throw off their fetters, and display those intellectual treasures which they eminently possess. The intervals of leisure are brief, and brief as they are. always clouded by anticipation of renewed toil, or "sickly'd o'er by the pale cast of thought," or the exhaustion of past labors: So that the sprightliness and buoyancy of the mind are essentially diminished, if not impaired. Yet notwithstanding this, it not unfrequently happens that, like Sampson, they break the withs which bind them, and resume, for a time, all their native activity, freedom and strength.

Our purpose however, is not directed to domestic or social, but to professional Life,—and even there, while it is the duty of the historian to depict things as they are, it is equally his duty to avoid any unnecessary encroachment upon the feelings of others. Great caution is required, while noticing the departed, to avoid giving pain to survivors. This however, is less to be apprehended upon this subject, as, though the Bar and

the Bench had some peculiarities, they had very few vices. There were no Tresillians, or Wrights, or Kelynges, or Pophams among them.

But if the delicacy be so great in regard to those who are no longer with us, what must it be, in occasionally noticing our associates—those whom we daily meet in the intercourse of social, or the arena of professional life. Upon that subject all that can be said is, that no animosity or envy shall be infused into these sketches —but upon the contrary, our brethren shall be spoken of, as they would be spoken to, in a spirit of fraternal kindness and conciliation, corresponding with the harmony and friendship by which the intercourse of the Profession has always been characterized. There are no asperities, no jealousies, no rivalries at the Bar; each man is apparently satisfied in his own sphere, and if he does not shine in direct radiance, he at least enjoys collateral light. Towards the Judges—the fathers of the Bar—there is not only habitual respect, but a sort of filial reverence entertained, and if at any time it should be lost sight of, the cause will not be found in the wanton disobedience of the children, but in the severity or despotism of the parents.

Having presented a general view of my design—and its incidental difficulties—I may be permitted in conclusion to say, that my chief motive for engaging in this undertaking, is the desire to furnish some few memorials of the legal profession. If this work be not attempted

now—it never will be. Every hour diminishes our recollections of by-gone days; but a few glimpses remain; and a few short years will obliterate every view and vestige of what, in the passing and changing pageants of life, has been so interesting to us all.

If this humble effort should accomplish no more than to invite superior minds to the prosecution of a plan so imperfectly commenced, although it is not all that I desire, it is perhaps more than I have reasonably the right to expect. But, as to succeed where success cannot possibly be doubtful, confers no honor on any man,—so to fail, honestly to fail, in a just enterprise where there is but little chance of success, reflects no disgrace; but to discharge our duties fearlessly and faithfully, in the various relations of life in which we may be engaged, is man's highest, and should be, man's *proudest praise.*

After acknowledging our grateful obligation to the patrons of the "Forum," and to all those who have contributed to enhance its interest and value, we may be allowed to say, that this work is entirely professional. That it is not intended as a finished specimen of fine writing or literary taste.—In these respects, no one can think less of it than the author. The short time given to its preparation,—the business interruption to which it has been subjected in its progress, all forbid the hope of its meeting the entire approbation of those for whom it was principally designed—we, however,

offer no other excuse for its many defects, than the assurance of our deep and lasting attachment to our brethren of the Bar—and the "Conscripts Fathers" of the Bench—and of our having undertaken the book in order that we may all live united in the memory of others, when our earthly connexion is at an end.

THE FORUM.

CHAPTER I.

FORENSIC ELOQUENCE—ANCIENT AND MODERN; WITH ILLUSTRATIONS.

It is obviously proper, if not necessary, before we enter upon the subject of Ancient and Modern Eloquence, to bestow a hasty retrospect upon the condition of jurisprudence—if it may so be called—in the earlier ages. In doing this, we cannot but be surprised at the power and ascendency which Grecian and Roman oratory has always held in the estimation of the entire world. This must certainly have arisen rather from their popular harangues upon great national questions, in times of public excitement and peril, than from any forensic effort, at least so far as from the memorials of their professional lives, we are enabled to judge.

The truth is, that all those speeches which have won

the world's admiration and applause, were *written*—and some of them never delivered, and what is still worse, chiefly written after the trial had been concluded. Neither Demosthenes nor Cicero ever pronounced one half of the speeches that have been handed down to us, and which have been the subjects of eulogy from orators, historians and poets, for thousands of years. We judge rather of their value from the effects which they are said to have produced, and from the impressions left by our course of classical instruction, to say nothing of the reverence with which the memory ever surrounds the tradition of departed greatness.

This system of writing speeches, which was introduced by Pericles, and especially recommended by Cicero, may cause them to appear to more advantage with posterity, but must have taken much from their effectiveness upon their auditory, if the men of those days were constituted as are those of the present. No man now, even if he were able, could venture to imitate their example with any hope of success. The practice of delivering speeches previously written, is with us confined to tyros or neophytes of the profession, who invariably abandon it, as soon as they are relieved from the timidity inseparable from youth and inexperience; and the less excusable practice of writing speeches that *never* were delivered, to say the least of it, displays more vanity than honesty.

Few men will agree with the notion of Cicero, that written discourses are preferable, or more available, than those which are the result of close thought, and laborious and careful study; and dependent upon the immediate action of the mind and surrounding circumstances for their dress and address. How is it possible that a coldly prepared speech, with an introduction (as sometimes happened,) taken, perhaps, for the twentieth time from a Liber Exordiarum, however able, can exercise such a power over a jury or a popular assembly, as a speech full of original fire, animation, and passion; all springing in their freshness from a just knowledge and application of the subject and character of the occasion; and the nature and disposition of those to whom it is addressed. A written discourse gives you no idea of true oratory—no more than a lifeless eagle furnishes you with a just idea of the same bird, when cleaving the air in the pride and majesty of his strength. That which is written, addresses its subject—that which is spoken, addresses its hearer. No man can infuse the passions into a written discourse—it is unnatural. No written speech, however passionate, glowing, and impressive in itself, can ever impart equal passion to the speaker, and certainly not to the audience. It is necessarily deficient in that mental and physical action that is spoken of by Demosthenes. A jury is captivated and convinced by the warmth, energy, and sincerity of the

advocate. There is an electrical communication and sympathy between speaker and hearer, that no one can describe, and which rarely can exist, where one acts upon memory and the other upon thought. What is intended to be grave and impressive, by a written discourse is often rendered light and ludicrous. We remember an instance of this sort—indeed instances are everywhere to be found. A lawyer who adopted Cicero's rule, of *writing*, presented himself before a jury upon an important case. If he had shared in the excitement as was natural, his memory would have been disturbed and he would probably have forgotten his speech—he therefore chastised and subdued himself, and proceeded coldly and deliberately to submit his views to the court and jury—when of a sudden, and most unexpectedly (for so it was written,) he burst forth, and exclaimed with an affectation of great fervor, "*But sirs, I grow warm.*" The transition was too violent to be appreciated, and it was followed by a laugh from the entire auditory.

As to the idea that writing will render the style more perfect, that may be; but it will not render it more prosperous, and in truth it will retard, if not destroy, our advances towards perfection in extemporary speaking, which is the crowning glory.

But in considering the ascendency of ancient orators, we have overlooked the judicial history of ancient States, which we must now briefly notice. In Egypt

the judges consisted of thirty-one, including the president, who wore a gold chain suspended from his neck, bearing an image made of precious stones. This image was called Truth, and when the president put it on, the trial commenced. All the laws were in eight volumes, which lay before the judges, and the proceedings were conducted in writing—paper books were furnished, but unattended by any oral argument, and the case was decided by the president's placing the image of Truth upon the statement and pleadings of that party in whose favor the court determined.*

Whatever may have been the merits of their legal literature, the course of the proceedings could not have been productive of any great proficiency in elocution, nor does it appear from juridical history that the memory of their proceedings survived the age that witnessed them. They are therefore simply adverted to now, in order to a cursory chronological review of the origin and progress of courts of justice and the modification of practice, from the earliest ages down to the present time.

Following Egypt in the order of time, and in some respects, as will be observed in the character of her legal proceedings, history next presents ancient Greece to our consideration.

Although we have always imagined ourselves to be familiar with Grecian eloquence, and speak in rap-

* Diodorus Siculus.

tures of Pericles, Demosthenes, and Æschines, the truth is, that out of Athens, "The Eye of Greece—the Queen of the Violet Crown," as she has been called, there was *no oratory* in any of the Grecian States; and even *in* Athens, oratory was mostly confined to parties, or relations or friends of parties, who sometimes wrote speeches on both sides and made a living by it. Many of the speeches of Demosthenes were never delivered by him, but by his clients. The populace were paid for attending, so that it became a sort of trade. The dicasts or jurors were paid out of fines and forfeitures. They amounted annually to six thousand, and each received five oboli a day. They were divided into sections of five hundred, and sometimes all sat together. They were interested in convicting in criminal cases, as the fines were paid to them, or confiscation enriched the treasury. It is truly said by Hobbes, that the utility of an advocate depends upon the tribunals before which he appears. If they are corrupt or ignorant, his efforts are impaired; and Athens, we are told, was in so bad a condition in this respect, that Socrates, though innocent, disdained to make any defence against a charge which resulted in his death.

Common informers, or sycophants, extorted money from the fears of parties, and nothing could be more corrupt or degrading, than the whole system of judicial proceedings. There could scarcely be said to be any

rules of evidence—hearsay testimony, common report, and dying declarations, without their modern safeguards, were all received in evidence. The *ostracism* of Aristides and the death of Socrates, are in short, fair specimens of the administration of the laws in this far-famed wonder and mistress of the world.

There was one respect in which the rules of their courts somewhat resembled ours, in the Supreme Court, and it is not improbable that *ours* may have been derived from their classic example—the advocates were limited in their speeches to a given time, and that time was regulated or ascertained by a clepsydra, or water clock, which derived its name from Clepsydra, a famous fountain in Messinia.

The clock, however, we are informed, was stopped during the time of the advocate's reading any documents or books. This limitation accounts for what otherwise would appear strange, that in the reported speeches we not unfrequently find, that instead of the advocate referring to want of time, or to the limitation of time, he speaks of being out of water, or of leaving some part of his water for his colleague.

This practice also obtained in Rome, to whom we now pass:—indeed, the Romans derived much of their learning, many of their virtues, and some of their vices, from the Greeks. Having subjugated Greece, the vassals became teachers, and instructed their victors in philosophy, in poetry, and in oratory.

Originally the kings of Rome presided at trials. After the expulsion of kings, the jurisdiction was exercised by the consuls, and subsequently by the prætors.

The prætors were at first two: Prætor Urbanus and Prætor Peregrinus; afterwards their number was increased, and in the time of Cicero there were twelve. They did not always hear the causes themselves, but were authorised to appoint judges, and when the prætor held the court he summoned to his assistance a number of assessors, called judices, who were taken from the Centum-viral body. The trials were of four classes: Actiones Populares, Actiones Extraordinariæ, Judicia Publica, and Judicia Populi.*

The Romans spoke of all as orators, who accustomed themselves to public speaking, either in popular assemblages or courts of law. An eloquent speaker acquired an influence which placed all the honors of the State within his grasp: but he was not obliged to study the law before he entered into public life. He was bound to defend the rights of his clients, when attacked in a court of law, and was prohibited from accepting any fee. The term advocate, was not applied to a pleader until after the time of Cicero. Its true signification was a friend, and referred to those numerous persons who assembled in behalf of the respective parties. In the early ages the parties carried on the cause them-

* Hortensius, page 90.

selves, with the aid of the Juris Consults, who were, what might be called, the Chamber Council.

The Judices or Judges in Rome, combined the characters of court and jury. They might modify or qualify the sentence—or even pardon—but theirs was the sole authority. They determined upon law and fact—often with but little knowledge of the former, and less regard for the latter. Artifice, management, and dramatic effect, often exercised most powerful influence over the results of their investigations or trials. And the bolder, or in some cases the more submissive the defendant, the more secure he was of escape from condign punishment. Wounds were publicly exhibited in the forum—war-worn mantles or shields were paraded before the offender—former wealth or services—present poverty and imbecility—were freely worked into every case that would admit of it, for the purpose of screening an offender. And such schemes were not merely resorted to by the defendant, but were adopted from the lowest to the highest of the advocates. Cicero, who was above them all in talents, fairly rivalled them in the variety and ingenuity of his professional inventions to hoodwink justice, and substitute mawkish sympathy for the severe dignity of a judicial tribunal. We need not refer to the cases of Manlius, Acquilius, Phryne, Galba, and Fronteius. This, however, was not the worst feature in their jurisprudence; the counsel for public, as well as private prosecutions, adopted a

similar course. Widows, whose husbands were alleged to have been murdered, in mourning robes and dissolved in tears, and rending the air with shrieks of agony, were introduced into the forum. Children, who had been defrauded, presented themselves with tearful eyes and upraised hands, praying for justice; while the rags in which they were temporarily and artfully clothed for the occasion, lent irresistible force to their appeals.*

But further—the advocates had no knowledge of the law, and what is worse, not unfrequently boasted of their ignorance. And this, perhaps, is their only excuse for substituting for legitimate argument, every sort of craft and contrivance that was likely to inveigle and secure victory, at the expense of the law and of justice, to say nothing of their assumed lofty character.

As to the Prætors and Judices, but little can be gathered from history that can be profitable or available to legal science at the present day. They were not lawyers, nor familiar with the law. They derived their instruction from the opinions of the Juris Consults, and were not always very careful in the application of that instruction. There were no exceptions, writs of error, or appeals from their decisions, and in the exercise of arbitrary power, they became sometimes regardless of the sacred principles of right, of which the law justly administered, is ever the best safeguard. They were political judges, de-

* Hortensius, page 107.

pendent upon popular favor, often swayed by personal motives, or individual or party prejudices; and still more frequently governed rather by the exigency of the times than the principles of justice. The passions exercised greater influence upon their deliberations and judgments, than the merits of the controversies that they were called upon to determine.

The advocates of those times of course conformed their addresses to the spirit of the times, and the nature of their tribunals. Rhetoric took the place of logic, and sheer sophistry not unfrequently usurped the place of both. With but rare exceptions, there were no scientific lawyers among *them*. They encountered immense labour, it is true, but it was not in devotion to the science of jurisprudence, but in the cultivation of a knowledge of general science, and more especially the arts and refinements of oratory. Lawyers such as Scævolo and Sulpicius, occupied a lofty, but still subordinate sphere of life. They were to the orators what attorneys and special pleaders are to the barristers in England. They appeared in the "atrium" daily, but rarely spoke in a case, and when they *did*, were almost invariably defeated in their causes, as might be supposed, as the value of their learning was beyond the appreciation of the Judices; and their want of accomplishment in the beauties and blandishments of oratory, was turned into ridicule, or treated with contempt, by those who had given their whole lives to the most sedulous study of

eloquence. Even Cicero himself, though at times he prides himself upon his legal knowledge, affects to scorn them, when in the defence of Murena, he says, "If you put me upon my mettle, overwhelmed with business as I am, I will in three days declare myself a juris consult."

But, suspending this hasty survey, or rather glance, at the ancient forms of justice, and the modes and morals of advocacy—to both of which we may again incidentally refer—let us pass from the Roman Republic, which was destroyed before the Christian era, to the time of Quintillian, who was born during the reign of Nero. Quintillian was a great admirer of Cicero, and became one of the most distinguished rhetoricians of the age in which he lived. The Augustan age which, having formed the interval betweeen Cicero and Quintillian, was more celebrated for its learning, its historians, and its poets, than its orators. Freedom of speech dwindled for a time into comparative insignificance, and almost perished under the blighting power and influence of royalty; still, like the dying day, it gave some of its brightest flashes in its expiring moments.

Quintillian, who died at about the age of fourscore, in the one hundred and twentieth year of the Christian era, though an inferior orator to Cicero, was a superior teacher, and his "INSTITUTES OF ORATORY" contain more practical instruction than any, or all the other works

upon that subject that have been handed down to us. He wrote with great beauty, purity, and power; and unlike his prototype, he inculcated the advantages of improving the faculty of extemporary speech, and recommended a thorough general preparation for an argument, in preference to the course theretofore too much in use, of directing the mind to just so much law, as might be deemed necessary for the occasion. He was a devotee to his profession, and although he withdrew from its more active pursuits after the loss of his wife and children, he continued the instruction of others, and composed, as history informs us, many orations in his retirement, which equalled in classic beauty, the best productions of the Augustan age; and perhaps we cannot do better than borrow from him a sentence—strongly expressed, it is true—as introductory to our imperfect views, upon the present subject:

"May I perish," says Quintillian, "if the all-powerful Creator of nature and Architect of this world, has impressed man with any character which so eminently distinguishes him from other animals, as the faculty of speech. When nature has denied expression to man, how very little do all his boasted divine qualities avail him." This plainly refers, not to the mere natural or abstract faculty, but to the improvement and refinement of which it is capable, and the tremendous power which, when highly improved and refined, it exercises

over the condition and worldly destiny of men. Rightly understood, it is far superior in its influence, to that mighty and fearful engine, the press; it swayed nations before the press was known. It attracts, sustains, and controls men and empires at pleasure; wielding, at will, the fierce democracy. "It is beautiful as Tirzah, comely as Jerusalem, terrible as an army with banners."

Speech alone, can successfully contend with types—for nearly fifty years, until very recently, no general war has distracted Christendom, and the voice of the world is still for peace. Yet one inspired and accomplished orator, of himself, without the influence of birth or fortune, or any external aid—drawing only upon his own intellectual resources, shall confront the press, raise and quell armies at pleasure, stand forth unblenching in the full blaze of royalty; govern whole nations, and enchant while he governs, and convince a rapturous and astonished world, that there is no aristocracy so supreme and unquestionable as the aristocracy of speech. It is at once the pride of peace, and the terror of war.

> "It rides upon the zephyr's wing,
> Or thunders in the storm."

The eloquence thus spoken of, is the perfection of speech. With us, it must be said, to be of rare attain-

ment; indeed, the whole world, through its countless ages, has furnished but few distinguished orators, though in every other department of art and science, it has been comparatively munificent. The reason of this is, that the faculty has not been studiously and laboriously improved. Rhetoric and logic, it is true, are branches of our systems of education, but they are abandoned when scarcely begun, instead of being prosecuted to those glorious results, which amaze, exalt, or subdue mankind.

With us, eloquence in one sense, may be said to be spontaneous with the whole people; but it partakes, in some respects, of a savage character—it is what is usually termed natural eloquence, wild as the prairie, and rough as the unpolished and encrusted diamond—"Satis loquentia, eloquentia parum."

Nature and fortune have been so bountiful, so prodigal to this country, as to render us apparently indifferent to all adventitious aid. As a man of great innate powers sometimes triumphs over the want of education, and wrests, by inherent strength, the laurels from the brow of the orator, the philosopher, or the sage; so America, a youthful giant, in the confidence of her own energy, is too apt to despise all considerations of symmetry, or of grace; of skill, or of beauty. The sun, in his wide career, never shone upon a people possessed of greater resources, of more abundant capacity for improvement; and so far as regards the present

subject, never witnessed capacities and resources less advantageously employed.

Travellers report us truly—let it not be disguised—as a money-making, money-loving people; and it would be well, if, instead of being restless under the charge—which derives its chief severity from its truth—our attention were directed to the reform of the evil. Once seriously attempted, and the work is half accomplished; every successive step shall be easier than the past; and the mind—the immortal part of man—having escaped from the sordid thraldom of the pocket, shall indulge in a store of endless moral and intellectual riches, not, perhaps, the less delightful, for having hitherto been unknown.

Liberty is ever essential to eloquence; it cannot spring or bloom in a land of slaves; but liberty alone is insufficient; civilization and cultivation must coincide with it. Liberty is the soil, and a fruitful soil, but refinement is the culture. Liberty may be said to be the body, but refinement is the symmetry; the soul—the grace, the celestial impress of that body, without which, the features and limbs of Apollo, would be objects of contempt, rather than admiration. As it is not individual liberty that we speak of, neither is it individual refinement. We refer to national liberty—national refinement—which first fan the latent, heaven-born spark of genius into a flame, and then supply the care that feeds it, and prevents its extinguishment.

So true it is, as was beautifully remarked by Longinus, "that liberty is the nurse of eloquence. It animates the spirit, and invigorates the hopes of men; excites honorable emulation, and a desire of excelling in every art. All other qualifications you may find among those who are deprived of liberty; but never—never did a slave become an orator! He can only be a pompous flatterer; his spirit being effectually broken, the timorous vassal will still be uppermost. The habit of subjection overawes and beats down his genius."

> "Jove fixed it certain, that whatever day
> Makes man a slave, takes half his worth away."

But while freedom, it is true, is requisite to the full development of the powers of speech, let it still be remembered, that an orator is chiefly created by himself. Without self-creation, no chance can avail him. The efforts made by Demosthenes to overcome the difficulties of articulation, and his personal and habitual defects, were more than equal to the accumulated labor bestowed upon the attainment of this divine art, from the time of Quintillian down to that of Chatham. Tully also, exhausted all the sources of improvement that Rome or Greece could supply; he was instructed by the first masters in philosophy, in the sciences and the arts, and for the purpose of perfecting himself in the blandishments and beauties of eloquence, he de-

voted many years of his life to an intellectual intercourse with the most gifted and distinguished women of the age—Cornelia and others,—and he tell us, that the Gracchi, who became distinguished speakers, were educated "Non tam in gremio, quam in sermone matris!" Thus was acquired that flexibility, softness and sweetness of expression, which could not so well have been derived from any other instruction.

Among the Romans, children even, were taught to speak the language purely at first, by allowing them to hear nothing but the best phrases; and it is said of Curio—considered among the first class of orators in his time—that he understood no poet; had read no books on eloquence, and had scarcely any knowledge of the law. The only thing which secured his eminence and applause, was his correctness and beauty of speech, quickness of apprehension, and great fluency of expression. The attention of every child, and the hopes of every parent, seemed to be directed to the forum, whence they expected the highest honors and preferments.

Demosthenes became a rival in fame to Homer; Cicero to Virgil; for the industry and devotion of the Orators were equal to those of the Poets. But Milton shall be remembered, when Chatham is forgotten. This is not to be attributed to any natural inferiority of the British statesman, but to an inferiority in labor in acquiring the great accomplishment, as well as to the

want of due appreciation by the age in which he lived, and by that which has succeeded.

The supineness of men, which leads them to live idly and indulge their animal appetites, preferring bondage in ease, to strenuous liberty, has superadded contumely to neglect. The art of speech, therefore, is degraded, instead of receiving encouragement; and no one is willing to toil, when the reward is to be public odium, indifference, or contempt. Hence it is, that republican antiquity leaves us so far behind in this immortal race. To say nothing of those great Grecian and Roman models already adverted to, Pliny and other cotemporaneous historians, mention numerous instances of men of the most powerful minds, who had been engaged in the study of oratory for nearly half a century, without deeming themselves fully qualified to venture a public harangue upon any important occasion. Since the time of Pliny, no devotion like this has been known to the world; and therefore no results comparable to those of former ages, could reasonably be anticipated. Pitt, Fox, Whitfield. Wesley, Erskine, Curran and Grattan, rendered themselves illustrious by their comparative superiority, when considered with reference to others of their own times. who were engaged in parliamentary, clerical, or forensic duties. Oratory with them, however, was but an incident, and not the great study of their lives. And, as it was an incidental pursuit, it was attended only

by incidental fame. The few years that have rolled by, since they performed so prominent a part on the world's stage, have almost obliterated the recollection of their temporary and transitory glory.

The only reasons for the lamentable deterioration of modern times, are want of leisure, and want of labor; men will die for immortality, but they will not live for it; they will encounter sudden and violent death, but they will not submit to a laborious and devoted life.

The present is an era of opportunity, without the will to embrace it. Let the inclination but once truly manifest itself—the result is not to be doubted. Let us begin to-day where we ended yesterday, and steadfastly pursue our object, with incessant study, and with ardor, self-denial and confidence, in the pursuit. Let us apply ourselves to the neglected art of speech, as we would to divinity, law, medicine, poetry, painting, sculpture, even commerce, and our orators shall be as conspicuous as the professors of any of those sciences, or any of those arts. Let us build daily and hourly upon our collegiate foundation, instead of abandoning it to premature and cureless decay.

A life devoted to study, and especially *such* study, is a life of pleasure, of deserved distinction, of lucrative acquisition, of transcendent power. Labor, in some sphere, is the lot of man, but it is at the same time, rightly viewed, the delight of man; the source and sweetener of the highest and noblest social enjoy-

ments. To the student of oratory, those enjoyments are indeed most precious and most necessary; they are aids to his advancement. The fine arts, polite literature—in short, all the graces and the muses, are tributary to his formation and success. They may all be wooed and won by labor, and without labor, they will all assuredly be lost. Incessant study loses its fancied severity, by being universal or various. Mental exercise and mental health are perfected by diffusion, as well as concentration; and this remark is peculiarly appropriate, as applied to oratory.

The mind of the orator should be directed to history, poetry, music, painting and sculpture, in order, in the language of Cicero, that he may comprehend that intellectual relation, that secret charm in the liberal professions, which connecting one with another, combines the influence and powers of all.

Oratory is distinguished, because, while it requires, it implies extensive knowledge. It is a mistake to suppose, as has been too frequently suggested, that accomplishment in speaking indicates a want of accomplishment in thought. As, for instance, that a great speaker cannot be a great statesman, a great lawyer, or an eminent divine. This is one of the absurdities and slanders of the day. In truth, a great statesman, lawyer or divine, must be a great speaker. What were Scævoli and Sulpicus to Cicero and Hortensius? Chatham and Mansfield were the greatest statesmen of their time.

Lord Chesterfield, in writing to his son, says of them: "They are, beyond comparison, the best speakers; Why? Only because they are the best orators. They alone, can inflame or quiet the House—they alone, are attended to, in that numerous and noisy assembly, so that you might hear a pin fall while either of them is speaking. Is it that their matter is better, or their argument stronger, than other people? Does the House expect extraordinary *information* from them? Not in the least—but the House expects pleasure from them, and therefore attends—*finds* it, and therefore approves. Take my word for it, that success turns more upon manner than matter."

Marshall, Brougham, and Dupin, were the greatest lawyers of their respective countries, yet their talents for speech secured them more fame, fortune and promotion, than without it, all their law learning could ever have acquired. This is readily understood—a man who cannot speak, or who speaks unintelligibly, (whatever may be his knowledge,) thinks for himself. A speaker, thinks for thousands, by making thousands think as he does. An eloquent writer is better for the future—an eloquent speaker better for the present; the laurels of the former cluster round his grave, those of the latter encircle his brows. One is a draft on time, the other at sight. Writing improves more—speaking delights and convinces more. One who deals in substantives, is much stronger than one who deals

in adjectives. The former gives you a variety of matter, the latter often only a variety of qualities, of a single matter.

The advocate, compared to a mere lawyer, is "Hyperion to a Satyr." His power and his glory pervade the whole realm. The lawyer is very well in certain limits, and in a certain way, and with certain men; but the orator is confined to no place—no occasion—no men; but is conspicuous in all, and with all. In private, as well as in public—at the forum, or at the banquet; surrounded by listening senates, or encompassed by the social circle, eloquence is still supreme.

"'Tis musical
As bright Apollo's lute, strung with his hair!"

By eloquence, we do not mean mere fluency—much less, flippancy. Yet words are not to be despised or undervalued. "Words, fitly spoken, are like apples of gold in pictures of silver." The perfect master of language, has achieved half the work of an orator, and the best half, too. The weapons in his armory are complete; they are of the "ice-brook's temper," and all that is required is the courage, and skill, and judgment to use them.

No man can be perfect in any language, without being, to a great extent, necessarily familiar with the knowledge which that language was designed and calculated to convey. Those egregiously err, who consi-

der language the first stage of a progress: in other words, that it is to the orator, what it may be said to be to the infant. It is the very last thing attained, if, indeed, it ever be perfectly attained: and it is the gloss, the embellishment, the introduction, the recommendation of every thing else. You have probably known many great men without it;—you certainly never knew a man with it, who was not great. It is possessed by few, desired by many, and envied by all.

Eloquence consists, it is true, more in the harmonious structure of thought, and in the depth and sublimity of feeling, than in the adoption of measured language, the manufacture of phrases, or the graceful fall of well-turned periods. Those who bestow more attention upon words than upon reason and sentiment, never yet were, and never can be eloquent; they are mere tuners of accents; and either speak holliday, or make fritters of the King's English. "Like the screech-owl—they are all noise and feather, without flesh or blood."

Words, nevertheless, are the apparel of thought. It is by no means necessary to a distinguished man, that his dress should be studiously considered, and nicely adjusted; but still, a proper regard to decency of exterior, as evincing a becoming respect to the taste and opinions of others, may contribute to enlarge the sphere of his usefulness, and to recommend him to those portions of society, whose perspicacity never enabled them to discover virtue in poverty, or genius in rags.

With this understanding, then, words may be said to be things—and most important things—as connected with our present subject; a sort of letter of introduction, or passport from heart to heart, obtaining access for more valuable and less perishable impressions. A blush has been called the color of innocence: to the eye of the superficial observer, the contemplation of external signs is the least painful and most important; and if these shall result in finally attracting attention to the inward man, even in the estimation of divine philosophy, they are not to be utterly despised. If some modern orators—these tritons of the minnows—should monster their nothings, or fastidiously decorate and bedizen the puny and sickly offsprings of their brain in embroidery and brocade, and thereby introduce them like shallow fops, into the best society, great men may derive instruction from their folly, and profit by their example. It is the privilege of philosophy, to derive benefit from the weakness as well as from the wisdom of others.

I differ, toto cælo, therefore, from those who underrate the beauties, and blandishments, and graces of oratory. Cicero is a shining instance of the correctness of the doctrine now contended for. Aware of the importance of language, the chief of his life, as has been said, was devoted to its study. Inferior, undoubtedly, to Demosthenes, in force of thought and character, yet was he a more finished orator. The arrangement of his sentences was more perfect, his language more

select; but in action, as well as in matter, no man can carefully read the discourses of those great masters, without acknowledging the supremacy of the Greek. The oratory of Cicero may be compared to a majestic river, gliding through mount, and vale, and plain, and reflecting from its broad and tranquil bosom, the flowers, and the foliage, the smiling villages and stately cities that decorate its shores; while it exhibits the beauties of the bright cerulean, and sparkles in the rays of the o'erhanging firmament. That of Demosthenes, on the contrary, resembles the mighty ocean, dark, deep, and terrible—now fanned by the gentle zephyrs, and now lashed and chafed by the storm—now smooth and unruffled, as ere winds began to blow; and now foaming and directing its rage, as it were, even against high heaven itself—theirs was the difference between beauty and sublimity; between symmetry and strength; between Apollo and Hercules.

Character does not depend more upon opinion, than opinion upon character; when, therefore, inquired of, what were the chief qualities of an orator, the great Grecian master replied "action;"—and the world shall witness that he was right. It embraces and enforces every thing. No man of imbecile mind, feebleness of conception, poverty of language, or coldness of heart, can possibly be possessed of action. We do not understand by action, gesticulation, or attempt at dramatic effect; but that adaptation, or conformity of the

graces and powers of body and mind, which shows that the whole soul is enlisted in the cause. In homespun phrase, it means to be in earnest; to appear to believe and feel yourself, what you desire to induce others to believe and feel. In an ancient work, "The Reliques of Literature," is contained a quaint expression of opinion, illustrative of this subject, which is not unworthy of regard, as it contains most valuable and appropriate instruction.

"Cicero and Roscius," says the author referred to, "are most complete, when they both make but one man. He answered well, that after often asking, said still, that action was the chiefest part of an orator. Surely, the oration is most powerful when the tongue is diffusive, and speaks in a native decency even in every limb. A good orator should pierce the ear, allure the eye, and invade the mind of his hearer; and this is Seneca's opinion: 'Fit words are better than fine ones.' I like not those that are injudiciously made, but such as are expressively significant; that lead the mind to something beside the naked turn; (and he that speaks thus, must not look to speak thus every day.) Words are not all—matter is not all—nor gesture; yet together, they are. 'Tis much moving in an orator, when the soul seems to speak as well as the tongue. Tully, we are told, was admired more for his tongue than his mind. Aristotle, more for his mind than his tongue; but Plato for both. And surely,

nothing decks an oration more, than a judgment well able to conceive and to utter. I know God hath chosen by weak things to confound the wise; yet even the Scriptures are penned in a tongue of deep expression, wherein almost every word hath a metaphorical sense, which doth illustrate by some illusion."

"How political is Moses in his Pentateuch! How philosophical is Job! How massive and sententious is Solomon in his proverbs! How quaint, and flamingly amorous in the Canticles! How grave and solemn in his Ecclesiastes! How eloquent a pleader is Paul at the bar—in disputation how subtle!—and he that reads the Fathers, shall find them as if written with a crisped pen. Nor is it such a fault as some would make it, now and then to let a philosopher or a poet come in and wait, and give a trencher to this banquet; St. Paul is a precedent for it. I wish no man to be too dark, and full of shadow. There is a way to be pleasingly plain, and some have found it. Nor wish I any man to totally neglect his hearers. Some stomachs rise at sweet-meats! He prodigals a mind of excellency, that lavishes a terse oration upon a feeble auditory. Mercury, himself, may move his tongue in vain, if he has none to hear him but the non-intelligent. They that speak to children, assume a pretty lisping. Birds are caught by the counterfeit of their own shrill notes. There is a magic in the tongue, can charm the wild man's motions. Eloquence is a bridle,

wherewith a wise man rides the monster of the world —the People!"

Plato defines eloquence to be the art of ruling the minds of men, and moving the passions and affections of the soul, which, like so many strings in a musical instrument, require the touch of a masterly and delicate hand. Hamlet furnishes a beautiful and forcible illustration of this view, in his reflections, upon the rehearsal by the players:—

"Is it not monstrous that this player here,
But in a fiction—in a dream of passion,
Can force his soul so to his own conceit,
That from her workings, all his visage wans—
Tears in his eyes—distraction in his aspect—
A broken voice—and his whole functions suiting,
With forms to his conceit—and all for nothing!
For Hecuba!
What's Hecuba to him, or he to Hecuba,
That he should weep for her? What would he do,
Had he the motive, or the cue for passion
That I have? He would drown the stage with tears,
And cleave the general ear with horrid speech;
Make mad the guilty, and appal the free;
Confound the ignorant, and amaze, indeed,
The very faculties of eyes and ears!"

"The highest order of eloquence," says Blair, "is always the offspring of passions. A man may convince, and even persuade others to act, by mere reason and argument; but that degree of eloquence which

gains the admiration of mankind, and properly constitutes one an orator, is never found without warmth or passion. Passion, when in such a degree as to arouse and enkindle the mind, without throwing it out of the possession of itself, is universally found to exalt all the human powers. It renders the mind infinitely more enlightened, more penetrating, more vigorous and masterly, than in its calmer moments. A man actuated by a strong passion, becomes much greater than he is at other times; he is conscious of more strength and force; he utters greater sentiments, conceives higher designs, and executes them with a boldness and felicity, of which, on other occasions, he would think himself utterly incapable."

But we have higher authority than Quintillian, Cicero, Demosthenes, Plato, the Stagyrite, or any other worldly testimony, in support of the importance of eloquence. Authority that can neither be denied nor questioned. The High and Mighty One, in whose divine government miracles are only resorted to for miraculous purposes, and who, even in his omnipotence, submits to his own just laws, substitutes Aaron for Moses, simply because he was more richly gifted with the power of persuasion.

You will pardon me, for calling your attention to that passage of Holy Writ, upon which I reverentially rely for the proof of this position. To all, it is no doubt familiar, but may still be new in its present ap-

plication. I refer to portions of the third and fourth chapters of Exodus:

"And God said unto Moses, I AM, that I AM. And thus shalt thou say unto the children of Israel, *I Am* hath sent me.

"And Moses said unto the Lord, O my Lord, I am not eloquent, neither heretofore, nor since thou hast spoken to thy servant; but I am slow of speech, and slow of tongue.

"And the anger of the Lord was kindled against Moses, and he said, is not Aaron the Levite, thy brother? I know that he can SPEAK WELL, and thou shalt speak unto him, and put words in his mouth, and I will be with thy mouth and his mouth, and teach you what ye shall do.

"And he shall be thy spokesman unto the people, and he shall be to thee instead of a mouth, and thou shalt be to him instead of God."

During the speech of Patrick Henry upon the subject of British taxation and aggression, we are informed that in a transport of passion he tore off his wig, and in suddenly attempting to replace it, put it the wrong side foremost. We may well laugh at the cold description of the occurrence, when the perilous occasion has gone by; but wigs were no laughing matters, when heads were in danger. This incident was ridiculous enough, it is true, but its farcical character was lost sight of in the excitement of the orator, the importance

of the occasion, and the deep tone of feeling which it was calculated to produce. It was, no doubt, much more effective than the artifice of Burke, who, while speaking upon the French Revolution, coldly and deliberately drew from his breast a glittering dagger, which he had there deposited for the purpose of dramatic effect. and which led to the shrewd and facetious inquiry of Sheridan, "Well, sir, you have brought the knife, but where is the fork?" One of these occurrences was the result of passion, the other was art; and art of the worst kind, for it was insufficient for its own concealment.

Gesture, generally, I know is denominated action; but we can readily conceive of great action without any gesture; physical, without mental action, is absurd and contemptible. School boys, or mere sciolists, are rarely deficient in gesture; but they fail in mental fervor—"in forcing the soul to their own conceit." The speech of Demosthenes against Philip, is full of action; so is that of Cicero against Cataline; and in this respect, the brilliant harangue of Lord Chatham upon employing the Indians in the American war. which is so familiar to us all, is not inferior to either. No man can read those productions, without being assured that their authors were filled with the true Promethean fire.

We can, of course, furnish but brief extracts of speeches, as illustrative of our text, but even those

may serve to direct renewed attention to the entire speeches referred to, and thereby obviate all occasion for commentary, as they sufficiently speak for themselves. We must be excused, if, in the first place, we introduce brief quotations from the famous Greek and Roman orators, in order that they may be compared with those of the distinguished men of our days —abroad and at home—which shall be presented in their turn.

Peroration. Philippic of Demosthenes, after describing the ancestry of the Athenians:—

"Such, O men of Athens, were your ancestors; so glorious in the eye of the world; so bountiful and munificent to their country; so sparing, so modest, so self-denying to themselves. What resemblance can we find in the present generation, of these great men? At a time when your ancient competitors have left you a clear stage: when the Lacedemonians are disabled; the Thebans employed in troubles of their own; when no other state whatever is in a condition to rival or molest you; in short, when you are at full liberty; when you have the opportunity and the power to become once more the sole arbiters of Greece; you permit, patiently, whole provinces to be wrested from you; you lavish the public money in scandalous and obscure uses; you suffer your allies to perish in time of peace, whom you preserved in time of war; and to sum up all, you yourselves, by your mercenary court, and servile resignation to the will and pleasure of designing, insidious leaders, abet, encourage and strengthen the most dangerous and formidable of your enemies. Yes, Athenians, I repeat it, you yourselves, are the contrivers of your own ruin. Lives there a man who has confidence enough to deny it?

Let him arise and assign, if he can, any other cause of the success and prosperity of Philip. 'But,' you reply, 'what Athens may have lost in reputation abroad, she has gained in splendor at home. Was there ever a greater appearance of prosperity? A greater face of plenty? Is not the city enlarged? Are not the streets better paved, houses repaired and beautified?' Away with such trifles; shall I be paid with counters? An old square new vamped up! A fountain! An aqueduct! Are these acquisitions to brag of? Cast your eye upon the magistrate, under whose ministry you boast these precious improvements. Behold the despicable creature, raised, all at once, from dirt to opulence; from the lowest obscurity to the highest honors. Have not some of these upstarts built private houses and seats, vieing with the most sumptuous of our public palaces? And how have their fortunes and their power increased, but as the commonwealth has been ruined and impoverished?

"To what are we to impute these disorders? And to what cause assign the decay of a state, so powerful and flourishing in past times? The reason is plain—the servant is now become the master. The magistrate was then subservient to the people; punishments and rewards were properties of the people; all honors, dignities and preferments, were disposed by the voice and favour of the people; but the magistrate now has usurped the right of the people, and exercises an arbitrary authority over his ancient and natural lord. You, miserable people! (the meanwhile without money, without friends,) from being the ruler, are become the servant; from being the master, the dependent; happy that these governors, into whose hands you have thus resigned your own power, are so good and so gracious as to continue your poor allowance to see plays.

"Believe me, Athenians, if recovering from this lethargy, you would assume the ancient freedom and spirit of your fathers; if you would be your own soldiers and your own commanders, confiding no longer your affairs in foreign or mercenary hands; if you would

charge yourselves with your own defence, employing abroad, for the public, what you waste in unprofitable pleasures at home; the world might, once more, behold you making a figure worthy of Athenians. 'You would have us, then, (you say,) do service in our armies, in our own persons; and for so doing, you would have the pensions we receive, in time of peace, accepted as pay, in time of war. Is it thus we are to understand you?' Yes, Athenians, 'tis my plain meaning, I would make it a standing rule, that no person, great or little, should be the better for the public money, who should grudge to employ it for the public service.'"

Again:—

"When, O, my countrymen! when will you exert your vigor? When roused by some event! When forced by some necessity! What, then, are we to think of our present condition? To freemen, the disgrace attending on misconduct, is, in my opinion, the most urgent necessity. Or, say, is it your sole ambition to wander through the public places, each inquiring of the other, 'what new advices?' Can any thing be more new, than that a man of Macedon should conquer the Athenians, and give law to Greece? Is Philip dead? No, but in great danger. 'How are you concerned in those rumors? Suppose he should meet some fatal stroke, you would soon raise up another Philip, if your interests are thus regarded. For it is not to his own strength, that he so much owes his elevation, as to our supineness.'"

Peroration of Cicero for Milo:—

"On you, on you I call, ye heroes, who have lost so much blood in the service of your country! To you, ye centurions, ye soldiers, I appeal, in this hour of danger to the best of men, and bravest of

citizens! While you are looking on, while you stand here with arms in your hands, and guard this tribunal, shall virtue like this be expelled, exterminated, cast out with dishonor? By the immortal gods, I wish (pardon me, O my country! for I fear, what I shall say, out of a pious regard for Milo, may be deemed impiety against thee,) that Clodius not only lived, but were prætor, consul, dictator, rather than be witness to such a scene as this. Shall this man, then, who was born to save his country, die any where but in his country? Shall he not, at least, die in the service of his country? Will you retain the memorials of his gallant soul, and deny his body a grave in Italy? Will any person give his voice for banishing a man from this city, whom every city on earth would be proud to receive within its walls? Happy the country that shall receive him! Ungrateful this, if it shall banish him! Wretched, if it should lose him! But I must conclude—my tears will not allow me to proceed, and Milo forbids tears to be employed in his defence. You, my Lords, I beseech and adjure, that, in your decision, you would dare to act as you think. Trust me, your fortitude, your justice, your fidelity, will more especially be approved of by him, who, in his choice of judges, has raised to the bench, the bravest, the wisest, and the best of men."

After describing the "rash levied numbers" of Cataline, Cicero proceeds to contrast their character and condition, with those of the regular Roman army:—

Second Oration of Cicero against Cataline.

"Against these gallant troops of your adversary, prepare, O Romans, your garrisons and armies; and first, to that battered and maimed gladiator, oppose your consuls and generals; next, against that outcast, miserable crew, lead forth the flower and strength of

all Italy. The walls of our colonies and free towns will easily resist the efforts of Cataline's rustic troops. But I ought not to run the parallel further, or compare your other resources, preparations and defences, to the indigence and nakedness of that robber. But if omitting all those advantages of which we are provided, and he destitute—as the Senate, the Roman knights, the people, the city, the treasury, the public revenue, all Italy, all the provinces, foreign States—I say, if omitting all these, we only compare the contending parties between themselves, it will soon appear how very low our enemies are reduced. On the one side, modesty contends; on the other, petulance—here chastity, there pollution; here integrity, there treachery; here piety, there profanity; here resolution, there rage; here honor, there baseness; here moderation, there unbridled licentiousness: in short, equity, temperance, fortitude, prudence, struggle with iniquity, luxury, cowardice and rashness; every virtue with every vice. Lastly, the contest lies between wealth and indigence, sound and depraved reason, strength of understanding and frenzy; in fine, between well-grounded hope and the most absolute despair. In such a conflict and struggle as this—was even human aid to fail—will not the immortal gods enable such illustrious virtue to triumph over such complicated vice?"

The speech over the dead body of Lucretia, ascribed by Livy to Junius Brutus, is for action, superior to either of those to which we have adverted. Though familiar, it is not the less appropriate to our purpose.

"Yes, noble lady, I swear by that blood which was once so pure, and which nothing but *royal* villany could have polluted, that I will pursue Lucius Tarquinius, the Proud, his wicked wife, and their children, with fire and sword; nor will I ever suffer any of that family, or of any other family whatever, to reign King in Rome.—Ye gods, I

call you to witness this, my oath!—There, Romans, turn your eyes to that sad spectacle—the daughter of Lucretius—Collatinus' wife—she died by her own hand. See there! a noble lady, whom the lust of a Tarquin reduced to the necessity of becoming her own executioner, to attest her innocence. Hospitably entertained by her, as the kinsman of her husband, Sextus, her perfidious *guest*, became her brutal ravisher. The chaste, the generous Lucretia, could not survive the insult—glorious woman! But once treated as a slave, she thought life no longer to be endured. Lucretia, as a woman, disdained life that depended on a tyrant's will, and shall we—shall men, with such an example before our eyes—and after five and twenty years of ignominious servitude—shall we, through a fear of dying, defer one single instant, to assert our liberty," &c.

Lord Mansfield, on the Delays of Justice, by the privilege of Parliament.

"I come now to speak upon what, indeed, I would have gladly avoided, had I not been particularly pointed at, for the part I have taken in this bill. It has been said, by a noble Lord on my left hand, that I likewise am running the race of popularity. If the noble Lord means by popularity, that applause bestowed by after ages, on good and virtuous actions, I have long been struggling in that race; to what purpose, all trying time can alone determine; but if the noble Lord means that mushroom popularity, that is raised without merit, and lost without a crime, he is much mistaken in his opinion. I defy the noble Lord to point out a single action of my life, where the popularity of the times ever had the smallest influence on my determinations. I thank God, I have a more permanent and steady rule for my conduct—the dictates of my own breast. Those that have forgone that pleasing adviser, and given up the mind to be the slave of every popular impulse, I sincerely pity: I pity them still more, if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them,

that many who have been saluted with the huzzas of a crowd one day, have received their execrations the next; and many, who, by the popularity of their times, have been held up as spotless patriots, have nevertheless appeared upon the historian's page, when truth has triumphed over delusion, the assassins of liberty. Why then, the noble Lord can think I am ambitious of present popularity, that echo of folly, and shadow of renown, I am at a loss to determine. Besides, I do not know that the bill now before your Lordships will be popular; it depends much upon the caprice of the day. It may not be popular to compel people to pay their debts; and, in that case, the present must be a very unpopular bill. It may not be popular, neither, to take away any of the privileges of parliament: for I very well remember, and many of your Lordships may remember, that not long ago, the popular cry was for the extension of privilege; and so far did they carry it at that time, that it was said that the privilege protected members even in criminal actions; nay, such was the power of popular prejudices over weak minds, that the very decisions of some of the courts were tinctured with that doctrine. It was, undoubtedly, an abominable doctrine; I thought so then, and think so still; but nevertheless, it was a popular doctrine, and came immediately from those who were called the friends of liberty; how deservedly, time will show. True liberty, in my opinion, can only exist when justice is equally administered to all; to the king, and to the beggar. Where is the justice, then, or where is the law, that protects a member of parliament, more than any other man, from the punishment due to his crimes? The laws of his country allow of no place, nor any employment, to be a sanctuary for crimes; and where I have the honor to sit as judge, neither royal favor, nor popular applause, shall ever protect the guilty."

Lord Chatham's speech in the British Parliament, in praise of the Congress at Philadelphia.

"When your lordships look at the papers transmitted to us from America; when you consider their decency, firmness, and wisdom, you cannot but respect their cause, and wish to make it your own. For myself, I must declare and avow, that in all my reading and observation, (and it has been my favorite study; I have read Thucydides, and have studied and admired the master States of the world;) I say I must declare, that, for solidity of reasoning, force of sagacity, and wisdom of conclusion, under such a complication of difficult circumstances, no nation, or body of men, can stand in preference to the general congress of Philadelphia. I trust it is obvious to your lordships, that all attempts to impose servitude upon such men, to establish despotism over such a mighty continental nation, must be vain, must be fatal.

"We shall be forced, ultimately, to retract; let us retract while we *can*, not when we *must*. I say we must necessarily undo these violent oppressive acts. They MUST be repealed. You WILL repeal them. I pledge myself for it, that you will in the end repeal them. I stake my reputation on it. I will consent to be taken for an idiot, if they are not finally repealed.

"Avoid, then, this humiliating, disgraceful necessity. With a dignity becoming your exalted situation, make the first advances to concord, to peace and happiness: for it is your true dignity to act with prudence and justice. That *you* should first concede, is obvious from sound and rational policy. Concession comes with better grace and more salutary effects from superior power; it reconciles superiority of power with the feelings of men; and establishes solid confidence on the foundations of affection and gratitude.

"Every motive, therefore, of justice and of policy, of dignity and of prudence, urges you to allay the ferment in America, by a remo-

val of your troops from Boston; by a repeal of your acts of parliament; and by demonstration of amicable dispositions towards your colonies. On the other hand, every danger and every hazard impend, to deter you from perseverance in your present ruinous measures. Foreign war hanging over your heads by a slight and brittle thread; France and Spain watching your conduct, and waiting for the maturity of your errors; with a vigilant eye to America, and the temper of your colonies, more than to their own concerns, be they what they may.

"To conclude, my lords; if the ministers thus persevere in misadvising and misleading the king, I will not say that they can alienate the affections of his subjects from his crown; but I will affirm, that they will make the crown not worth his wearing: I will not say that the king is betrayed; but I will pronounce, that the kingdom is undone."

The Peroration of Edmund Burke's speech, on the impeachment of Warren Hastings.

Extract from Mr. Burke's speech in Westminster Hall, on the sixth day of the trial, 15th Feb., 1788.

"*My Lords*,—We have now laid before you the whole conduct of Warren Hastings, foul, wicked, nefarious, and cruel as it has been, and we ask, what is it, that we want here to a great act of national justice? Do we want a cause, my lords? You have the cause of oppressed princes, of undone women of the first rank, of desolated provinces, and of wasted kingdoms.

"Do you want a criminal, my lords? When was there so much iniquity ever laid to the charge of any one?—No, my lords, you must not look to punish any other such delinquent from India. Warren Hastings has not left substance enough in India to nourish such another delinquent.

"My lords, is it a prosecutor you want?—You have before you the Commons of Great Britain as prosecutors; and, I believe, my lords, that the sun, in his beneficent progress round the world, does not behold a more glorious sight than that of men, separated from a remote people by the material bonds and barriers of nature, united by the bond of a social and moral community;—all the Commons of England resenting, as their own, the indignities and cruelties that are offered to all the people of India.

"Do you want a tribunal? My lords, no example of antiquity, nothing in the modern world, nothing in the range of human imagination, can supply us with a tribunal like this. My lords, here we see, virtually, in the mind's eye, that sacred majesty of the crown, under whose authority you sit, and whose power you exercise. We have here the heir apparent to the crown. We have here all the branches of the royal family, in a situation between majesty and subjection. My lords, we have a great hereditary peerage here: those, who have their own honor, the honor of their ancestors, and of their posterity, to guard. We have here a new nobility, who have risen, and exalted themselves by various merits, by great military services, which have extended the fame of this country from the rising to the setting sun. We have persons exalted from the practice of the law, from the place in which they administered high, though subordinate justice, to a seat here, to enlighten with their knowledge, and to strengthen with their votes, those principles which have distinguished the courts in which they have presided. My lords, you have here also the lights of our religion; you have the bishops of England. You have the representatives of that religion, which says, that their God is love, that the very vital spirit of their institution is charity."

CHARITABLE USES.

Extract from the argument of Horace Binney, in the case of Girard's Will, in the Supreme Court of the United States, Jan. Term, 1844.

"It has been said that the law of England derived the doctrine of charitable uses from the Roman Civil Law. Lord Thurlow has said it, and there are others who have said the same thing. It is by no means clear. It may very well be doubted. It is not worth the time necessary for the investigation. One of the worst doctrines, as formerly understood in England, the doctrine of *Cy-pres*, has been derived from the Roman law, and perhaps little else. Constantine certainly sanctioned what are called pious uses. A successor, Valentinian, restrained donations to churches, without disturbing donations to the poor;—and Justinian abolished the restraint, and confirmed and established such uses generally and forever.

"But where did the Roman Law get them? We might infer the source, from the fact that Constantine was the first Christian Emperor,—that Valentinian was an Arian, a sagacious, bold and cruel soldier, but the tolerant friend of Jews and Pagans, and a persecutor of the Christians,—and that Justinian, 'the vain titles of whose victories are crumbled into dust, while the name of the Legislator is inscribed on a fair and everlasting monument,' obtains, with this praise from the Historian of the Decline and Fall, the more enviable sneer, of being at all times the 'pious,' and at least in his youth, the 'orthodox Justinian.' We might infer it still better from that section of the code, which, after liberating gifts to orphan-houses and other religious and charitable institutions, '*a lucrativorum inscriptionibus*,' and confining the effect of these charges to other persons, concludes with the inquiries—'Cur enim non faciamus discrimen inter *res divinas* et humanas? Et quare non competens prerogativa *celesti favori* conservetur?'

"What are *pious uses!* They are uses destined to some work of

benevolence. Whether they relate to spiritual or temporal concerns, —whether their object be to propagate the doctrines of religion, to relieve the sufferings of humanity, or to promote those grave and sober interests of the public, which concern the well being of the people at all times,—all of them come under the name of '*dispositiones pii testatoris.*'

"They come, then, from that religion to which Constantine was converted, which Valentinian persecuted, and which Justinian more completely established; and from the same religion they would have come to England, and to these States, though the Pandects had still slumbered at Amalfi, or Rome had remained forever trodden down by the barbarians of Scythia and Germany. I say the legal doctrine of pious uses comes from the Bible. I do not say that the principle and duty of charity, are not derived from natural religion also. Individuals may have taken it from this source. The law has taken it in all cases from the revealed will of God.

"What is a charitable or pious gift, according to that religion? It is whatever is given for the love of God, or for the love of your neighbor, in the catholic and universal sense,—given from these motives, and to these ends,—free from the stain or taint of every consideration that is personal, private or selfish.

"The domestic relations, it is not to be doubted, are most frequently a bond of virtue, as they are also the source of some of the most delightful as well as ennobling emotions of the heart. In the same class, both for purity and influence on human happiness, we may generally place the relations of kindred by blood or alliance, our friends and benefactors, those of whom we are a part, or who are an acknowledged part of ourselves. There is nothing in the Bible to sever any of these relations, if cultivated wisely, and in due subordination to greater duties; nor much, with perhaps an exception or two, to enjoin a special observance of them. One of them has the sanction of a commandment in the second table, to make

children remember their parents, who need no command to remember *them:* and another is defended by injunctions, against infirmities, which, while they are its cement, are often its ruin. All of them are deeply rooted in our nature. Instances are not wanting of their vivid influence between men whose nature is discolored by the darkest stains; and without any emphatic sanctions in the revealed Word, they are perhaps more than sufficiently invigorated by natural impulses, which for good or evil rarely or never sleep. The feelings which attend them are not unmixed with benevolence—nay, they are often deeply tinctured with it; but benevolence does not bear supreme rule among them, nor is it their sole guide and governor. It is not to be forgotten by the Christian moralist, that although the ties which bind men together in these narrower relations, are necessary to their happiness, and therefore to their virtue, the due observance of the relations themselves is not that which the Gospel meant chiefly to inculcate upon man. Father and mother, son and daughter, husband and wife, master and servant, kinsmen, friends, benefactors and dependents,—while such relations bind individuals together, they often break society into sections, and deny the larger claims of human brotherhood. They are an expansion, and sometimes little else, of the love of self. This is in many instances their centre and their circumference. The gospel was designed to give man a truer centre, and a larger circumference; to wean him from self and selfish things—even from selfish virtues, which are 'of the earth, earthy,'—to make the intensity of his self-love the standard of his love of human kind, and to build him up for heaven, upon that which is the foundation of the law and the prophets, the love of God and the love of his neighbor.

"Here are the two great principles upon which charitable or pious uses depend. *The love of God* is the basis of all that are bestowed for his honor, the building up of his church, the support of his ministers, the religious instruction of mankind. *The love of his neigh-*

bor, is the principle that prompts and consecrates all the rest. The currents of these two great affections finally run together, and they are at all times so near, that they can hardly be said to be separated. The love of one's neighbor, leads the heart upward to the common Father of all, and the love of God leads it through him to all his children. The distinction between the two descriptions of charities, the doctrinal and the practical, or as they may with more propriety be called, the religious and the social, is one, however, that Christianity can hardly be said to enforce, since all its doctrines are practical, and all the charities it enjoins are religious; but it is of some moment in the law, as may hereafter be perceived.

"But who is my *neighbor?* It was, perhaps, difficult to make a Jew, a Jewish lawyer especially, whose profession was not the best in the world to enlarge his heart—it might have been difficult for some teachers to make such a Jew understand that *he* was neighbor to a Samaritan, a schismatic, with whom the Jews 'had no dealings;' but it was not at all difficult to make him confess, by the voice of his own self-love that a Samaritan was neighbor to a Jew. A Jew, whose brother had fallen among thieves, who had stripped him of his raiment, and wounded him, and left him half dead, was not slow to confess, that he that showed mercy on him, was his neighbor, even though he was a Samaritan.

"Even the disciples of the Great Teacher, the fishermen from the strand of Genesareth, who, from their station, and the vicissitudes of their calling, would seem to have been more than others in sympathy with the unprotected and unprovided of the earth, were not quick to learn this great lesson. An outcast from the coast of Israel, a Canaanite, who sought relief for her demoniac daughter, though she came with the strongest claim that humanity ever makes for sympathy and succor—a wretched mother imploring aid for her afflicted child—received from them nothing but 'send her away, for she crieth after us.' The sentiment in their hearts, their Master, preparing the

lesson for them, seems to have put into words: 'It is not meet to take the children's bread, and to cast it to dogs.' But when the reply came—'Truth, Lord, yet the dogs eat of the crumbs which fall from their master's table'—the reproof of the misjudging disciples, and the restoration of the wretched demoniac, were conveyed by the same answer: 'Oh woman, great is thy faith, be it unto thee even as thou wilt.'

"Lesson after lesson was designed to lead the Jew from the prejudices of his narrow family, to 'all the kindreds upon earth,' and to open his heart to even the proscribed Gentile, instead of suffering none to enter but those who held to him the personal relations, by which his own infirmities were cherished and confirmed—to lead him to imitate that celestial mercy which sends the rain upon the unjust, and 'is kind to the unthankful and to the evil,'—to impel him, in fine, to love his enemies, and to do good unto all men, as his brethren of one descent from the same Father in heaven. 'He that loveth father and mother more than me, is not worthy of me: and he that loveth son or daughter more than me, is not worthy of me.' 'My mother and my brethren are these which hear the word of God and do it.' Such was the language of Christ to those who were prone to think, that the love of their own blood, or of their own nation, was the highest attainment of virtue.

"The great final illustration of the principle of charity, is given as almost the last act of the ministry of Christ, when he prefigured the gathering of all nations, and the separation of one from another, as a shepherd divides the sheep from the goats. To those on his right hand the king shall say—'I was an hungered, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in; naked, and ye clothed me; sick, and ye visited me: I was in prison, and ye came unto me.' And when the righteous, unconscious of this personal ministration to his wants, say, 'Lord, when?' the answer consummates the lesson, and leaves it for the in-

struction of the living upon earth, as it is to be pronounced for their beatitude in heaven: '*Inasmuch as ye have done it to one of the least of these my brethren, ye have done it unto me.*'

"It is not, therefore, in gifts to the beloved relation, the faithful friend, the personal benefactor, the personal dependent, the known, the individuated, whether beloved for merit, from gratitude, by personal association, or in reciprocation of good offices, that we are to look for acts of *charity*. These have their personal motives and their personal ends. We must go out of this narrow circle, where sometimes self-love is all that kindles our emotions, and perhaps always gives to them the warmth which we mistake for a nobler fire, into the larger circle of human brotherhood—the unrelated by any nearer affinity—the naked, the hungry, the sick, the stranger and the captive—and must give to them, in humble reverence, and in faint imitation, of that divine beneficence, that gives every thing to us. This alone, in the sense of Scripture, and in the sense of law also, is a charitable gift.

"Nor is the extension of the hand to the wayside mendicant, or the administration of succor to the traveller who has just fallen among thieves near our path, or that occasional relief which feeling rather than principle prompts, to the distressed who meet our eyes, a compliance with the duty which the gospel enjoins. Provision for the day of need—accumulation for future necessity—a provident forecast for those who can have none for themselves—a preparation for our brethren under the gospel, such as we should make for our children and brothers by blood—all these are not more the suggestion of reason, than they are the command of religion. The apostolical direction to the churches was distinct and reiterated. 'Upon the first day of the week let every one of you *lay by him in store*, as God hath prospered him, that there be no gatherings when I come. And when I come, whomsoever ye shall approve by your letters, them will I send to bring your liberality unto Jerusalem.

And if it be meet that I go also, *they shall go with me.*' St. Paul, himself, was a trustee for charitable uses, and by his injunction and example, gave the highest sanctity to both the charity and the trust.

"It is by no means in the Gospel that this provision for the helpless and unknown is first announced, though it is there that the precept has its greatest expansion and emphasis. For whose benefit was the Jewish command, 'When thou cuttest down thine harvest in the field, and hast forgot a sheaf in the field, thou shalt not go again to fetch it!' When the olive tree was beaten, for whose sake was the husbandman commanded not to go over the boughs again? For whom was the gleaning of the grapes, after the vintage was gathered? They were all for the unknown, the unrelated, the unfriended—the stranger, the fatherless, and the widow. 'Thou shalt remember that thou wast a bondman in the land of Egypt. Therefore I command thee to do this thing.' 'Thou shalt not glean thy vineyard, neither shalt thou gather every grape of thy vineyard. Thou shalt leave them for the poor and the stranger. I am the Lord, your God.' 'For ye know the heart of a stranger, seeing ye were strangers in the land of Egypt.' The appeals are constant, reiterated, urgent—they are more than appeals, they are commands directly addressed to the Jews by the highest authority, and in the dread Name itself, to extend their gifts and their protection to the unknown stranger, the unfathered orphan, and the widow.

"It is this command so clear, and sustained by such sanctions, to the Jews first, and afterwards to the people of all nations, that makes charitable uses a matter of religious duty, so that to deny the performance or the enjoyment of them to any man, during his life, or at his death, or to withhold from them the sanction and protection of the law, is to deny him the exercise of one of the most sacred rights of conscience. Next to the worship of Almighty God, and as a part even of that worship itself, they are esteemed, and ever have been,

as both a duty and a blessing. They were so promulgated to the Jews before the coming of Christ, and they were so taught and enjoined under the new covenant; and it is a miserable mistake, both of their origin and of their end, to question them for that uncertainty of particular object, which is of their very substance and essence."

John Sergeant in the same Case.

"When and how did Christianity come into England? for whenever that was, the seed of the law of charity came with it, and ripened, and became fruitful, as it had done at Rome, but without, as far as appears, any deliberate apostacy to heathenism. But here it seems necessary, in a legal discussion, to rest this great argument, strong as the foundations of the world, upon the narrow, feeble basis of human authority. It can be done with more precision and certainty as to the law of England, than as to the civil law. A part of the law of England is the natural and revealed will of God. The Scriptures of the Old and New Testament contain the revelation. This, we understand from Blackstone, is part of the ancient common law of England. We must bear it in mind when we come to speak of the common law of Pennsylvania, derived from England.

"When did this become a part of the law of England? We might answer the question, as well as that about the law of charity, by asking another—when was it not a part? It is sufficient that it *is* part of the common law. Does any one believe that it became so by the statute of 43d Elizabeth? The first dispensation was to one people. They might well deem themselves honored above all the nations of the earth, and especially because to them were entrusted the oracles of truth. They did not seek to make proselytes, though some proselytes there were, of two descriptions. Their religion was not communicable to nations or people. In their dispersion, they

have been scattered among all nations, but they are still a people by themselves, and their religion serves to distinguish them from all other people, so that now, after so many ages of dispersion, the order of Providence requiring, they could be brought together again, with certainty, without any miraculous creation of power. This is the continued miracle of their existence. It is needless to add, that as a religion of the people, this never came into England. Christianity is believed by some to have been introduced into Britain nearly as soon as at Rome, by the Apostles themselves, at all events, that the church was there established before the end of the second century. It was trodden down by the heathen invaders, except in the mountainous districts, where it is said to have continued without interruption. Not pausing to examine the historical evidence of this statement, being of little consequence in the present inquiry, (though important in the history of the church,) no one doubts the introduction of Christianity into Saxon England by Augustin, before the end of the sixth century. It was then thoroughly established."

"At the Norman conquest, (A. D. 1066,) it was found thoroughly established. William invaded England with the sanction of a papal grant: and after he was seated on the throne, his controversies with Gregory VII., particularly about homage and Peter pence, show the religious state of the kingdom. In determined will, and eminent abilities, William and Hildebrand were well matched. But in his own kingdom, William prevailed, and Hildebrand's haughty spirit was obliged to yield. The same point is equally established by the controversies between William Rufus and Anselm, Archbishop of Canterbury, a prelate whose memory seems entitled to great respect, as well as to sympathy for the wrongs he suffered, not only from his own sovereign, but also from the See of Rome.

"This was five centuries before the statute of 43 Elizabeth. Wicklif's attempt to reform the church, was in 1356, more than two centuries before the statute.

"Sufficient, however, would it be to say, that Christianity was found fully established at the accession of Henry VIII., almost a century before the statute, which no one can by any possibility question.

"The revealed law, then, was a part of the common law, fully incorporated into it, as early as the time of Alfred, (the ninth century,) at the latest. That revealed law, is a *law* of *charity*. Who can deny it? If it had the virtue to produce the law of charity in the code of Imperial Rome, how could it fail to do so in England? Or, how can it be that in the latter it did not fill up its own proper measure as completely as in the former? From the earliest period, the revealed law was a part of the common law of England, regarded in judgment. The note in Tothill, 126, cited by Judge Baldwin in Magill v. Brown, p. 54, is a striking instance of its acknowledgment. 'The law of God speaks for him; equity and good conscience speak for him; and the law of the land speaketh not against him.' The same is literally true of every gift to charity. Does any one deny that charity is a part of the revealed law? If he do not, he must admit that gifts to the poor, or for the poor, in whatever form, are at all times under the protection of that law. If he do, let him open the sacred books, wherever he will, and there he will find the law of charity, first given to the people of Israel, and then to the whole earth.

"To this divine light, we owe the beautiful creation of a paternal power in the State—a parens patriæ. It extends, says the learned counsel (Gen. Jones,) to infants, females and charities, and, it must be added, to idiots and lunatics, and all the helpless, to watch over and guard them, in their persons and property, and take care that their helplessness shall not be their destruction. In arranging charities in this class, the highest conceivable claim is conceded to them, and the surest basis of legal support. For what would society be without such a paternal power? Would it be a civilized and christian community? Or would it not be a nation of savages, with all

the vices and cruelty belonging to that condition? To suppose this parental power to belong only to a crown, and that it can be exercised only by a chancellor, under royal delegation, would be to deny it to all but monarchical governments, and derogatory, in the highest degree, to our republican States. But this is a mistake. The parental power is not an attribute of any form of government—it is the attribute, the inseparable attribute of Christian society, the law of its nature, and all that depends upon the form of government, is the *mode* of administering it. With us, it resides in the State, and is exercised by such instrumentality as may be deemed most fit for the purpose. The law itself always exists, and is of perpetual obligation, and so are the rights and duties it acknowledges. If there be instances in which, from any cause, there is a failure of active aid, there is none, there can be none, in which it is lawful to wrong the helpless, or to despoil a charity, or in which the law will assist the spoiler. So far, at least, the law of the paternal power is ever in force. For the present purpose, as will be seen, this is enough. The charity in question, is asking no aid. The trust is in course of execution by the trustees, under the sanction of the laws of Pennsylvania. It requires no aid from a Court of Chancery, nor from any other court. What is asked, is against the charity—that it shall be destroyed, that the fund shall be taken from the trust and from the trustees, and given to individuals, not objects of the charity, for their own exclusive use. Such an attempt is contrary to the revealed law. It is contrary to the common law, which may not have been provided with efficacious remedial process to help a good work, but surely never assisted in its destruction. It is contrary to the first principles of civilized society, and inconsistent with acknowledged truth."

Mr. Webster, in the case of Girard's Will.—Christianity is the law of the land.

"It is the same in Pennsylvania as elsewhere, the general principles and public policy are sometimes established by constitutional provisions, sometimes by legislative enactments, sometimes by judicial decisions, and sometimes by general consent. But however they may be established, there is nothing that we look for with more certainty than this general principle, that Christianity is part of the law of the land. This was the case among the Puritans of New England, the Episcopalians of the Southern States, the Pennsylvania Quakers, the Baptists, the mass of the followers of Whitfield and Wesley, and the Presbyterians; all brought and all adopted this great truth, and all have sustained it. And where there is any religious sentiment amongst men at all, this sentiment incorporates itself with the law. *Every thing declares it.* The massive cathedral of the Catholic; the Episcopalian church, with its lofty spire pointing heavenward; the plain temple of the Quaker; the log church of the hardy pioneer of the wilderness; the mementoes and memorials around and about us; the consecrated graveyards, their tombstones and epitaphs, their silent vaults, their mouldering contents; all attest it. *The dead prove it as well as the living.* The generation that are gone before speak to it, and pronounce it from the tomb. We feel it. All, all, proclaim that Christianity, general, tolerant Christianity, Christianity independent of sects and parties, that Christianity to which the sword and the fagot are unknown, general, tolerant Christianity, is the law of the land."

"I now take leave of this cause. I look for no good whatever from the establishment of this school, this college, this scheme, this experiment of an education in 'practical morality,' unblessed by the influences of religion. It sometimes happens to man to attain by accident that which he could not achieve by long-continued exercise

of industry and ability. And it is said even of the man of genius, that by chance he will sometimes 'snatch a grace beyond the reach of art.' And I believe that men sometimes do mischief, not only beyond their intent, but beyond the ordinary scope of their talents and ability. In my opinion, if Mr. Girard had given years to the study of a mode by which he could dispose of his vast fortune so that no good could arise to the general cause of charity, no good to the general cause of learning, no good to human society, and which should be most productive of protracted struggles, troubles, and difficulties, in the popular counsels of a great city, he could not so effectually have attained that result as he has by this devise now before the court. It is not the result of good fortunes, but of bad fortunes, which have overridden and cast down whatever of good might have been accomplished by a different disposition. I believe that this plan, this scheme, was unblessed in all its purposes, and in all its original plans. Unwise in all its frame and theory, while it lives it will lead an annoyed and troubled life, and leave an unblessed memory when it dies. If I could persuade myself that this court would come to such a decision as, in my opinion, the public good and the law require, and if I could believe that any humble efforts of my own had contributed in the least to lead to such a result, I should deem it the crowning mercy of my professional life."

These specimens of the style of American lawyers, will compare, for strength, purity, and eloquence, with any production of former or present times; and there is certainly nothing in English oratory, that exhibits more argumentative power, or a richer vein of legal and historical knowledge.

There is one other speech, delivered by Joseph R.

Ingersoll, in the celebrated case of Richard Smith, indicted for the murder of Captain John Carson, which we may be privileged to introduce. Mr. Ingersoll was, at the date of this effort, under thirty years of age—the youngest of all the counsel concerned. The case did not admit of the display of great legal attainments, but there have been but few speeches pronounced in this country, more remarkable for deep pathos and classical beauty. To say, that it was equal to any argument in the cause, is sufficient commendation, when it is known that such men as William Rawle and Jared Ingersoll, were concerned. Space, however, is not allowed for more than the exordium; in presenting which, we feel justified in observing, that the grace and propriety of its delivery were equal to the copiousness and felicity of its diction.*

"To you, who have been state prisoners for the last five days, it must be a subject of little satisfaction that so many counsel are permitted to address you. Yet the humane policy of our laws, ever watchful of the treasure of life, has surrounded it with all the sanctions that human wisdom can devise. A stranger, who has recently arrived from the continent of Europe, where he has been accustomed to witness the comparative disregard of life, which is exhibited by the tribunals of older countries, and has now been an attentive spectator of this scene, has expressed his astonishment and delight at the opportunities here afforded for exculpation of innocence, and the

* Trial of Richard Smith, as principal, and Ann Carson, as accessory, 20th of January, 1816.—page 145.

complete and satisfactory demonstrations of guilt, that must necessarily precede conviction. To him it was equally novel and wonderful, that while a public officer, divested of the feelings of animosity which might be expected to influence the friends of the deceased, alone conducted the prosecution, the advocates of the accused, without restriction of number or limitation in topics of discussion, might freely range over the most extensive fields of argument, and gather from every quarter, illustrations and inducements, in favor of him who is still presumed to be innocent. The momentary inconvenience which you sustain in a painful separation from your business and families during a long protracted trial, will readily be reconciled to minds of a proper tone, by the reflection that it may save a fellow creature. If each succeeding person who addresses you, can present a single new idea, contributing, however partially, to this important end, or even can so illustrate a thought already suggested, as to give it additional force and impressiveness, the laborious attention will be well bestowed.

"The prisoner is now alone upon his trial. But in the indictment which has been found, he is associated with another, who was exposed to the same arraignment, and has equally appealed for protection to the mercy of her God, and the justice of the country. An union of hearts and hands, under solemnities founded in the purest principles of religion and morality, and recognised and respected by the municipal law, has received an awful confirmation by exposure to a common danger, and inculpation in a common crime. That person awaits in anxious, but respectful solicitude, the moment when she too will be exposed to the scrutiny of a trial; for she will hail that moment as the harbinger of her enlargement from a disgraceful imprisonment, and her restoration to the society of those children, whom she never has abandoned—whom she never has ceased to watch over with the tenderest affection—to whom she has performed the duties more peculiarly incumbent on her sex, as well as those which would

have become a father's care. She is not now upon her trial. Her defence, therefore, is no further a subject of animadversion, than as it has been connected with that of the prisoner at the bar, either by the inherent nature of the case, arising from evidence of joint participation in collateral transactions, or by the course pursued by the prosecuting officers of the commonwealth. The former authorises inferences of innocence, in favor of one of the parties, from acknowledged or established proof with regard to the other—the latter, designating the necessity of that connection, affords the additional and authoritative sanction to these inferences of official opinion and assent. The charge is, in effect, that of a combination to commit murder. Disproving the combination, we go far to disprove the whole crime. I shall not be considered as deviating from the strictest line of argument, by which I am willing to be bound, when I dwell minutely upon the conduct, as it has been displayed in the evidence, of the unhappy female, who has been the unfortunate, but innocent subject, of all these melancholy controversies."

"Besides, the history of the case is little more than the history of its most conspicuous character; and exculpating her, will largely contribute to place the blame where it ought to rest, and to vindicate him, who has been wrongfully accused. Certainly the circumstances now under discussion, are of an unprecedented character. The annals of criminal jurisprudence furnish no parallel. A husband, after having for years abandoned the children to whom he had given existence, and whom he was bound to protect, in the bosom of what might have continued to be his family, has fallen the victim of his own folly, or crimes. A wife is arraigned for butchering in cold blood, the parent of her children and the former partner of her bed, once endeared to her by the strongest ties that can sanctify human nature; and the legitimate sanction of a new tie, is threatened with dissolution by the union of the second husband in the crime. To complete the whole—the parents of that wife, are summoned to im-

precate the vengeance of the law, and to consign to an ignominious death, both their child and the husband of her choice. All the charities and all the sympathies of our nature, are torn asunder. It should seem as if the arch fiend of hell had woven his blackest web, to display in one dismal perspective, the most complicated group of human wretchedness."

"The Egyptians, we are told, in no barbarous age, by way of example to the living, subjected the bodies of their departed citizens to the ceremony of a trial; and exposed them to punishment, which was thus divested of its cruelty, and excited scarcely less emotion among the spectators, than if it had been accompanied by suffering to the accused. Among modern nations, and in a more enlightened age, the dead are respected, chiefly from regard to the living; but when the safety or advantage of the living is to be promoted, or secured by a free inquiry into the conduct of the dead, why should it not be made? History, which has been termed philosophy, teaching by examples, is little else than a long catalogue of the crimes of those who have gone to their account. A never ending perseverance in error, would be the consequence of an omission to detail them. And posterity, which execrates the memory of a Jefferies, no less applauds the historian for transmitting it to their hate, than for recording in the same enlightened page, the virtues of many of his cotemporaries. Shall the shade of Carson be invoked to excite unwarrantable feelings of indignation against a prisoner, who can no longer defend himself—to stimulate the curses that follow him to his cell, and pursue him in his melancholy journeys back again to the bar—to prompt the unmanly blow—and yet shall it not be used to allay the sensation it has thus excited? Shall none of the transactions of his life be exhibited, except the doubtful penitence of his dying hour? Shall we be blinded to all the errors of his devious pilgrimage, by an imaginary apotheosis, arising only from the melancholy character of his death? No! no! The body must be dis-

sected, to ascertain the disease of which it died—the character must be scrutinized, to discover how far these violent prepossessions are just."

We must, of course, in comparing ancient and modern eloquence, make allowances for the inadequacy of translations, to do entire justice to what are called the dead languages; and we must also allow for the difference in government and in men, in order to do justice to the orators of antiquity, and to understand their control over the popular mind. Æschines, in reciting to his class the great oration of Demosthenes for the Crown, perceiving them lost in admiration, exclaimed, "But what would have been your astonishment, if you had heard it delivered by himself?" hence, we may readily imagine that the effect of elocution depended principally upon the manner of the orator. Looking to the sentiments and arguments alone, we cannot perceive any thing in this speech, excepting its abuse, that outstrips modern competition. Undoubtedly, the action of a speaker then was, and still is, the soul of a speech. There is no oratorical effort that ever captivated the world, that cannot, by an imperfect delivery, be rendered utterly contemptible—not in itself, but in its influence upon others. Some speeches have no action in themselves, and may be called mere essays; action imparted to them by the speaker, will not improve them, but render them worse.

Others, again, have great inherent energy and action, and require commensurate zeal and animation in order to their effective delivery.

If any confirmation of the truth of this doctrine be required, cast your eyes upon the drama. Wherein consists the vast difference between Cooke, and Kean, and Kemble, and Booth, and Forrest—and the vilest drivellers that ever converted a tragedy into a farce? The latter are perfectly familiar with their parts; that is, they have committed the words of their author with great exactness, but they have forgotten, if they ever knew, "that the word killeth—it is the SPIRIT which maketh alive." They are actually crushed by the weight of their own armor, and like Cardinal Beaufort, they "die, and make no sign." There is this consolation, however, that their death, is the life of the audience.

Oratory, then, according to my humble views, springs rather from the heart than the head; though its best efforts are usually the result of joint influence.

Moral courage, decision of character, and energetic mental and physical action, all belong to the same category, and contribute to constitute the thorough advocate. They are indispensable; and it is somewhat surprising, that in these qualities both Demosthenes and Cicero were occasionally deficient. Those who, among the ancients, manifested the most of them, were Julius Cæsar and the Apostle Paul. The casting away his shield, dedi-

cated to good fortune, and his terror in his first speech before Philip of Macedon, reflect but little credit upon the courage of Demosthenes, and bring his bravadoes into doubt. There is no such enemy to memory or oratory as unreasonable fear; a man of a feeble temper, never can succeed.

Cicero was also thrown into such consternation in his oration for Milo, upon beholding the soldiery in the senate chamber, that although he promised the most, he performed the least. Of that occasion, he thus speaks :—

"Those guards you see planted before all the temples, however intended to prevent violence, yet strike the orator with terror; so that, even in the FORUM, and during a trial, though attended with a useful and necessary guard, I cannot help being under some apprehensions, at the same time that I am sensible they are without foundation. Indeed, if I imagined they were stationed there in opposition to Milo, I should give way, my lords, to the times, and conclude there was no room for an orator in the midst of such an armed force. But the prudence of Pompey, a man of such distinguished wisdom and equity, both cheers and relieves me, whose devotion will never suffer him to leave a person, whom he has delivered up to a legal trial, exposed to the rage of the soldiery; nor his wisdom, to give the sanction of public authority to the outrages of a furious mob."*

It will also be remembered, that he composed four

* Cicero for Milo—delivered by Cicero, at the age of fifty-five—retouched and presented to Milo, while exiled, at Marseilles. It was of this speech, that Milo is reported to have said, that if it had been delivered as written, he should not have been condemned to banishment.

speeches, which are called his Philippics against Mark Antony; three of which he never ventured to deliver. While the speech that he *did* pronounce, was in the absence of Antony, and manifests the utmost timidity. His greatest—perhaps his only defect—was want of moral courage. Had he possessed the firmness and fortitude of Cato or Cæsar, he would have been the man of Rome, in Rome's most palmy state. Even his death was marked by what must, at that time, have been considered great pusillanimity.

This, also, coming down to modern times, was Lord Mansfield's defect. He was repeatedly struck dumb, by the attacks of Lord Chatham. Although clearly the most accomplished debater of his time, yet was he unable to encounter or resist the torrent of Chatham's declamation and invective. Nay, further, it is said, that when Chatham turning to him, said, "I must now address a few words to Mr. Attorney—they shall be few, but they shall be daggers;"—that Mansfield actually quailed, and shrunk under the attack. When, fixing his eye upon him, as if in commiseration, Chatham exclaimed, "Judge Festus trembles!—he shall hear from me some other day." He also betrayed the same want of self-possession in the great libel question, in which he was opposed to Lord Camden, who, though his inferior, obtained over him a decided triumph.

But there is a still more serious objection to him, if,

indeed, it be not a different phase of the same objection—a want of heart. Here it was, we suppose, that Chatham had, and felt his advantage. Mansfield was evidently his superior in learning, and in grasp of mind; but he had not the spirit, the high and indomitable will of his adversary. A cold and selfish man cannot warm others, or excite sympathies which his own heart is incapable of feeling; the world is even with him—he shows no kindness, and receives none.

Lord Erskine, too—the brightest of English advocates—and at times displaying most exemplary and undaunted resolution and bravery—lost, or surrendered rather, an opportunity of a triumph, from a want of moral courage, when he declined taking the defence of Warren Hastings: no doubt—or such at least is the general belief—from a fear of encountering Pitt, Fox, and Burke. When, had he met them, one or all, it would have been upon his own peculiar forensic field, and he would have more than regained his lost honors in the House of Commons, by his transcendent abilities as an advocate. At a dinner given by Mr. Dundas, Erskine having been rallied upon the subject of not maintaining his high reputation for eloquence, when translated to the House of Commons, Sheridan, who was present, said, "I'll tell you how it happens, Erskine, you are afraid of Pitt, and that is the flabby part of your character."

Ellenborough, Dallas, and Plummer, all unequal to

him, took the defence of Hastings, successfully maintained their ground against their powerful adversaries, and secured to themselves imperishable renown. And yet, Erskine, on all occasions at the bar, and especially in the case of The King against the Dean of St. Asaph, showed a determination and courage that will never be forgotten.*

*A Case of Libel.—Justice Buller told the jury, "that there was no doubt as to the innuendoes, and that the simple question was, whether or not the defendant published the pamphlet?" If he did, you ought to convict him.

The jury returned a verdict, "Guilty of publishing, only." Buller then said, "If you find him guilty of publishing, you must not use the word *only*."

Erskine.—"I beg your Lordship's pardon—I mean nothing that is irregular. I understand they say, 'We only find him guilty of publishing.'"

Juror.—"Certainly; that is all we do find."

Buller.—"If you only attend to what is said, there is no difficulty or doubt."

Erskine.—"Gentlemen, I desire to know whether you mean the word *only* to stand in your verdict?"

Jury.—"Certainly."

Buller.—"Gentlemen, if you add the word only, it will negative the innuendoes."

Erskine.—"I desire your Lordship, sitting here as Judge, to record the verdict as given by the jury."

Buller.—"You say he is guilty of publishing, and the meaning of the innuendoes is as stated in the indictment."

Juror.—"Certainly."

Erskine.—"Is the word *only*, to stand as part of the verdict?"

Jury.—"Certainly."

Erskine.—"Then I insist it shall be recorded."

Pinckney, too, to whom, in speaking of Erskine, the mind naturally turns, "as *quales et quantos viros*,"—equals, on the opposite sides of the Atlantic, in professional glory; lost caste in refusing to defend Justice Chase, upon his impeachment in the United States Senate, (although gratitude should have impelled him to that service,) and left to Luther Martin, Harper, Hopkinson, and others, those laurels that he might have won, and worn, himself. There are many other instances of this infirmity that history supplies, which our readers would reluctate in contemplating.

Every man, however, has his weak hour, or we should all be angels. Napoleon lost Waterloo, and forgot to die on the field of battle; which, speaking in the language of worldly ambition, would have crowned his fame forever. Nothing in his life, would have become him like such a death; but as no man is wise at all times, so no man is brave at all times. Sudden

Buller.—"Then the verdict must be misunderstood—let me understand the jury."

Erskine.—"The jury do understand the verdict."

Buller.—"Sir, I will not be interrupted."

Erskine.—"I stand here as an advocate for a brother citizen, and I desire the word *only* may be recorded."

Buller.—"Sit down, Sir—remember your duty, or I shall be obliged to proceed in another manner."

Erskine.—"Your Lordship may proceed in what manner you think fit: I know my duty as well as your Lordship knows yours; I shall not alter my conduct."

and unexpected exigencies destroy the equilibrium of the mind, and leave our actions rather to the control of chance, than reason.

"The heart of a statesman," says Napoleon, "must be in his head;" and we may be permitted to add, "the head of an advocate must be in his heart." A phrenologist of some distinction informs us, that in a blindfold examination, he happened to ascribe superior talents to a man, who was actually deficient in intellect. When the error was discovered, and a re-examination took place, he observed, that the head was a good one, and all that it had been described to be, but that the chest was small and narrow, and the heart was too feeble to nourish, invigorate, and stimulate the brain.

The head, without the heart—if the comparison may be excused—is like a steam engine without a boiler. Without the aid of the heart, reason is cold, vapid, and comparatively worthless. The heart is the throne of the passions;—'tis there we rule, are ruled, and must be won. The passions constitute the impulse and motive to intellectual action, and often spontaneously regulate human deportment, without regard to the restraints of reason, or the decree of judgment. It is only, however, where the emotions or influences of the head and heart are judiciously adapted to each other, that the harmonious and perfect orator is formed. Great mental accomplishments are therefore more necessary to those possessed of great depth and

energy of feeling;—they are reason's girdle and passion's bridle. Where there is extensive power, there must be co-extensive control and direction. Misapplied energies eventuate in the worst consequences, and it is frequently to be regretted, that extraordinary intellectual strength, swelled into irregular and eccentric action by the impulses of the heart, like the mighty Nile, at times defies restraint, and sheds terror and dismay over those smiling regions, which it was designed to fertilize and to bless.

As feudal nobility disappears before that great leveling principle which has equalized America, and is rapidly overrunning the whole world—a modern, more natural, more legitimate, and less questionable peerage will arise, the peerage of talents—in which orators will be princes. Universal respect and unbounded influence, will be their assured reward; they will be revered by the populace, supported and encouraged by the opulent; their alliance sought by every family; their company courted by every society; their authority recognized and their aid required by every government. This is no illusory or far-fetched fancy. It may have once been a paradox, but the times have given it proof. Henry, and Ames, and Wirt, and Pinckney, with a host of other examples, all abundantly establish and inculcate its reality. It is therefore, we say, to this divine art, our youth—our educated youth—should assiduously apply themselves. It matters not how

their lot may be cast; it matters not what may be their calling: the lawyer, the clergyman, the professor of any science, the statesman—nay, we may say, the merchant, the tradesman, the farmer, and the mechanic, will all derive advantage, amazing, incalculable advantage, from the improved power of speech. It is the best basis, the most powerful lever, the chief element of elevation; and its prevalence extends "far as the adventurous voyager spreads his sail." Persuasion, now, is the only government, as it has always been the best government. Coercion is a tale of other times; public and private dominion have no longer any foundation in fear. Whether moral or forcible authority is to be preferred, would be an idle inquiry. For, as has been said, the age of constraint, like that of chivalry, has passed away—and, assuming its true position, the mind now looks down upon that power, which it was too long taught to look up to. Artificial aggrandizement has given place to what may be termed natural ascendency, or the true nobility of nature. "Viam inveniam aut faciam," is the doctrine of the present day; and it has ever been the doctrine of daring and aspiring minds.

"What to him,
That wears great nature's patent in his breast,
Are all the tinsel trappings of a court?
* * *. Were he ten times a lord,
Could his redoubled titles more than vouch
His innate worth? The consciousness of virtue

Shrinks from external proof, and rests alone,
And rests secure upon approving Heaven,
Without whose smile a diadem is dross,
And priceless jewels glitter to betray.
Forty thousand lords, fair weather lords,
In their united worth, are not the tithe
Of Nature's nobleman."

He takes his post—not by fortune, not by chance—by the side of those who claim theirs by the privilege of birth. He holds it not by the frail tenure of inheritance, but in his own direct, absolute, and unquestionable right. No man dares dispute it—it is not borrowed or reflected glory; the power that acquired it, is sufficient to maintain and secure it; he builds not upon the fame of his ancestors; he mounts not upon the stilts and crutches supplied by his friends; he stands—as the Creator designed he should—upon his own feet, self-dependent and self-sufficient; and he looks down—down upon those who, in their imaginary and supercilious elevation, have been taught to look down upon him. The poor and friendless boy is forgotten, in the self-formed and complete man. He looks about him, and despises the tinsel and trappings of the fools of fortune. He subdued adversity without them, and in his prosperity they are unnecessary. He despised them when before him—they are doubly contemptible when behind him.

With us, there are no stars, or garters, or orders of nobility. There is no royal favour to court, or to

profit by; but every freeman is a chartered king: and an improved intellect shall shed a brighter lustre around his brow, than the richest jewel in a monarch's crown; because, under heaven, it is emphatically his own. No human power can give it to him without his will—without his will, no human power can deprive him of it. How emphatically does this part of our subject address itself to the young? and perhaps we cannot do better than pause upon it a little longer, and place it before you in some of its varieties, even at the expense of the order originally proposed.

Fortune is too transitory, too fugitive, to attract any permanent regard. It is like the lightning, "that doth cease to be, ere one can say, it lightens." And although thousands submit to its dominion, it can impart no rational gratification to its possessor, except when applied to the promotion of virtue. The case is widely different, however, with a man of moral and intellectual wealth. Behold him in the literary, professional, or social circle—he is the very centre of interest and attraction—mark him in the councils of the nation,

> "Deep on his front engraven,
> Deliberation sits, and public care."

But to return from this digression. Although it is not within the professed scope of the present work, to go beyond the *forum*, yet, as eloquence "is the

subject of our story," we cannot, in its consideration, lose sight of one to whom we have incidentally referred, and who, according to Longinus, was "among the first of orators"—we mean the APOSTLE PAUL. He was commanded to "be not afraid, but to speak, and hold not his peace;" and he did speak boldly, in the name of the Saviour. See him standing before Felix, reasoning "of righteousness, temperance, and judgment to come." Is it to be wondered at, that the Roman governor trembled? Behold him, on Mars' hill, before the mighty areopagus, exclaiming:—

"Ye men of Athens! I perceive that in all things ye are too superstitious, for as I passed by and beheld your devotions, I found an altar with this inscription, 'To the unknown God,'—whom therefore ye ignorantly worship, him declare I unto you."

Then, again, in the synagogue at Corinth, when opposed and assailed by the blasphemous Jews, he shook his raiment, and said unto them: "Your blood be upon your own heads—I am clean."

This is the true model for a minister of the Gospel; this is genuine eloquence; this is what Demosthenes denominated action. Instead of Felix trembling at the present day before Paul, every Paul trembles before every Felix—man before man, and in the presence of his God. The charge against *him* was, that he persuaded men to worship God contrary to the law; the charge that might be truly preferred against some of

the preachers of the present day, would be, that they cannot persuade men to worship God, even with all the aid and influence of the law. So eloquent was this great Apostle, that we believe there is but one recorded instance, of his having upon any occasion, put a single hearer to sleep, though he awakened many to the joys of eternal life. That was the instance of Eutichus, who, during his slumber, fell from the third loft and was taken up dead, and was afterwards miraculously restored to life by the Apostle. Alas! how many among us, are permitted to doze through a drowsy discourse, "having," in the language of Dean Swift, "selected more secure places for their repose, and choosing rather to trust their death to a miracle, than their revival."

Paul fully understood the value of speech; he was an orator in the best sense of the term. When assailed by the incensed populace at Jerusalem, and bound in chains, he exclaimed to the chief captain: "I beseech thee, suffer me to speak unto the people;" and a noble speech he made. And again, when Ananias commanded them to smite him on the mouth, Paul said unto him, "God shall smite thee, thou whited wall; for sittest thou to judge me after the law, and commandest me to be smitten, contrary to the law?" How utterly does he demolish the fawning orator, Tertullus, before Felix! and how simple, yet how beautiful a defence he makes before Agrippa! Nothing can surpass the

concluding appeal, in answer to the imputation of madness, cast upon him by Festus: "I am not mad, most noble Festus, but speak forth the words of truth and soberness; for the king knoweth of these things. King Agrippa, believest thou the prophets? I know that thou believest." Agrippa said unto Paul: "Almost thou persuadest me to be a Christian." "I would to God," replied the Apostle, "that not only thou, but also all that hear me this day, were both *almost* and *altogether* such as I am, EXCEPT THESE BONDS."

Paul's intellect was of the highest and noblest order; he had as much force as Demosthenes; as much grace as Cicero; and much more artlessness and moral courage than either. Inferior to them, as he no doubt was, in worldly learning, and avoiding display as incompatible with the cause of his Divine Master, it is still much easier to conceive of *their* rare and combined perfections, than to elevate the mind to *his*. So much thought, so much simplicity, so much zeal, so much humility, so much reliance upon heaven, so little upon himself! How widely and how favourably distinguished in all those characteristics from the vain-glorious Roman, and the arrogant and ferocious Greek! They mounted to the temple of fame, on the necks of an admiring populace. He scaled the glorious Empyrean from beneath the foot of the oppressor! They grew great amidst the acclamations of tributary thousands. He carved his way to immortality, through

execration, persecution, and imprisonment! They lived for worldly glory and display; he, for the glory of the Saviour and eternal life!

Is it not remarkable, that this most eminent and eloquent Apostle, whose speeches and whose epistles are inferior to none of the ancients, should have been so overshadowed in this world's vision, by the reputation of more lofty and presumptuous, but still inferior men? The secret consists in this: the Christian despises worldly renown, and fixes his hopes above; that anticipated reward is sufficient for him in the world's eyes; and it is not more incompatible with the saintly character to desire the world's applause, than it is with the world's character to accord it.

But descending from the Divine science, as it may be called—from this mountain, this sky-capped mountain, into the sequestered vale of life; from public, and turbulent, and ambitious scenes, to private, retired, and social relations, has eloquence still lost its charm? On the contrary, it is there that we witness its chief beauty, its supreme and most despotic control; it is the very life of the circle that revolves around it; it is the sun of the whole system, and imparts to it its light, its heat, and its motion; it is ever changing, and ever new.

> "Now 'tis like all instruments,
> Now like the lonely lute;
> And now 'tis like an angel's song,
> That bids the Heavens be mute!"

See the lawyer in his office; the pastor at the family fireside; the priest at the confessional; the father in the bosom of his family; the physician in the chamber of sickness, or of death—is eloquence nothing there? It has, in all these positions, sustained many a drooping, and subdued many a proud spirit; banished despair from the bosom, and bound up many a bruised and broken heart. Is it nothing in enforcing the virtues, or administering the hospitality of the domestic board? Nothing, in soothing and blending unsocial feeling into harmony! Nothing, in infusing the delightful principles of morality and religion into those immediately around us? Nothing, in the familiar colloquial intercourse of social life? Nothing, in winning—nothing, in improving—nothing, in preserving the affections of those we love? Nothing, in stimulating or sustaining virtue? Nothing, in rebuking and repressing vice? If eloquence be incompetent to all, or any of these tasks, no human power is adequate to their accomplishment. Printing will not answer; there the press cries craven, and gives up the conflict. Writing will not answer; for before the essay is prepared, the occasion to which it is directed has too frequently passed away. In a word, wealth, and power, and authority, are weakness, vanity and folly, when confronted by learning and eloquence. A triumphant orator is as far superior to a successful general, as are the enjoyments of the immortal mind, superior to the gratification of the depraved appetites of our decaying bodies.

Nay, who would not rather be the most eloquent man of his day, than even the President of the United States? The latter sways a political authority, for which he depends upon the public voice—the former a moral and intellectual sceptre, which he sways in his own absolute right.

To conclude. In all the pursuits of life, then, we should be ever mindful of all the advantages of eloquence; improve them daily, hourly, unceasingly. There is no situation so mean, that they cannot dignify it; there is no elevation so high, that they cannot exalt it. Without them, knowledge is the miser's wealth, and only cheers the owner; with them, the treasures of the mind are scattered or diffused to the four quarters of the earth, and having imparted their benefits to others, like the bread cast upon the waters, shall be returned after many days. Oratory, however, let me finally observe, is not a mere castle in the air—a fairy palace of frost-work, destitute alike of substance and support. It may rather be compared to a magnificent temple, constructed of Parian marble, sustained by pillars that shall endure for ages, exhibiting the most exact and admirable symmetry, and combining all orders, varieties, and beauties of architecture.

CHAPTER II.

REVIEW OF THE PRACTICE OF THE LAW BEFORE THE REVOLUTION—AND JUDGES AND MEMBERS OF THE BAR.

In his "Lives of the Chancellors and Chief Justices of England," Lord Campbell repeatedly complains of his inability to trace them through the lapse of more than five centuries. But although it is certainly easier to prosecute our researches through little more than a century and a half, than to thread the labyrinth of five centuries, yet from the records and cotemporaneous history derived from the British archives, a much better clue is to be obtained, than any possessed by us. But, without repining at evils which we cannot cure, let us, with the imperfect lights and means supplied, take a hasty retrospect of what may be called, the birth and infancy of the State of Pennsylvania. Indeed, the very difficulty at this time encountered, in procuring authentic information upon the subjects proposed to be

treated of in this chapter, is strong evidence in itself of the necessity that exists for redeeming without delay, the earlier events of our history from the grasp of forgetfulness. Every passing day increases the labors of research, and a few years will obliterate and consign to utter oblivion, all that we should desire to remember and preserve of our past annals. The origin of societies, communities, and nations, like the youth of individuals, gives some denotement of their future career, and furnishes to others those examples of wisdom and virtue, which it would be proper to emulate; or those instances of folly or vice, which it is commendable to avoid. When we are told that Penn's treaty with the Indians was the only known treaty,

"Never sworn to, and never broken,"*

we may well be proud of the great founder of our native State, and be at no loss to understand the influence she has always exercised and maintained, in regard to all the other colonies. We may readily comprehend her peaceful tendencies, her commercial reputation, her civil and religious liberty, her moral and political ascendency, her probity and patriotism. Honest and conscientious youth, is at least an earnest of pious and exemplary old age. But without further prelude, let us approach our task.

* Voltaire: "Dixon's Life of Penn," p. 216.

Any detail of the earlier history of the ante-Revolutionary courts, would afford no great interest, and could not now be given with much accuracy. Mr. Penn's religious sentiments made him desirous of having the civil differences of his colonists settled in an amicable way, or at least, by tribunals having as little of the name, machinery, and "terrors of the law," as possible. In a community composed chiefly of Quakers, a good many disputes, though wholly secular, were settled by "Friends," either in "meeting" or out of it; and the habits and spirit of their amicable mode of adjustment, extended beyond the limits of this peaceful sect.

We find "the Peace-makers," as they are called, an established part of Mr. Penn's judicial machinery in 1683. Of whom, or of how many persons, this body was composed, we know not; their office would seem to have been diplomatic, quite as much as judicial, and to have depended more on their address, than on their law and learning. They probably negotiated, going from party to party, and heard matters privately, and prior to the litigants being handed over to the "tormentors," like to which Scriptural and Jewish institution, the "County Court" would seem in the early times of the colony, to have been very much considered. The Provincial Minutes,* for example, tell us that, when one Richard Wells made his complaint

* Vol I., p. 34.

against one of his neighbors, it was "ordered that he be referred to the *Peace-makers*, and in case of refusal, to the *County Court*." So, in another case,* we find the parties "*advised* to make the business up *between themselves;* otherways to have a trial by the "County Court." We find, also, at a later date, some proceedings of the Provincial Council, then the High Court of Errors and Appeals—Mr. Penn, himself, presiding as Proprietary and Governor—showing the same disposition to dispense with the judicial apparatus deemed in modern times, so great a blessing: they are, in the case of "Andrew Johnson, pl'ff, v. Hance Peterson, def't," a case heard, considered and adjudged, on "the 13th day of the Third month, 1684." We have no "statement of the case," as reporters call it, nor any arguments of counsel, but the decree is given with great clearness; it is worthy of transcription, not only as showing how far the modern formalities of jury trials, &c., were thought to be necessary in the State, but also as proving to how early a date that *care of judicial records*, which is so peculiar to Pennsylvania—and has been so often mentioned to its honor in other States, and at Washington—was observed and enforced by William Penn himself. The decree is:† "The Governor and Council advised them to shake hands, and to forgive one another; and ordered that they should enter into bonds for £50 a piece, for their good

* Vol. I., p. 51. † Id., p. 52.

abearance, w^ch^ accordingly they did. It was also ordered that the RECORDS OF COURT concerning that business, should be BURNT."

Mr. Penn took great care, also, that the bar—so far as a necessity existed for there being a bar at all—should be a very pure ministry indeed, and be interested in the settlement, instead of in the fomentation of quarrels. Such decisions as Foster v. Jack,* in which "the dignity of the robe" was scouted, and the profession put much upon the footing of "any mechanical art;" or, as Ex parte Plitt,† by which it was decided that counsel might *honorably* "go snacks" with client, will find no precedents in our early laws and practices. It was enacted by law‡ in Pennsylvania, as early as 1686, "for the avoiding of too frequent clamors and manifest inconveniences, which usually attend *mercenary* pleadings in civil causes," "that noe persons shall plead in any civill causes of another, in any court whatsoever within this province and territories, before he be *solemnly attested in open court*, that he neither directly nor indirectly, hath in any wise taken, or will take or receive to his use or benefit *any reward whatsoever, for his soe pleading*, under the penalty of £5, if the contrary be made appear." And it had, prior to this, by the laws agreed upon in England,§ been enacted "that

* 4 Watts, p. 337. † 2 Wallace, Jr., p. 454.

‡ Provincial Minutes, vol. I., p. 122.

§ Hall and Sellers's Laws; Appendix by Kinsey, C. J., p. 3.

in all courts, *all persons*, of all persuasions, may freely appear *in their own way*, and *according to their own manner*, and there *personally* plead their own cause *themselves*, or, if unable, by their *friends*."

Coming to a later date and more advanced state of the colony, we have, as early as 1705, the Arbitration Law of that year, declaring that parties having accounts to produce one against another, may consent to a rule of court for referring the adjustment thereof to *certain persons, mutually chosen by them* in open court, whose award, when approved of by the court and entered upon the record, should have the effect of a verdict given by twelve men.* Now, by these various manifestations and enactments, lawyers and juries were meant to be dispensed with in a body, and suitors being without lawyers, the courts were, of course, a good deal without law. Immense numbers of such disputes as arose in those days of simple concerns, where the Legislature of the State declaring, that "whereas, there is a necessity, for the sake of commerce, that the growth or produce of the territories annexed to Pennsylvania, should *pass in lieu of money*," enacted, that "wheat, rye, Indian corn, barley, oats, pork, beef, and tobacco, shall be accounted *current pay*, at the market price,"†—disputes, chiefly of fact, and involving no points which a good understanding and familiarity with business could not adjust—were

* Bradford's Laws of 1728, p. 73. † Id., p. 25.

settled by "reference," without any lawyers at all. And in the provincial days of the eighteenth century, such men as Joseph and Edward Shippen, Charles Willing, Israel Pemberton, Samuel Powel, John Stamper, Peter Baynton, John Kearsley, Clement and William Plumstead, with a few others, made, pretty much, a court *de facto*, under the arbitration law, by which immense numbers of disputes were finally and wisely settled, just as in later days we know that Robert Morris, Tench Francis, Archibald McCall, Francis Gurney, John Nixon, and a few others known in our city history, who were constantly acting as referees, settled the great questions of commercial difference between their brethren of the Exchange, much better than the best courts could have done it for them.

The spirit of that fiction of law, known as *Quo minus*, by which suitors in England brought their cases—though not cases of revenue—into the Exchequer, seems to have been invoked at an early date in Pennsylvania, for the advancement of references. The Arbitration Act of 1705, we have seen, contemplated references only where the parties had "accounts to produce one against another." But in practice, the Act was extended to other actions. It was probably found necessary to do so, to give better equitable relief than we could otherwise get. We have the record of a reference, from the "Supreme Court, April term, 1765," in which Timothy Peaceable, lessee of John Fox, sues,

among other persons, our respected "Benjamin Franklin," philosopher, &c., *in ejectment;* the property, whose title was involved, being "a certain lot of ground, situate on the south side of High street, between Third and Fourth streets," &c. It was, we see, part of the well known property, along what is now called Franklin Court, and on which Dr. Franklin had his residence. The referees were Thomas Willing, Philip Syng, and Redmond Conyngham. Observe the award! dated January 25th, 1766. What Lord Chancellor ever made a better? "We do find," says this decree, "that the title to the same lands and hereditaments is in the plaintiff; but that, nevertheless, the defendants have an equitable claim thereto; wherefore we are of opinion, that in justice and equity the lessors of the plaintiff ought to sell and dispose of the said lands and hereditaments to the defendants; and we do accordingly award, that the lessors of the plaintiff shall, on the payment of the sum of five hundred pounds lawful money of Pennsylvania, to them, by the defendants, convey and release to the said defendants respectively, the said several lots and lands in fee; which said sum of five hundred pounds, we do settle and fix as the price, which ought in equity and good conscience, to be paid by the defendants to the lessors of the plaintiff, in lieu of the lots and lands aforesaid; and do accordingly award the same to the plaintiff, in satisfaction of the said lands and hereditaments. We are

likewise of opinion, that in the conveyances and releases of the lessors of the plaintiff to the defendants, there ought to be contained covenants of warranty against themselves and their heirs, and the heirs of George Fox, the original purchaser. Lastly, we do award, that the costs of suit and the necessary expenses of the referees, be *paid equally by both parties.*"

So satisfactory does this system of "reference," established by our ancestors in 1705, appear to have proved itself, both to the profession and people, that it long survived the Revolution; and as lately as 1790, when such a man as Mr. Shippen was presiding in the Common Pleas, and Chief Justice M'Kean, with his able associates, were on the Supreme Bench, we find it still greatly resorted to. And so well-grounded had it become, that one motive of Mr. Dallas in publishing his Reports in 1790, is stated by him in his preface, to be, their "use in furnishing some hints for regulating the conduct of *referees*, to whom, according to the present practice, a very great share of the administration of justice is entrusted."

We may find, perhaps, another reason—more flattering to the bar—for the great extent to which disputes, in our earlier history, were peaceably adjusted. The bar, in the days of the Province, was much more than now, the profession of a special social class. The honor of the barrister was united with the name* of

* See inscription on the monument of Samuel Hassel, in the grounds

the barrister, and when men by any possibility, could settle their disputes without the aid of the lawyer, or needed his aid only in the character of a friendly counsel and intercessor, the courts and the bar both felt, we may presume, that their highest offices were performed. We have seen the terms of an early enactment, about "mercenary pleading;" and the spirit of the law remained after its letter may have been repealed.

With such laws, and such popular dispositions as we have indicated, we can understand what is otherwise difficult of comprehension, that the Court of Common Pleas, prior to the Revolution, had scarcely ever a single lawyer upon its bench; that to be "learned in the law," was not a requisite for appointment to the judicial office; and that, as we believe, the bench was composed—in the associate part of it, certainly—of such aldermen of the city, or justices of the peace from the county, as chose to set in banc, in a solemn way. From the causes mentioned, however, the court, in its earlier history especially, was relieved of much that would otherwise have engrossed its time; and of much, perhaps, that if tried with the technical formality of English law, it would have been hardly able to go through. In addition to this, the Recorder of the city, who was usually, if not always, a lawyer,

of Christ Church, in which this old member of the profession is styled "Barrister-at-law."

presided in the Mayor's Court, as it was then and long afterwards called; a court in which the jury were regularly summoned by the mayor's writ. To this jurisdiction belonged the trial of most crimes committed within the old "City;" then—as being the only populous part of the county—the chief seat of crime; so that the judges of the Common Pleas, sitting as the Quarter Sessions, were relieved of much of the most disagreeable, as well as the most onerous, business which now afflicts them. The Court of Common Pleas, under its different forms of Orphans' Court or Quarter Sessions, was occupied, it will be thus seen, chiefly with such civil affairs as required the executive order and action of the court, rather than its judicial function; such as the laying out of roads, the appointment of certain city officers, perhaps; with many other duties of like kind, now transferred by the progress of the times, to the wisdom of the people; the granting of licenses, discharge of insolvents, appointments of guardians, confirmation of partitions, regulation of the wharves, I suppose, and other matters now attended to by the wardens of the port. Great trusts, no doubt, were reposed in them, and their jurisdiction was at once legislative and judicial; common law, equitable and prudential: but in earlier times especially, it was a jurisdiction which required the *arbitrium boni viri* much oftener than such learning as is now necessary for the proper discharge of the judicial office.

We have an obituary, in print, of Isaac Norris, for some years—made by commission, we presume, rather than by special education in the law—though of this we are not certain—the "President of the Court." He died in June, 1735, and the obituary referred to, in giving a beautiful character of him, rather indicates at the same time, what the office of the judicial functionaries of that day required. He was a merchant; as he was also, for upwards of thirty years, a member of the Provincial Council. "His great abilities," says this obituary, "in the discharge of his duty in each of these stations, made him to be justly esteemed one of the most considerable men in the government; his courteous deportment and affability gained him the love and respect of many. A quickness of apprehension, liveliness of expression, and soundness of judgment met, and were remarkably conspicuous in this good man; nor did it appear that the age of sixty-four had impaired any of these valuable qualities. None were more frequently applied to for composing differences than Mr. Norris, and few succeeded better in good offices of this kind; his reputation for sense and integrity being so well established, that both parties willingly submitted themselves to the determination of his superior understanding." No mention seems to be made of his learning or abilities as a *lawyer;* and it was rather, we suppose, as a respected citizen and a good man, vested with an official posi-

tion, that his judicial qualities had their field of useful exercise. He valued his law books at £56, and we have seen some of them in this day with his name in them, but have never seen any evidence—as we have in the case of his cotemporaries, Kinsey and Hamilton—of what in this day we should look for, as the proofs of much professional learning. We cannot say, however, that it may not have existed; a century and a quarter rises up between this time and his, to intercept our view.*

Indeed, at that day, law itself was a simpler science than now; we had not a single volume of reports in America, and only about fifty from England. We had not yet fairly passed from the feudal into the commercial existence. The rules of evidence were much less attended to; and if a man understood a few Acts of Assembly, and knew Dalton's Justice of the Peace, he had all the legal education which any one could teach, and almost all that any could attain.

* There is a portrait—if we remember—of Mr. Norris, in the Gallery of Portraits—now quite numerous—in the Hall of the Historical Society of Pennsylvania. Whether an original, or copy, we know not. Whichever it be, it has no considerable merit as a work of art, and less interest otherwise, than most of the portraits in that collection. The dress is plain, in the Quaker style, and void of any of the marks of a judicial costume; the countenance, owing, perhaps, to the artist's want of skill, is impressed by nothing remarkable, except the characteristics which are usually supposed to indicate his religious sect. We presume the portrait hardly does its subject justice.

There is no doubt, indeed, however much our pride may be gratified in magnifying the greatness of our early colonists, that for the first ten or twelve years after the charter, the legal proceedings were of a very simple and unlearned kind, and indicate a state of society, *generally*, pretty coarse and ignorant; and sometimes, pretty ridiculous also. Pennsylvania was in that day of the kind of nation, in which "the one-eyed are kings;" and when we hear of lawyers and of judges, we must not look for Tilghmans, for Binneys, for Washingtons, or Marshalls. The town, as yet, was not much more than a collection of huts or log houses, and its population an association of traders, adventuring their fortunes in a region from which the savages were scarcely dispossessed. They brought large names from England, and gave them to humble things. Some idea may be formed of what the judicial labors of a chief justice came to, from such a fact as this, that at a much later day all the proceedings of so considerable a jurisdiction as the Orphans' Court—for the space of twelve years, from 1719 to 1731—though the petitions, evidence, and orders in each case, are set out very much more full than is now customary, occupy but sixty-nine pages of a docket, whose leaves were of the size only of ordinary cap paper. Large margins also, are left at the top, bottom, and sides, and the lines having large spaces between them, and being written mostly in court-hand, make what

printers would call very "lean" matter. About five small pages, therefore, contain the whole records of a year.* No great observance of formalities, I presume, took place in any court, either civil or criminal. A few years ago, it is known that many of the early records, both civil and criminal, of the city, were delivered over by the county commissioners of that day to the janitor of the public buildings, for such custody as this functionary chose to make of them. Finding them useful for nothing so much as to kindle the fires of his court rooms, this officer soon applied most of them to that purpose. Happening one day to hear what he was doing, a gentleman of the bar gave directions for the rescuing of a good many which were curious either in illustration of our early society or of our provincial law, whose progress was of course much concurrent with it. They are now bound in a volume, in the possession of the Historical Society of Pennsylvania. Copies of a few of them, chiefly presentments of the grand jury, between 1700 and 1704, may be seen in the Appendix A, and will well repay the reading of them. They are chiefly presentments of offences, the notice of which could belong only to a very primitive state of society—of one man, for "swaring three oths in the market place, and also for

* For a particular account of these records, see note to Cromwell v. The Bank of Pittsburgh, 2 Wallace, Jr., 589.

uttering two very bad curses;"—of another, for "being maskt, or disguised in woman's apparel; it being against the law of God, the law of this province, and the law of nature, to the staining of holy profession, and incoridging of wickedness in this place." The indictments are generally very short, without any technical language whatever, and they are often destitute of what was then in England, and has long since been deemed here a requisite legal precision; though, as will be seen by reference to the Appendix, when any want of substance was pointed out by the bar, the court appears to have sustained the objection.

After 1704, the indictments, which are drawn by one of the Ashetons, are entirely scientific; and indeed all the proceedings of the *officers* or the court—proceedings, I mean, only clerical—appear in general to be good. The indictments after this year, however, present, equally with these before them, a curious record of the times, though less than the earlier ones, such records of the law. There are great numbers of them for forestalling the markets and regrating; although the extent of the purchases do not, from the specification of the indictments, appear to have been alarming. In the 33 Geo. II., Mrs. Margaret Hum is presented for, that "in open market she did buy, regrate, and into her hands and possession did get and obtain forty fishes, called shad." The offence is charged to have been committed on the 30*th of April.* Francis

Johnson, indicted at the same time, was a greater operator, for he had obtained one hundred; but both got them on the same 30th of April, when, unless the season was backward, or the Delaware less prolific than now, the deprivation to the public would not, we think, have been great. John Baskall is presented for having, on the *4th of February*, regrated "ten rock fish;" a more serious offence against any gentleman, who, in that cold month, was going to give a dinner: and Lewis Slammin is presented for regrating "four bushels of apples." Many housekeepers, just now, would commend these precedents to the prosecuting attorney. About the middle of the century, even before "the affair of 1745," I find several of the brethren of St. Andrews in trouble; some of them are in advance of Mr. Thackeray, and are presented for having publicly, and with a view to bring our Sovereign Lord, the King, into contempt, said, "G—d d—n King George." And one for singing a song, "Charlie shall have his own again;" *his* name was Alexander Murray; all honor to his memory! The juries, however, both grand and petit, seem, for some years, not to have made an advance in proportion to that of the king's attorney, if we may credit the presentments. It appears by one of them, that on the 21st of January, 1714, Peter Evans, Esquire, sends to Francis Phillips a challenge, thus expressed:

"SIR:—You have basely scandalized a gentlewoman that I have a profound respect for; and, for my part, I shall give you a fair opportunity to defend yourself to-morrow morning, on the west side of Jos[a] Carpenter's garden, betwixt seven & 8, where I shall expect to meet you *gladio cinctus*. In failure whereof, depend upon the usage you deserve, from

"Yours, &c.,

"PET. EVANS.

"Jan. 21st, 1714.

"I am at the Pewter Platter."

Mr. Francis Phillips, who is described in the venire as "clerk," and who, if he was not in holy orders, acted, we must think, in a most ungentlemanlike way, handed Peter Evans over to the grand jury, who found a true bill. Having pleaded *non culp.*, he was regularly tried: the jury found a special verdict, as follows:—

"We, of the jury, do find that Peter Evans, in the indictment mentioned, did send a letter in writing to Francis Phillips, containing these words:—[letter quoted.] If, upon the whole, the court do judge the words contained in the said letter to be a challenge, then we do find the said Peter Evans guilty; but if the court do judge the words contained in the said letter are no regular challenge, then we do find the said Peter Evans not guilty."

The next entry that we find, is—"CURIA ADVISARI VULT;" and so the case seems to have ended. Whether it was the law of the case, or the honor of it—which

is the more probable—that overcame the court and jury, and caused the C. A. V., the record does not show, no judgment appearing from it to have been given.

But we find this same "Francis Phillips, clerk,"—who, if he was a clergyman, must have been one of the few disreputable clergymen who were here before the Revolution—very soon afterwards, the subject, himself, of an indictment, for having, "as much as in him lied," attempted "to deprive, annihilate, and contemn the authority of the recorder, mayor, and justices of the peace," by saying, "Tell the Mayor, Richard Hill, and Robert Asheton, the Recorder, that I say they are no better than rogues, villains, and scoundrels." It would seem, therefore, that if Peter Evans did not win the battle "on the west side of Jos[a] Carpenter's wall," he did clearly so, before the court and jury assembled to convict him.*

*We are wholly unable to trace this gentleman, Mr. Peter Evans, and therefore commend his memory to the Historical Society; a body which, as at present managed, is really useful. A person named Evan Evans, was an early rector of Christ Church, and we are a little afraid that Peter was his son; especially as we find a gentleman so named was a member of that parish, a contributor to the completion of the church in 1739, and at different times the rector's, and also accounting warden. If Mr. Francis Phillips, "clerk," was a clergyman of the established church, our suspicion is confirmed by the place fixed for the combat. "Joshua Carpenter" seems to have been a great friend of the clergy, and unlike some of the wardens in later days, fond of entertaining them. The Reverend Mr. Talbot, an English clergyman of that day, was, he tells us, "very kindly and hospitably entertained by Mr. Joshua Carpenter, at his house;" where, we

The courts appear to have steadily resisted the popular demand for cruel punishments. In 1717, the grand inquest, with so respectable a citizen as Mr. William Fishbourn as its foreman, presents as follows:— "Whereas, it has been *frequently and often* presented by several former grand juries for this city, the necessity of a ducking-stool and house of correction, for the just punishment of scolding, drunken women, as well as divers other profligate and unruly persons in this place, who are become a public nuisance to the town in general; therefore, we the present grand jury, *earnestly* again present the same to this Court of Quarter Sessions, desiring their immediate care; that those public *conveniences* may not be longer delayed, but with all possible speed provided for the *detection* and quieting such disorderly persons." And a few years later, a second inquest, with Benjamin Duffield at its head, "taking in consideration the great disorders and the turbulent behaviour of *many* people in

learn, that he lodged for six weeks at a time. The Reverend Mr. Francis Phillips was, perhaps, a guest of Mr. Carpenter also, and not to give the reverend gentleman too long a walk before breakfast, on a cold winter's morning, (21st January, 1714,) Mr. Peter Evans considerately invites him, just to step out "betwixt seven & 8," *gladio cinctus*, "on the west side of Jos[a] Carpenter's garden;" where he may have "an opportunity to defend" himself.

There was a Peter Evans, who for many years, was Register of Wills of the province; but he, we think, was not this gentleman.

this city, present the great necessity of a ducking-stool for *such people*, according to their deserts."

It would appear by these records, that the grand inquests of Pennsylvania considered the offices of this "conveniency" much greater, than those which common law assigned to it; to wit—"an engine of correction," for "common scolds." One inquest regards it apparently, as having the qualities of the "fire ordeal," and recommends it as a "detective" operator; and the other seems to regard it as proper to be applied to all "turbulent people," of either sex, in the city.

Whether this last recommendation affected so many interests as to awaken opposition, or whether the court, of its own motion, resisted these earnest and repeated demands of the jury, we cannot tell. The ducking-stool, we think, was not adopted.

When crimes, however, were of a kind really to demand severity, the court appears not at all to have withheld it. In 1729–30, we find, for example, Charles Gallahan sentenced, for a criminal offence, "fifty pounds; *to receive at the cart's tail, thirty-five lashes on his bare back round two squares of this city*, and pay the costs of prosecution." The court exercised also an excellent discretion, it appears; for when "John Hendrick, late of Philadelphia, laborer, on the 21st day of October, (being the first day of the week, called Sunday,) in the seventh year of the reign of of our Lord George the second, by the grace of God,

of Great Britain, France and Ireland, king, defender of the faith, at the city of Philadelphia aforesaid, of *his own impious power and authority*,* voluntarily, openly, publicly, and contemptuously molested, vexed and disturbed, a certain congregation of people, called Quakers, in a certain meeting-house in the said city, assembled together in the discharge of their duty, and in the worship of God," the said John Hendrick is not sentenced at all, as in the last case; but in a spirit of very Christian moderation—suggested, likely, by "Friends" themselves—to the payment of five shillings, and "to stand in the pillory *one hour*, with the offence wrote on his head." So far for these curious records—commended, as we have seen, by our county commissioners, to the useful purpose of lighting fires.

We perceive, by the legislative enactments of the early part of our provincial history—especially many Acts passed in 1705—as the Act for taking lands in execution, &c.; the Act about Arbitrations and Defaulking; the Act concerning the Probates of Written and Nuncupative Wills, and for confirming devises of Lands, and several others, some of which were repealed by the queen in council; some of which remain at this day in force as original enactments, and others of which have been incorporated, almost verbatim, into our Re-

* We doubt if it is good law—it certainly is questionable divinity—thus to ignore "the malice and instigation of the devil."

vised Code—that there was no want in the legislative council, at an early date, of good legal mind and good legal education. But whoever the lawyers were, they seem to have been inclined to make a Pennsylvania system of jurisprudence, rather than to introduce the English; and every thing relating to the jurisprudence of the earlier years of the century, has a very plain and practical form. We take it to be possible, that we owe these laws to Andrew Hamilton, for some years, with John Kinsey, the only great lawyer, it would seem, in the province.* They bear the impress, we think, both of his intellect and his character, and this idea derives confirmation from what is said of him in a printed obituary. To whomsoever we owe the modelling of our early system, he seems to have had a task of difficulty. The common people were not inclined to the English refinements, and the queen or king in council generally repealed our Acts, which were passed to supply them.

About the year 1745, however, there appears to have been adopted by at least a portion of the bar, more dignified conceptions of the law, and a more scientific sort of professional practice than had hitherto prevailed, among such lawyers even as Andrew Hamilton and John Kinsey. Indeed, a great change appears about this time to have taken place in the "stratifica-

* See post; in speaking of the Vice-admiralty Court.

tion" of our colonial society generally. Nearly two generations had gone since the colony was founded; it had greatly increased in wealth and population. The exclusive *regime* of the Quakers had passed away. The Church of England was, perhaps, coming into the ascendant, if not of numbers, yet of liberality, intelligence and education. In 1748, Edward Shippen, afterwards Chief Justice, had been sent to the temple to be educated; as at a later date was Thomas Willing, originally designed for the bar; and at a still later, Joseph Reed, Benjamin Chew, Edward Tilghman, Jared Ingersoll, William Rawle and others. In 1745, we find the lawyers barring entails, for the first time, by common recovery;* a process which, before that time, they would seem not to have sufficiently understood to resort to, since we know that entails had been extremely odious, and two ineffectual legislative attempts to give power to dock them by common deed, had been defeated by the queen in council.† Still the organization of the Common Pleas remained the same; the judges being yet, as before, the aldermen of the city and the justices of the peace from the county; the only difference being, we presume, that men of a higher grade of education and intelligence, than as a general thing had before been *common*, were now usu-

* Lyle v. Richards, 9 Sergeant & Rawle, 332.

† See Acts of 1705 and 1710; Hall & Seller's Laws, Appendix, by Kinsey, p. 191.

ally invested by the government with a commission of the peace; or that, in the more important cases, the less competent officers retired in favor of those more acceptable to the suitors and the council. About 1750, we find BENJAMIN FRANKLIN seated, at the age of forty-four, upon the bench, and we may infer that considerable attention to legal forms was now prevailing; as he tells us,* that "after attending a few courts, and sitting on the bench to hear causes," he gradually withdrew; "finding that more knowledge of the common law than he possessed, was necessary to act in that station with credit." We are in possession of a very complete record of a case, which was tried while Franklin was on the bench; and in a sheet of autographs, made and owned, as well as very highly prized, by the late Mr. Ingraham, but now obtained for the use of this work, for which it has been lithographed, may be seen the fac simile of his signature to a bill of exceptions, made from the record autograph, which is probably unique, it is the case of Lawrence William v. William Till, No. 125, of June term, 1749; John Ross was counsel for the plaintiff, and Tench Francis for the defendant, both of them really accomplished lawyers. It was a suit of unusual magnitude for the Common Pleas, being an action to recover £3794 19*s.* 10*d.* sterling; and it was tried before THOMAS LAW-

* Autobiography, chapter IX.

RENCE, JOSHUA MADDOX, EDWARD SHIPPEN, and BENJAMIN FRANKLIN, Esquires, Justices. The pleadings are in the most regular form of the English law; (see Appendix B,) and numerous bills of exceptions are each signed by the judges. We have in this record a singular exhibition of the social and judicial system of the province. Taken in connexion with the large influence of "Friends" in the civil concerns of that day, it seems to present a mixture of the times of the patriarchal government with that of the reign of the merchant princes, and that of the highest state of artificial English law. We find here four persons, not one of whom was ever at the bar, nor, so far as we know, ever professionally educated, seated on the seat of judgment, hearing an important case of commerce, and adjudging it by rules of scientific common law jurisprudence. Let us, with a view of marking, so far as we can, one epoch in the history of our provincial jurisprudence, record what few facts we know of these judges. Thomas Lawrence, whose name stands first upon the list, belonged to a circle of distinction, for its wealth, fashion, and family importance in the province, but was never scientifically bred, we presume, to the law. He is not to be confounded with his son, bearing the same name; a man like his father, of reputation. The father, we suppose—though possibly the son—is the same person to whom, Franklin tells us, that he resigned, in 1747, the colonelcy of his Philadelphia

regiment; "a fine person," says Franklin,* and "a man of influence." The father, the especial subject of our notice, was a merchant. He appears to have been a religious man, and was a liberal subscriber, in 1729, to the completion of that church which, at the distance of a century and a half from the time it was built, remains the finest church edifice in Philadelphia; we speak, of course, of Christ Church. At a later date, his legal knowledge seems to have been called in requisition, to prepare drafts of a petition and charter for that corporation; a duty which he appears to have readily and promptly performed. He came to the bench, we suppose, in 1724, and died in office in 1754. Joshua Maddox, of whom we know more, was an English gentleman, of studious and contemplative tastes, liberally—but not, we believe, professionally—educated in England; a man of dignity and fortune. Though a scholar unquestionably, he had pursued commerce, as we know—and pursued it with skill, reputation and success. Yet he sat, as the records of the Orphans' Court show, from March, 1741, till his death, in April, 1759, a term of eighteen years, upon the seat of judgment, constantly partaking in its councils and attending its adjudications; and when he died at the age of seventy-four, had almost become personified in this province with the administration of its local

* Autobiography, chapter VIII.

justice.* Mr. Maddox, like his associate, Justice Lawrence, was a warden of Christ Church, in the burial-grounds of which, at the corner of Fifth and Arch streets, close by the grave of his other associate, Franklin, his monument may yet be seen. Edward Shippen, also, was a merchant—the father, we think, of the Chief Justice, his namesake, who afterwards became so eminent on the bench; but he, himself, was a trader; and Franklin, known to the world in many capacities, besides those of a statesman and a philosopher, has never, we think, until we have now thus presented him, been known as a judicial administrator in the Common Pleas, Orphans' Court and Court of Quarter Sessions, of Philadelphia.

Lawrence, Maddox, and Franklin, were not only associates on the bench, but seem to have been otherwise engaged in useful labors. They were all three of them founders and original trustees, in 1749, of the University of Pennsylvania.

* We have seen a few of his books; among them Chrysostom's Treatise *De Sacerdotio*, in Greek and Latin. It is filled with MS. annotations by the Judge, in Latin, showing that he read it carefully and intelligently. At the end of another volume from his library, a huge folio, entitled, "*Expositio Epistolæ D. Pauli ad Colossenses*," by one of the Bishops of Salisbury, we find, neatly written, this entry by the Judge: "*Perlegi hunc librum eximium*, 16 *cal. Aprilis*, 1753, *J. M.*" His MS. annotations in this book, also, attest that he perfectly understood the intensitive force of "*per*, in composition." The book had been read by him, as we suspect, it has never been read *since;* though it has been in the hands of scholars, too.

Such was the Court of Common Pleas of Philadelphia, in 1749; every vestige of its action, so far as the public knows, has, in little more than a century, become almost obliterated; as is manifest by the sort of history of it which we are obliged to give, in order to give any history at all. Such as it was in 1749, we presume it remained in its general characteristics, until it was changed by the outbreak of the Revolution. How many of our provincial judges joined the cause of the people, we cannot state. One—of whom we have good tradition—having received his commission from the king, was not quite willing to swear allegiance against it, to the subject. The judges whom we find there in September, 1777, were James Young, John Ord, Philip Behm, Plunkett Fleeson, Benjamin Paschall, Peter Evans, Jesse Richards, and David Todd. We know no great deal, and nothing with certainty, of being right in it, about any of these persons, though we believe these are the names of men, all of whom are known to antiquaries and genealogists of our city. If any of them were professional men before being on the bench, the tradition of their fame has passed, in this generation, into dimness. Mr. Fleeson, we know, was a good deal before the public, and was an active magistrate and in commission of the peace, after the Revolution, but was not upon the bench, that we know of. The history of the courts after 1776, belongs, however, to a later term than that

embraced by this memorial, which is meant to be confined to the province alone.

Whether the old provincial Court of Common Pleas contrasts to the advantage or disadvantage of some administrations of it that we have had since, or, under our popular system, are likely to have hereafter, every one will determine for himself. Whatever may or may not have been the extent of its acquaintance with the artificial rules of modern law, it was no doubt a grave, decorous, and dignified body, competent to perform all the duties which came before it; *par negotiis, neque supra.* Its tenure was for life. In its power of appointment to several offices, it was respectable for its public authority; and all its incumbents were men distinguished for weight of personal character. We know little of the formalities which belonged to the court room, nor indeed—unless it was in Market street, at the crossing of Second street—do we know exactly where the court room was. We have reason to believe, however, that those ceremonies of respect, which the wisdom of past times thought so much connected with respect itself, were observed with becoming attention. An escutcheon, which has descended to our time, shows that the crown and royal arms were placed behind the bench, as the emblem of its authority; and an ancient portrait of Justice Maddox, painted by Hesselius, in 1751, represents a venerable and benignant-looking man, costumed with care and dignity, in the

fashion of the day, short-clothes, ruffled wrist-sleeves, and a wig—not in any sort of a robe, however—with a velvet cap laid upon the judicial table, the top of which is covered with a dark cloth, the sides being hung with crimson velvet; himself seated in a crimson velvet-covered and cushioned chair of office, the cushion and arm-rests of which are tasselled with cords and golden fringe. Undoubtedly it looks like a seat which its incumbent, when ordering it, considered that he would have the right to use for the residue of his life.*

* This picture was owned, and highly valued by a descendant of Mr. Maddox, the late Mr. Horace Binney Wallace, a lover and judge of art. It is this picture, no doubt, which he refers to, in a passage in those "Literary Criticisms" published since his death; and in which, discoursing on the present modes of travel, he makes it suggestive of some fine reflections upon the altered habits and feelings of the time.

"It is a characteristic of this age," says the writer, "that whatever it does, it must do passionately. The man of the present time will not journey, unless it be furiously. If that grave ancestor of mine, who is now looking down upon me from his stately chair, with nothing ruffled about him but his wrists, could step out alive from the canvas and behold the crowded steamboat pawing madly along the water; or the long train of cars shooting like a harnessed comet over the narrow road of iron, he would surely imagine that one side of the world had caught fire, and the scorched inhabitants were rushing from the flames—or that some still more terrible catastrophe was about to happen at the other end, and mankind, with a noble philanthropy, were hastening to prevent it—or, at least, that every person in the excited multitude was pressing forward on business of a vital importance; and he would doubtless be surprised to be told that those herds of men were hurried on by interests not more weighty or more elevated than those which occupied his own bosom, to

The only portrait we have, near this date, which represents the costume of the bar, is a very good one of Andrew Hamilton, done, no doubt, in England; he is dressed in a long flowing wig, a scarlet coat, frilled bosom, and *bands*, precisely like those worn by some denominations of the clergy in our time. It is manifest that if this, or any thing like this, was the ordinary costume of the bar, it must have generated an observance of propriety in manner, which belongs to a different and a better school than that of the sack-coat and "sqush hat." Indeed, the beauty and bright intelligence of his cleanly-shaven face, would present a contrast with many countenances now to be seen of a Saturday morning in our court rooms, which would not argue much in favor of the improved personal appearance of the men of this generation.

traverse in two hours the distance, which to him, followed by his careful servant, had often, for the mind and meditative heart, formed the improving employment of as many days; that one of the most tremendous powers in nature had been pressed into use only that men may save a time which they will not employ, and shorten a distance which it had been pleasant to prolong. An emblem, too, of the democratic spirit might perhaps be found in the spectacle of men pressing and pressed forward in masses, when before they moved with a more solitary and reserved independency; in the submission of individual inclination and humor to the direct will of the multitude, of which they became a part; the exchange of a path and a conveyance of limited capacity for speed, with freedom to tarry or wander at discretion, for a road and a vehicle of limitless power, but without the ability to stop or deviate at all; with many other fancies of the like nature."

Though all the judges seem to have been engaged in pursuits not judicial, it is certain that their judicial duties were prominent matters with them, and received faithful and steady attention. They seem to have bestowed especial attention upon the mode in which the judicial records were prepared, entered and preserved; a matter less difficult to secure in that day, when the clerk was an officer of the court, subject to its control, and holding office usually during his life, than now, when he is wholly independent of the court, elected for a "job," and for the most part equally careless and ignorant of the duties he is elected to perform. We have looked at many of the records of the Orphans' Court, from 1719 till the Revolution, including the series of its minute books, and to any one often obliged to consult the judicial records of Pennsylvania in our own time, it is refreshing to turn to these far better registers, the memorials of our ancestors. Many of them are beautifully written in court-hand; all of them are careful and legible; and, when relating to real estate, are everywhere so illustrated by diagrams, as to show that both courts and clerk perfectly understood upon what they were acting. No person can examine them, and not see that attention, a sense of responsibility, and habits of order, must have pervaded the administration of our provincial justice at the time of which we speak. The writs of some of the courts, as appears by looking at them, were *engraved*, and are

always sealed with care and neatness; and when sealing-wax is used—as it constantly is—we find it to be that known in England, as "East India wax;" a species of wax made hard with rosin, in order to resist the effects of heat of climate and pressure from the papers on which it is put, being packed tightly in bundles. The result is, that on many of our old court papers, the impression of the seal remains as "sharp," at the distance of a century from the time it was put there, as it was the hour in which it was made.*

The character of the Justices of the Supreme Court appears to have been much the same with that of those of the Common Pleas, that is to say, but few of them had been much educated for the bar, before they were raised to the bench.

James Logan, who successively filled the stations of Recorder of the City, Presiding Judge of the Common

* It will give some idea of the character and capacity of the *older* prothonotaries, when we remember that Mr. Biddle, who was afterwards President Judge of one of our Common Pleas—that of Philadelphia, we believe—was, for many years, the prothonotary of that same court; and that Edward Shippen, afterwards Chief Justice of the State, was for a long term of time a prothonotary's clerk, and also prothonotary in the Supreme Court. There are hundreds of writs in the handwriting of President Biddle and Chief Justice Shippen. We see, too, very readily, how such men, beginning with the foundations of the law—its forms—were thoroughly trained by long and good apprenticeship, before they came to the judicial administration of its principles; and how, before they got upon the bench, they were so perfectly versed with the *practice* of the court which they were to administer.

Pleas, and Chief Justice of the Province, we know was fond of books; a fine classical scholar, a good mathematician; fond, too, of archæology, criticism, theology, natural philosophy, and apparently of *anatomy*, also. Indeed, his correspondence, much of it in Latin, shows, it is said,* that there was scarcely a department of learning in which he was not interested. He had been a merchant, and though a "Friend," he also exercised the military office. And as we know that he held, at different times, the important posts of Provincial Secretary, Commissioner of Property, Receiver-General, President of the Council, (in which last office the government of the province for two years fell upon him,) and was withal much devoted to the agriculture and the improvement of Stenton, his beautiful farm near Germantown; we may readily believe that, however imposing he may have been in his judicial presidencies, his legal acquirements could not have been of a profound or technical kind, nor his strictly judicial duties very engrossing. Of the labors of "Andrew Robeson, Esq.," Chief Justice in 1693, as ancient records tell us, we have very few records, and of Jeremiah Langhorne, his successor at a later day, scarcely any records whatever. Except that we know they both died, we should scarcely know that either of them lived. Among the hundreds of lawyers who now belong to the bar of

* See Sparks' edition of Franklin's works, vol. VII., p. 24.

Pennsylvania, I suppose that not five of them ever so much as even heard the names of these once well known Chief Justices of their State.

John Kinsey, prior to being Chief Justice, had been in extensive practice, and was undoubtedly an educated lawyer, as well as a man of fine natural parts, and the same is true, of the education and practice of Chief Justice Chew. But William Allen, whom we find on the bench as Chief Justice, in 1754, when our first printed Reports—those of Mr. Dallas—begin, was a merchant, in partnership with Mr. Turner; and it may interest the curious to know, that his counting-house was in his dwelling, in *Water street*, below Market; a fashionable quarter of the town in his day. He was a man distinguished for his social and fashionable eminence, as his family continued, I believe, to be, both in its men and women, before and after the Revolution. The wife of Chief Justice Allen, was Margaret, a daughter of Andrew Hamilton. Mrs. Greenleaf, a woman of splendid beauty, during the time of Washington, was his grand-daughter. Mrs. Tilghman, the wife of the Chief Justice of that name, was another. The late very accomplished Andrew Allen, for some time British consul at Boston, afterwards a resident of Burlington, N. J., and finally of Clifton, in England, where he died lately, was also his descendant. But there is no doubt that the Chief Justice practised commerce, at least *ex amateur*, or as an inactive partner,

during his judicial career; and from *it*, much more likely than from the liberal professions, or from any emoluments of high judicial station, acquired the wealth which enabled him to maintain a liberal city house and style of life, and a summer home at Long Branch; at which spot, known even prior to our Revolution as a watering-place, he had nearly a hundred years ago, a second residence for summer.*

We are not without a pretty good portrait of Chief Justice Allen, interesting in the history of the law, as one of the few pictorial records of our early Chief Justices, and interesting also in the history of American art, as one of the early productions of our countryman, Benjamin West; a painter, whose genius has of late times been as much undervalued in England, as by a small party round the court of George III., it was overvalued about fifty years ago; it is a three-quarters

* Allen, as we state in the text, was a liberally disposed man, and distinguished mention is made in the papers of that day, of the great dinner which he gave in September, 1736, on his retirement from the mayoralty. "On Thursday last," says The Pennsylvania Gazette of the 23rd of that month, "William Allen, Esquire, Mayor of this city, made a feast for *his* citizens at the State-house, to which all the strangers in town, of note, were also invited. Those who are judges of such things say that, considering the delicacy of the viands, the variety and excellence of the wines, the great number of guests, and yet, the easiness and order with which the whole was conducted, it was the most grand and the most elegant entertainment that has been made in these parts of America."

length, and taken standing; he has a curled wig and ruffled sleeves, but is otherwise dressed as plainly as possible. The costume for the whole dress, is apparently of one color—a not very good shade of brown; the colors may have faded. The face is round, with rather straight features, and is distinguished by *bon hommie* and good sense, rather than by intensity or acuteness of intellectual action, or by anything ascetic. He looks like a man who had the sense to use the good things of life without abusing them; and his whole appearance would render not improbable the story recorded of him, that when, on the establishment of the first theatre in Philadelphia, about a century ago, a deputation of gentlemen from "Meeting" waited on him, as Chief Justice of the province, to put the players out of it, he told them that he must decline such action, as he had read as good moral instruction in plays, as he had ever heard from any of their sermons. This portrait is in the possession of a gentleman of Philadelphia, who is connected by marriage with the descendants of the Chief Justice.

Of one of the puisne judges in 1754, under Allen's presidency, William Coleman, we have a terse, but beautiful characterization, by Dr. Franklin, who, with him, was a member of the well-known "Junto," established at an early date in Philadelphia. "William Coleman," says Franklin, writing of the year 1728, "then a merchant's clerk, about my age, had the cool-

est, clearest head, the best heart, and exactest morals, of almost any man I ever met with; he afterwards became *a merchant of great note*, and one of our provincial judges. Our friendship continued without interruption to his death—upwards of forty years; and the club continued almost as long, and was the best school of philosophy, morality, and politics, that then existed in the province;" Godfrey, the inventor of the quadrant, Joseph Brientnal, Scull, George Webb, and others, were its members.

It is interesting to note how often the names of our early provincial judges are connected with our city institutions of public usefulness; whether of charity, religion, or letters. Logan was the founder of one of our libraries—the Loganian; Coleman was an active member and first treasurer of another—the Franklin Library Company of Philadelphia. Allen, Coleman, Lawrence, Maddox, and Franklin, were founders and original trustees of the University of Pennsylvania, and among the persons in 1749, who "subscribed among themselves a sum exceeding £2000, to establish it;" "humbly hoping," says their declaration, "through the favor of Almighty God, and the bounty and patronage of well disposed persons, that it might be of great and lasting benefit to the present and future rising generations." Coleman was the first treasurer of the college, and Franklin and Maddox were both active persons, as well as contributors

to that now venerable institution of humanity—the Pennsylvania Hospital.

Of Lawrence Growden, Caleb Cowpland, Alexander Stedman, and John Lawrence, who, with John Morton, were also judges of this court between 1754 and the Revolution, our knowledge does not enable us much to speak; the impression is, that both Growden and Lawrence were lawyers, but we think not Stedman or Cowpland. The Growdens came to the province at a very early date, and for nearly a century seem to have been connected in different ways with its courts and bar; it is probable they were people of some consideration at home, for they gave to their place near Philadelphia—in Bucks county, perhaps—the name of "Trevose," which was also the name of the seat or locality at which they had been long established in England, when they left it to come here. In their origin, as known in Pennsylvania, they were probably "Friends," though not all of them in harmony with the civil authority of that sect. As we shall see, further on, Joseph Growden, at a very early date of our history, was a man of some legal and literary distinction, and involved both himself and others in conflict with the provincial government—then very badly administered by one of the governors—for presuming to publish comments, by way of interpretation, upon the character of Mr. Penn. The name of Growden is not known at the bar in this day; but our impression

is, that to that family, in its *female* lines, the legal name of Rawle, long and still at our bar, belongs by descent. Of Caleb Cowpland, we cannot find a single trace, except his name. Alexander Stedman has left us a few vestiges, which, for want of better, we must retrace. By comparing the signature on the sheet of autographs in this work, with the autographs of the subscribers for the "First City Dancing Assembly," recently fac-similed in this city, we find that in 1749, our venerable judge, then a youth, was a gentleman of taste and fashion; he was a member of this "City Assembly;" "an Association," says the annalist, Mr. Watson, "which, like another Almack's, embodied the exclusives of the day, when the elite were far more marked by metes and bounds of separation than now." "It professed," says this gentleman, "to enroll and retain in its union, only 'those who had ancestral bearings and associations.'" Mr. Stedman, we are happy to add, does not appear to have allowed the dissipations of the time to have carried him too far away; and if we want assurance that by the time he had reached judicial honors, he had attained also to becoming gravity, we may find it abundantly in the fact told us in Dr. Dorr's History of Christ Church. He exercised for several years (from 1759 to 1764,) the office of fiscal warden of that corporation, an office of responsibility and of still more honor.

It is said that John Morton—afterwards known as

a signer of the Declaration of Independence—sat, for a short time, under the province, as President of the Common Pleas, and an associate of the Supreme Court; so little is known of his history, however, that it is difficult to fix the dates with exactness; though, as he died in April, 1777, and was in Congress in July, 1776, it is probable that his judicial tenures were as we have supposed. We know that his early education and associations, though plain, were entirely respectable, and his moral character above all stain; and every act of his public life, of which we have any knowledge, shows that his intellectual parts were marked by that "finest, rarest, last betrayed," of mental faculties, good judgment. "To say of any man," we are told by an accomplished writer, a member of our bar, "that he excels by *that* attribute, is to award, perhaps, the highest praise that could be bestowed. It is above invention; it is beyond eloquence; it is more than logic. In every employment and every condition of life, public and private, deliberate and executive—and most of all, in the judicial—the ascendency of judgment over talent, wit, passion, imagination, learning, is evinced at once by the rarity of the endowment, and by the superiority which it is certain to confer on its possessor." Such is the praise which belongs—in his judicial administration—to Morton. Of Chief Justice Chew—the last Chief Justice of the Crown—we need not speak here, as he belongs rather

to the history of the Commonwealth, in which he held the distinguished post of President of the High Court of Errors and Appeals. Let us conclude, then, these notices, with the name of one, of whose integrity and virtues the memory is yet fresh, and who, we can well believe, must have done the Provincial Bench not less honor than those who did it most. Of Mr. Thomas Willing, an associate in 1767, the prolongation of whose life to a very advanced term, made his venerable person familiar to many of this generation, we need say but little; he had been partially educated to the law in England, in the Temple, in which place, at No. 3, in the King's-walk, he is said to have had an uncle, named also, Thomas Willing, residing. But it is as a distinguished citizen and merchant, that his memory comes chiefly commended to this generation; his character in both capacities has been sketched by a master-hand at the bar, in our own time.

"This excellent man," says a lapidary inscription,* "in all the relations of private life, and in various stations of high public trust, deserved and acquired the devoted affection of his family and friends, and the universal respect of his fellow-citizens. From 1754 to 1807 he successively held the offices of secretary to the Congress of Delegates at Albany, mayor of the city of Philadelphia, her representative in the General Assembly, President of the Provincial Congress, delegate to the Congress of the Confederation, President of the first

* On a monument in Christ Church burial ground.

chartered bank in America, and President of the first bank of the United States. With these public duties he united the business of an active, enterprising, and successful merchant, in which pursuit, for sixty years, his life was rich in examples of the influence of probity, fidelity, and perseverance upon the stability of commercial establishments, and upon that which was his distinguished reward upon earth, public consideration and esteem. His profound adoration of the Great Supreme, and his deep sense of dependence on his mercy, in life and in death, gave him, at the close of his protracted years, the humble hope of a superior one in Heaven."

Such, in a general way, were the men, so far as casual reading recalls them, who made the judiciary of the old province; a judiciary not likely to be surpassed in weight of private character or in degree of public estimation, by any which, in the times that we live in, we are probably again to see. Long may their virtues and character remain to receive our homage!

This sketch of our early judges will show, perhaps, in how much higher a degree, moral and prudential qualities enter into the true composition of a dignified bench than any others; and that good principles, good habits, and good manners belong as much and as inseparably to judicial greatness and judicial influence, as legal learning or legal practice.

If the bench of the republic in our own day, possesses less weight than did the bench of the province; if the title of a great magistrate is no longer a revered or respected one; and if the judge is not held by *us* as he was by our fathers — everywhere in honor — we

must search for the cause in the altered modes of appointment, and the altered—the "available"—requisitions which the good people of our time have declared that *they* deem the best ones.

In looking at the character of some of the persons who exercised the judicial office in the days of the province, one cannot help observing how much higher, too, in that day, than in this, must have been the character of "the merchant." Nearly all the justices, both of the Common Pleas and the Supreme Court—Franklin excepted—were merchants; yet they were men not only of much intelligence and education, but men also of a very high character as gentlemen; having all the atmosphere and reserve of gentlemen, and bearing those characteristics of independency and retirement, which Mr. Burke admired in the judicial character, and which, while fit to mark especially that character, belong to the best expressions of society everywhere; but belong not at all to the driving, eager, gambling class, which, too often in this day, assumes to represent "the merchant," whose honest and honourable commerce was the commerce of our fathers.

We ought not to conclude, perhaps, without a word about the Admiralty Courts which, formerly of the province, have, since the adoption of the federal constitution, passed to the Union.

The court of vice-admiralty, during the province,

was one whose jurisdiction has been a subject of contest at the bar ever since our federal constitution was adopted; and, as it remains one of serious difference of opinion upon the bench of the highest tribunal of the country still, we shall not attempt to discuss it. Its ordinary business, we would think, could not have been great, but it had occasionally cases of large amount. Dr. Franklin tells us that Andrew Hamilton, who had taken passage with him in 1724, on a vessel for England, had gone down the Delaware as far as Newcastle, but was "recalled by a great fee to plead for a seized ship." The case must have been one of magnitude, which could offer a fee sufficiently large to bring back Mr. Hamilton after he had set out on his voyage. We have also a long and carefully written opinion by John Kinsey, in September, 1745, on a question of salvage, which indicates so good a degree of familiarity with that class of questions as to prove that they could not have been unfrequent subjects of his examination.

The judges, we suppose, were appointed immediately from the crown. We may infer this, both from the nature of the jurisdiction, and from the fact that even in early times they appear to have belonged to the church of England; for the only two whom we *know* to have been judges were wardens of Christ Church in this city. One of the earliest of these was William Assheton, who died in September, 1723, at the early

age of thirty-three, being at that time the rector's warden. Those persons who were formerly in the habit of attending the venerable church of which we speak, and whose records, as given to us by Dr. Dorr, are among the most valuable contributions yet made to the history of our early city families, will perhaps recall a stone, (now covered by the floor put there in 1836,) which was in the aisle in front of the chancel rails, not far from the north wall, the inscription partially obliterated: thus—

"M. S. Famæ
Assheton * * * * iensis
de Salford juxta Manchester
* * * * Lancastriensis
Stéphanus Watts Francisca
Rudolphi Susanna Assheton
Anno Salutis 1768."

To the older members of this family which came early to the province, and was one of the best educated in it, and in many of its members connected with our courts, where we always find their proceedings characterized by education, skill, and sense, we suppose William Assheton, the judge, to have belonged. We find him, in 1722, in the absence of the rector from indisposition, invited by the vestrymen to "read prayers and sermons" to that respectable congregation. His sister was married, we think, to one of the early rectors

of the church, Mr. Archibald Cummings; a name very familiar to persons who, like most lawyers in much practice of passing upon titles of real estate in Philadelphia, have had constant occasion to trace and to note the histories of our earlier families; for, in a space of about fifteen years, we have Mr. Cummings' registries of no less than "851 marriages, 1728 baptisms, and 1601 burials." In an obituary notice which we have seen of Judge Assheton, he is styled "William Assheton, Esquire, Counsellor-at-law *and* Judge of His Majesty's Court of Vice-Admiralty for this Province, and one of the Governor's Council." He is stated to have been "a man of ability and probity in his profession;" and it is added, that "his death is much lamented as well by the public as by his private friends and acquaintance (they being very sensible of their loss.)" The name—once so much in place and honour—has become, we believe, entirely extinct in any kind of professional life in this city; nor do we know at all by whom it is represented. We take it to be probable, that Charles Read succeeded Judge Assheton in the vice-admiralty. He may have been in some way related to him, for he was the guardian of Assheton's children. Prior to his appointment to the bench he had been several times elected mayor and sheriff of the city, and one of the legislative representatives for the county. It gives us an idea of the judicial character of that day, which we hardly entertain even in this,

to find that Mr. Read, at the time of his death, held not only the office of judge of the vice-admiralty, but was also one of the provincial council, one of the commissioners of the law office; and held also several other posts of honor and profit in the province, besides being *collector of the port of Burlington, in New Jersey.* A tribute to his character, of which we have a copy, declares of him that he "always discharged his respective trusts to the general *applause;*" and that he "left behind him the character of a sincere Christian, tender husband, indulgent father, kind master, faithful friend, good neighbour, and agreeable companion." He died in 1736, we think, in the 51st year of his age. He, too, like Judge Assheton, was a warden of Christ Church, though we do not perceive that, like his predecessor, he was ever invited to even such discharge of the sacred functions as is allowed to lay readers.

We believe that, at a later day, Thomas Hopkinson, father of Francis, the first district judge for this district under the constitution, was also a judge of the admiralty. We know that he was long the clerk or prothonotary of one of the provincial courts; and if his judicial duties were performed as intelligently, and as regularly, and as beautifully as his clerical ones (of which many evidences may be seen,) undoubtedly were, he must have discharged them, if not like his predecessor, Mr. Read, is said to have done—to "general

applause"—at least to the satisfaction of all the counsel of his court.

We have but few printed reports of the early admiralty. Mr. Penn, while in this country, considered himself a lord admiral, as his father, Sir William, had been before him. But we have only one of his cases and decisions. This is reported in the Provincial Minutes,* and as a specimen of that lucid style of reporting, and especially of *stating the case*, which has since been very well known to the readers of our Supreme Court reports, both State and Federal, —as well as for Mr. Penn's excellent decision on the difficulty—deserves an extract here. We quote it literally :—

"At a Councill held at Philadelphia y^e^ 8^th^ of y^e^ 7^th^ Mo. 1683. Present: Wm. Penn, Prop^r^ and Gov^r^, [and the Council.]

"Phillip England made his Complaint against James Kilner, who denyeth all alledged against him, only y^e^ Kicking of the maid, and that was for Spilling a Chamber Pott upon y^e^ Deck; otherways he was Very Kind to them. George Green Saith that Phillip England went to Said Kilner to the overplus Water, also Beer, which was his own, and was denied it. Tho. Brinket Saith that James Kilner said he must take care of their Water, having but a Little Left, but never denyed them water at any Time. Also y^e^ Ship rouled sometimes when y^e^ Caske was almost out, and soe made it Like pudle. He further saith y^e^ Seamen drunk more of y^e^ Passingers beer than they themselves, and chainged 5 Barrells of y^e^ Passingers beere and then the had not pformed halfe their Voige, and the Ship beer

* Vol. I., p. 25.

being spent, drank wholy of the Passingrs; he also saith ye Seamen drunk some times one Cann, some times two a day, more then ye Passingers that owed the drinke. The Master Saith the Passingers Left the Ordering of the Drink to him, but they deny it.

The Govr gave the Master a Repremand and advised him to goe wth the Passingers and make up the Buisness, wch accordingly he did."

We have next an opinion (not in these minutes) of Mr. Justice Assheton, given in the spring of 1723, "when he gave judgment against two persons who were tried before him for *contempts* against the king." In that day of the province, therefore, the punishment of "*contempts*" seems to have been a special department of the admiralty jurisdiction. Two persons, brought before the judge, adherents of the cause of Charles Stuart, and Scotsmen, most probably, had ventured to call George Guelph "the Pretender;" and one of them, it appeared, had not only spoken ill of the king, but had been guilty of that which might naturally impress the court as a still greater offence—disobeying and publicly affronting *magistrates*. He denied that he was bound to obey either the House of Hanover or the House of Hanover's judges. One of the men had confessed his guilt, and submitted; but the other was contumacious, and it had to be proved upon him. Judge Assheton goes into the whole general subject of contempts, explaining exactly what they are: "in order that people may know when they incur guilt,

and though they are fully predetermined in their own opinions, against clear conviction, they may at least be so discreet as to reform their *manners*. He does not tell either the prisoners or us how, exactly, *contempts against the king* fell within the admiralty jurisdiction. He may perhaps have felt secure in the fact that the subject of contempts is not one for revision by any one except the courts which commit, and have *usurped* a power. If this was so, have we not cause to feel grateful for the advance of jurisprudence in this day? After telling them what is contempt against the king, he informs them, "that it is greatly impudent and presumptuous, for private persons to intermeddle with matters of so high a nature; and it will be impossible to preserve the peace, unless subjects will quietly submit themselves to those whom Providence has placed over them." He then examines the matter on "the Hebrew law," the law of "the New Testament," and asks, "if the maiming of a Roman Emperor, was punished with death, what severity can be too harsh for those who thus despise dominions, and speak evil of dignities? who curse, asperse, and deny their supreme, true, and lawful, and *undoubted* sovereign." He gives some principles for the judicial action, not exceeded in strength of tone by any we have had since, and which we should almost think, had served as precedent peculiar to the admiralty. "Though it be," he says, "the duty of a magistrate, and an excellent qualification in

him, to temper justice with prudence, and severity with gentleness and forbearance, yet it must be confessed, *much more* for the common advantage, to have such magistrates as incline to the *excess of sharpness and rigor*, than those who are disposed to mildness, and easiness, and compassion. . . . The strict and *harsh* magistrate is the better restraint, the stronger curb; the mild and merciful one exposes the laws to contempt, makes magistracy cheap, and lessens the prince, who makes both the law and the magistrate." After giving a somewhat milder sentence to the prisoner, who had confessed his guilt and submitted to sentence, namely—that he "shall stand under this court-house* for the space of one hour, on two market-days, with one paper fixed on his breast, and another on his back, with these words writ upon them, in fair characters: '*I stand here for speaking contemptuously against my sovereign Lord*, KING GEORGE;'—pay 20 marks, sterling, and the charges of prosecution," the judge goes to the other one, who had been contumacious, and "heartily wishing that the sentence might have a good effect upon him," pronounces his doom thus: "I do adjudicate and decree, that you shall stand in the pillory, in this market-place, for the space of two hours, on two market-days; that afterwards,

* From this, it would appear that the old Admiralty Court must have been over the *pillory*, which was in the market-house at Third street, as the other courts were over the market-house, at Second street.

on the said days, you *shall be tied to the tail of a cart, and be drawn round two of this city squares,* and then you shall be *whipped on your bare back, with forty-one lashes,* and be imprisoned till you have paid the charges of prosecution."

It is only when we read such judicial sentiments, and such judicial sentences—common sentences of the time—that we, in this day, can estimate the value of such efforts as those of William Bradford, Esquire, which, in 1794, led to the amelioration of our penal code. We read the small tract which bears his name, without being deeply impressed with the author's great superiority to other able men; and without at first being perfectly able to understand, how it is that this essay has given to him a reputation over Europe. It was in the *thought* that his merit consisted, and that thought it was, which has since "conquered the world."

It was our design in this chapter to give some special account of the Provincial Bar. The latest, and ablest, and best portion, however—the part which includes the names of McKean, Chew, Shippen, Reed, Ingersoll, Lewis, Rawle, and Tilghman, belongs to the Commonwealth, and we shall speak of them under that title. Of the earlier ones, excepting Francis, Dickinson, George Ross, and Andrew Allen, most of them fill a larger space upon the Provincial Bench, of which, in a general way, we have given our impressions. Of

some of these gentlemen just named, the elder Mr. Rawle, has given us such recollections as he had. His beautiful sketch is in print, and we need not attempt its improvement. We know that they were all well educated and accomplished lawyers and gentlemen, trained in the English school both of law and breeding; and that Mr. Francis, who was attorney-general, appointed in 1741, and Mr. Galloway, were both in extensive practice. But unhappily Galloway, unlike Francis, Hamilton, Dickinson, and other patriots of that period, deserted his country in her extremest need —in the darkest hour of the Revolutionary struggle, and therefore his name should be written only in the same volume that records the treason of Benedict Arnold, though not on the same blood-stained and guilty page. Men may escape merited punishment for a time, but the history and memory of their misdeeds, shall be their assured retribution.

Mr. Allen also was the attorney-general, appointed November 4th, 1769—the last attorney-general, we think, that the king of England appointed within this, our people's realm. He was faithful to his master, and his estates were confiscated by the people, to whose sovereignty he refused to submit. Of Andrew Hamilton, the greatest of the provincial lawyers, who was not raised to the bench, we give a special notice further on. But it would be of no great interest to the reader, nor, we presume, of any value to jurisprudence,

did we attempt to exhume the nearly forgotten history of John White, "attorney-general of Pennsylvania," of whom we know nothing but what we get from Proud, that, on the "25th October, 1683," he was appointed "to plead the cause between the Proprietary and Governor, and Charles Pickering and Samuel Buckley:" —of another king's attorney, of whom even the name is lost to us, but who was appointed 17th November, 1685, "to prosecute John Curtis, accused of speaking treasonable words against the king;" of Samuel Hensent, empowered 16th January, 1685, "to prosecute all offenders against the penal laws, and to search for those who are on record convicted, and prosecute them if they have not satisfied the law;" of David Loyed, his successor, appointed 24th April, 1686, and of whom we know only that he attempted unsuccessfully to control —against William Bradford, its first defender in America—the freedom of the press, which Mr. Penn had invited here; a matter we tell of hereafter: of G. Lowther, whose annals are shorter still than Loyed's, since we know nothing of him but the date of his appointment, 23d September, 1706, or of Joseph Growden, Jun., who, succeeding Andrew Hamilton in his office, was commissioned 5th March, 1725. Our readers would soon be wearied with such annals. They are histories, however, which well deserve attention as a special subject, and are worthy of regard from those whose tastes lead them to vindicate the fame of our

early colonists. But it is a task which should be undertaken soon. Even while we write, the memorials which remain are passing rapidly to oblivion. A few gentlemen closely connected with the Historical Society have of late times done infinite service to the future history of our city and State, by the efforts they have made to bring together and to preserve, its scattered and solitary fragments. The Society which they represent and take care of, deserves private and public encouragement; the collective encouragement of the city, the collective encouragement of the State, and the individual encouragement of the people of both. To the labors of these gentlemen, much better able than we are to trace these matters further and in more detail, we may be permitted respectfully to commend them.

In the foregoing hasty and imperfect survey of the earlier history of the province, we have designedly omitted to notice the early and continued struggle for the liberty of the press, and the celebrated trial of John Peter Zenger, for a libel, in 1735, in which Andrew Hamilton manifested so much firmness and ability as to secure to himself the unquestioned title of the first advocate of his day. To this agreeable task we now address ourselves. At the moment of our writing, it is a remarkable and interesting fact, that the legislature of Pennsylvania, after a lapse of more than a century and a half, have enacted a law

providing for the admission of the truth in evidence, on the part of the defendant, in all criminal prosecutions for a libel; and thus at least partially settled a question that has produced more controversy than almost any other connected with the law. We may also mention here what is not generally known—that John Peter Zenger arrived in the province of New York about the year 1710; and was apprenticed by Governor Hunter to William Bradford, who some time before this had established himself there as a printer. Afterward, in 1733, he set up for himself in New York; and in 1735 an information for a libel against the king and governor, was filed against him, and his paper was ordered to be burnt by the common hangman. His devotion to the freedom of the press seems to have been regularly derived from his master, as we shall see, if he did not even "better the instruction."

The most extraordinary man, excepting Dr. Franklin and the great Founder, among all who lived during the early provincial history of Pennsylvania, was Andrew Hamilton, and almost the only man who deserved the name of an advocate. From the fact of one of the earlier Lieutenant-governors appointed by William Penn, bearing the same name, they are often confounded together, or supposed to bear the relation of father and son. Yet the Hamilton of whom we now speak, had no relationship or connexion with the other; they flourished a quarter of a century apart: and in

truth, our subject originally bore the name of Trent—was a native of Ireland, emigrated to this country, and settled for a time on the Eastern shore of Maryland, where he married, and afterwards removed to Philadelphia, in the early part of the last century.

What were the inducements for his change of name, or of residence, nothing is known, nor is it a matter of any interest; our business with him is after he reached our soil, and not with his antecedents. He was the greatest lawyer of his time in this country, and a man of irrepressible energy of character; he became President of the Executive Council—Speaker of the Senate, and Attorney-general. He planned and founded the State-house, in which independence was afterwards proclaimed. He was a friend of Franklin, and a devoted and unquestionable patriot; he received a vast grant of lands for his services, embracing Bush-hill, and a large part of Lancaster county. His scientific skill was in requisition in almost all the other colonies, but his most remarkable professional effort was made in behalf of John Peter Zenger, to whom we have referred, as a printer in the city of New York, who was indicted for a libel, published against the government.

Before proceeding to a brief notice of this celebrated trial, we may be permitted to give some account of a matter which must ever be interesting in America: the struggle between the Press and the Crown, in the infancy of this colony; which, while it forms a proper

prelude to the trial in which Hamilton was afterwards engaged, exhibits the early history of the law of libel and the freedom of the press, down to the year 1735, when the case referred to was determined.

The "Liberty of the Press" in America, is a matter whose *earlier* history, we think, has not been well apprehended, even among ourselves, in modern times. Knowing, as we do, that our country was, as a general thing, colonized by those who left England in discontent with its laws against a general liberty on the subjects of religion and politics, we have been led to suppose that THE PRESS was as free in the early state of the colonies, as it has been in our own days. This, we take it, is a great mistake; it is, *certainly*, so far as concerns Pennsylvania. There was, in truth, no liberty of the press at all, worth speaking of, in this State, prior to the year 1731; and it seems to have been asserted, maintained, and finally established by the printers themselves, against the sharp and unscrupulous action of the crown-officers, who exercised in this colony, at least, a power far beyond any ever exercised contemporaneously in England; a power, indeed, such as we find existing only in tyrannies as absolute and irresponsible as those of Naples, St. Petersburgh, or Vienna. The history of this subject is one of growing interest; it deserves a special study and illustration from some literary man of the country; and such, sooner or later, it will no doubt receive. In

the mean time, we give to it a page or two of these remarks.

When Mr. Penn had become the Proprietary of Pennsylvania, there is no doubt but that he meant to give the colonists the benefits of the press, and to allow to it all the liberty which it enjoyed at that time in England. In the very incipiency of things, he addressed himself to William Bradford, a youth, originally of Leicester, where his family belonged, but afterwards of London, to make a venture of his fortunes with the printing-press, in Pennsylvania. Bradford was the son-in-law of Andrew Sowles, a wealthy printer and publisher in London; a man of very good character, and a particular friend of Mr. Penn,* whose regard for him is shown by his inviting him to be one of the witnesses to the charter of Pennsylvania.† It was in this way, we suppose, that Bradford and Mr. Penn became acquainted; they came to Pennsylvania together, as we learn from Dixon's Life of Penn,‡ on "The Welcome," in 1682; and Bradford soon established his press "near Philadelphia," as imprints of 1687 inform us.§ He seems, at first, to have confined himself to

* For an account of Sowles, see a volume, entitled "Piety Promoted, in brief Memorials of the virtuous Lives, Services, and Dying Sayings of some of the people called Quakers." Vol. II., London, 1789.

† See fac-simile in John Jay Smith's Autograph Curiosities, part 2.

‡ Page 263, London, 1851.

§ This person, the first printer in America, south of Boston, it may be

printing almanacs, and such tracts of moral and agricultural instruction as all parties found to be acceptable, and all admitted to be not only harmless, but eminently useful. But on *political* subjects, or such *religious* controversies as the "Friends," who then engrossed the whole government, were continually engaged in, he seems very carefully not to have printed any thing for some years after coming to the colony. Indeed, although one of Mr. Penn's principal objects in inviting him to go with him appears to have been to print the laws, such seems to have been the disputatious character of the colonists, and such their inclination to interfere with the restraints which he had placed on his government, that Mr. Penn had hardly been in the province six months, when, at a council at which

interesting here to state, established, with Claus and William Rittenhouse, the first paper-mill in America, on the Wissahicon creek, as early probably as 1685 or 1687. He went, in 1692, on the invitation of Colonel Fletcher, to New York, where he was appointed printer to the Crown, an office which, with his son and grandson, he enjoyed for fifty years, for the three provinces of New York, New Jersey and Pennsylvania. He became rich, and died in New York in 1752, at the advanced age of ninety-two years. There is a monument to him on the north side of Trinity Church, New York, of which venerable corporation, as we learn from Dr. Berrian's sketch, he was for several years, (1703 to 1710,) a vestryman; as he also was a contributor in 1711, to the embellishment of the original edifice which occupied the site of the present structure. It was in New York that Zenger, as we have said, was apprenticed to him by Governor Hunter. William Bradford, the second Attorney-general of the United States, was the great-grandson of the first printer.

he presided, it was enacted, that the *laws should "not be printed."** He discovered that a colony, where the PRESS was FREE, would start into new being, and escape entirely from his power. It was a proof, not so much of Mr. Penn's arbitrary temper, as of his forecasting sagacity. Things, however, went along pretty well, till 1689. In that year some dissension having arisen in the colony as to the rights of the settlers, Joseph Growden, one of the most intelligent and educated men of the province, caused Bradford to print "The Charter, or Frame of Government of the Province," with some remarks by Growden. Bradford appears to have anticipated trouble, and therefore put no imprint to the tract; though, as he was the only printer south of Boston, in the country, there was no real question by whom the pamphlet was printed. As soon as it appeared, he was summoned before the Governor and Council, and examined in a way which we find very often in the old State trials of England, but absolutely inconsistent with any system of legal evidence or constitutional government. A written account of this examination, in his own hand, was found within a year past, among some papers at Chester, in this State. It has never been printed before, and as it presents both a curious account of the proceeding itself, and a striking view of the entire absence of the

* Provincial Minutes, Vol. I., p. 18.

liberty of the press in Pennsylvania in that day, and of the earliest attempts to vindicate it, we give it here entire. It will be seen, according to this report of the proceeding, that Mr. Penn had given "PARTICULAR ORDER FOR THE SUPPRESSING OF PRINTING" in his province; a report which we might almost believe to be inaccurate, did we not find exactly the same thing asserted in the printed Minutes of the Provincial Council,* by which we learn that Growden was arrested, as having directed the printing of the paper; and that Governor Blackwell censures him, "not only for that it was false, *but for that the Proprietor had declared himself against the use of the printing press.*"† The paper drawn up by Bradford, and giving an account of the trial, is as follows:—

* Provincial Minutes, Vol. I., p. 236.

† This startling statement of Penn's desire to suppress the printing press in his colony, rests upon Governor Blackwell's authority; but there would seem no reason to doubt its accuracy, as the statement is made in two places, and in both instances in the presence of the Council, who must have had a knowledge of what was contained in Mr. Penn's instructions. Of Governor Blackwell, we have not personally much knowledge; the name of Blackwell was well known in this city until of late years, when it ceased, we believe, with the Reverend Robert Blackwell, D. D., for many years a minister of Christ Church and St. Peters; but this gentleman was not a descendant of the Governor; his ancestors, of an English family, having, from a very early date, been settled on Long Island and on Blackwell's Island, of which last they were proprietors; and from which he came with the American army, after it left Long Island, as Chaplain. The Governor probably returned to England.

"*The examination of William Bradford before Governour Blackwell, att Philadelphia, the 9th of the Second month,* 1689, *concerning printing the Charter.*

Governour.—'Why, Sir, I would know by what power or authority you thus print? Here is the Charter printed!'

Bradford.—'It was by Governour Penn's encouragement I came to this province, and by his license I print.'

Governour.—'What, Sir, had you license to print the Charter? I desire to know from you, whether you did print the Charter or not, and who set you to work?'

Bradford.—'Governour, it is an impracticable thing for any man to accuse himself; thou knows it very well.'

Governour.—'Well, I shall not much press you to it, but if you were so ingenuous as to confess, it should go the better with you.'

Bradford.—'Governour, I desire to know my accusers; I think it very hard to be put upon accusing myself.'

Governour.—'Can you deny that you printed it? I do know you did print it, and by whose directions, and will prove it, and make you smart for it, too, since you are so stubborn.'

[*Jno. Hill*, standing by, said, 'Sir, I am informed that one hundred and sixty were printed yesterday, and that Jos. Growden saith he gave 208 for his part towards the printing it.']

Bradford.—'It's nothing to me, what Joseph Growden saith, let me know my accusers, and I shall know the better how to make my defence; I do not desire to do anything that might give offence to any; I have been here near four years, and never had so much s^d^ to me before by Governour, or any else. Printing the laws, was one of the chief things Governour Penn proposed to me before I came here, yet I have forborne the same, because I have not had particular order; but if I had printed them, I do not know that I had done amiss.'

Governour.—'Truly, I question whether there hath been a Governour here before, or not, or them that understood what government was—which makes things as they now are.'

Bradford.—'That's strange; I do think and believe that there hath been a Governour here. However, since thee came here, (Governour,) I never heard of any thing to the contrary, but that I might print such things as came to my hand, whereby to get my living; it is that by which I subsist; nor do I know of any "Imprimatur" appointed. When things are settled and ordered, I hope I shall comply, so far as to endeavour to avoid giving offence to any.'

Governour.—'Sir, I am "Imprimatur;" and that you shall know. I will bind you in a bond of five hundred pounds, that you shall print nothing but what I do allow of, or I will lay you fast.'

Bradford.—'Governour, I have not hitherto known thy pleasure herein, and therefore hope thou wilt judge the more favorably, if I have done any thing that does not look well to some.'

Governour.—'If you would confess you might expect favour, but I see you are willfull; you should have come and askt my advice, and not have done any thing that particular parties bring to you. Sir, I have particular order from Governour Penn for the suppressing of printing here, and narrowly to look after your press, and I will search your house, look after your press, and make you give in five hundred pound security to print nothing but what I allow, or I'll lay you fast.'

[*Jno. Hill* said, 'The Charter is the groundwork of all laws, and for you to print it att this time without order from Governour, is a great misdemeanor.']

[*Griffith Jones* said: 'William, I doubt thou hearest and takes advice of those who advise thee to that which will not be for thy good at last.']

Bradford.—'Governour, it is my imploy, my trade and calling, and that by w^{ch} I get my living, to print; and if I may not print

such things as come to my hand, which are innocent, I cannot live: I am not a person that takes such advice of one party or other, as Griffith Jones seems to suggest. If I print one thing to-day, and the contrary party bring me another to-morrow, to contradict it, I cannot say that I shall not print it. Printing is a manufacture of the nation, and therefore ought rather to be encouraged than suppressed.'

Governour.—'I know printing is a great benefit to a country, if it be rightly managed; but if otherwise, as great a mischief. Sir, we are within the king's dominions, and the laws of England are in force here, and you know the laws, and they are against printing, and you shall print nothing without allowance; I'll make Mr. Growden bring forth the printer of this Charter.'

Bradford.—'Since it hath been here said that the Charter is the ground or foundation of all our laws and priviledges, both of Governour and people, I would willingly ask one question, if I may, without offence, and that is, whether the people ought not to know their priviledges and the laws they are under?'

[*Griffith Jones.*—'There is a p'ticular office, (MS. worn out,) thou knows where y^e^ Charter is kept, and those that want to know any thing, may have recourse thither; it was a very ill thing for thee, at this juncture, to offer to print the Charter.']

Governour.—'It is a thing that ought not to be made public to all the world, and therefore is entrusted in a particular person's hand, whom the people confide in.'

[*Griffith Jones.*—'William, thou knows thy father hath suffered much in England, for printing, (though I do not say for doing any thing against the law, or meddling with government,) and I would not have thee bring trouble upon thyself.']

Bradford.—'If it were not for the people to see and know their privileges, why was the Charter printed in England?'

Governour.—'It was not printed in England.'

Bradford.—'Governour, under favour, it was printed in England.'

Governour.—'It was not—What, this Charter?'

Bradford.—'Yes, this Charter, but that some alterations have been made since.'

[*Griffith Jones.*—'By what order did you print it in England?']

Bradford.—'By Governour Penn's.'

Governour.—'That was something; but you was not to print it of your own accord.'

Bradford.—'Have I?'

Governour.—'That I shall prove and make you know, Sir.'

[*Griffith Jones.*—'There is as much need of the alteration of the Charter now as ever, and may be, if six parts of seven of the people be obtained, which is not impossible.']

Governour.—'There is that in this Charter, that which overthrows all your laws and priviledges: Governor Penn has granted more priviledge or power than he hath himself.'

Bradford.—'That is not my business to judge of or determine; but if anything be laid to my charge, let me know my accusers; I am not bound to accuse myself.'

Governour.—'I do not bid you accuse yourself; if you are so stubborn and will not submit, I will take another course.'"

With more to the same purpose.

We have no report of the way in which the case ended. Indeed, Bradford appears to have been so much more than a match for both Governor and Council, that it is probable they were glad to part with him peaceably. It is certain his press was not stopped, nor much controlled, notwithstanding the assaults upon its liberty, by Penn, his deputies and council. But further attacks of the same kind were at hand. In 1692, a quarrel took place between the Quaker

magistracy and a part of the Quaker colonists, on a question partly civil and partly religious; and Bradford, though taking no part, apparently, in the quarrel itself, printed a pamphlet of one of the disputants, George Keith, who had taken part against the dogmas which the Quaker Rabbis, who then thundered from the seats of authority, now asserted. Bradford was arrested, and the sheriff being sent to search his office, took possession of his press, tools, type, and also of the "form," as printers call it, (which he found still standing,) from which the obnoxious pamphlet had been printed. The trial was had in form before two Quaker judges, Jennings and Cook, assisted by others. A curious contemporary account of it still remains to us. The prisoner conducted his case in person, and managed it with a fearlessness, force, acuteness and skill which speak very highly for his intelligence and accurate conception of legal principles. When the jury were called, he challenges two of them because they had formed and expressed opinions, not as to the fact of his having published the paper, but as to its being of a *seditious character;* opinions which he himself had heard them express. The Prosecuting Attorney says to Bradford, after he had made his exception:

"'Hast thou at any time heard them say that thou printed the paper? for that is *only* what they are to find.'

Bradford.—'That is not only what they are to find. They are

to find *also whether this be a seditious paper or not, and whether it does tend to the weakening of the hands of the magistrates.*'

Attorney.—'No, that *is matter of law*, which the jury is not to meddle with, but find whether William Bradford hath printed it or not.'

Justice Jennings.—'You are only to try whether William Bradford *printed it or not.*'

Bradford.—'This is *wrong;* for the jury are judges in the law as well as in the matter of fact.'

Justice Cook.—'I will not allow these exceptions to the jurors.'"

We have, therefore, in this trial, evidence of the fact, interesting to the whole press of America, and especially interesting to the Bar and the Press of Pennsylvania, that, on the soil of Pennsylvania, the father of her press asserted, in 1692, with a precision not since surpassed, a principle in the law of libel hardly then conceived any where, but which now protects every publication in this State* and in much of our Union; a principle which English judges, after the struggles of the great whig Chief Justice and Chancellor, Lord Camden, through his whole career, and of the brilliant declaimer, Mr. Erskine, were unable to reach; and which, at a later day, became finally established

* From and after the passage of this Act, on the trial of indictments for writing or publishing a libel, the truth of the matter charged as libellous may be given in evidence, and if the jury in any case shall find the same was written or published from good motives or for justifiable ends, and that the matter so charged was true, it shall operate to the acquittal of defendant or defendants.—*Acts of Assembly of Pennsylvania*, 1855-56.

in England only by the enactment of Mr. Fox's libel bill in parliament itself.

Well authenticated tradition has reported an amusing anecdote connected with this trial.* The oral testimony upon the question, whether Bradford printed the "seditious libel?" being insufficient to satisfy the jury, the form itself was carried to their room. Attempting to wheel it round into a just position, one of the jury, as he assisted in the effort, pushed against the bottom with his cane—he pushed a little too hard; the shrunken quoins gave way. Like magic, the form fell into a confused heap of letters; and a mass of *pi*, was the only evidence which the prosecution relied upon as its convincing proof! Bradford soon after published an account of his trial, which he circulated extensively. He already had the jest on his side, which, in common apprehension, was a victory; and it was not long before he got the judgment with him also. He appealed, at once, from the Justices—the inferior County Court which tried him—to the Governor in Council. Colonel Fletcher was now in power. The case came on to be heard April 27th, 1693, before the Governor, Lieutenant-governor, (Markham,) and the Board of Council. The minutes record his triumph.† "Upon reading the petition of William Bradford, printer, directed to his

* New York Tribune, of February 7th, 1849.

† Minutes of the Provincial Council, Vol. I., p. 326.

Excellency, wherein he set forth that, in September last, his tools and letters were seized by order of the late rulers, for printing some books of controversy, and are still kept from him, to the great hurt of his family, and prays relief—his Excellency did ask the advice of this Board;" and "the several members of Council being well acquainted with the truth of the petitioner's allegations, are of opinion and do advise his Excellency to cause the petitioner's tools and letters to be restored to him;" whereupon it was "ordered that John White, sheriff of Philadelphia, do restore to William Bradford, printer, his tools and letters, taken from him in September last." Bradford's old foes upon the bench, "Sam. Jennings" and "Arthur Cook," not long after this resigned their places.* Like Robin hostler, after "the rise of oats," it seemed as if they "never joyed since;" "it was the death of them."

This severe censorship of the press by the government, by no means ended with the earliest times of our colony. We find, that in 1721, the finances of Pennsylvania having fallen into great disorder, some one had published a pamphlet, entitled "Some Remedies Proposed for Restoring the Sunk Credit of the Province," and *Andrew* Bradford, a son of the *William* already named, and whom we have spoken of above, having recently published his "American Weekly Mer-

* Minutes of the Provincial Council, Vol. III., p. 141, 142.

cury," the first newspaper printed in Pennsylvania, one of the persons in his office inserted in the number of January 2nd, 1721, the following paragraph on the same subject: "Our General Assembly," it runs, "are now sitting, and we have great expectations from them at this juncture, that they will find some effectual remedy to revive the dying credit of this Province, and restore us to our former happy circumstances." On the 21st of February, 1721, Bradford was summoned, for this short paragraph, before the Provincial Council. Declaring that he knew nothing of the printing or publishing of the pamphlet, and that the paragraph in the Mercury "was inserted by his journeyman, who composed the said paper without his knowledge, and that he was very sorry for it," &c., he escaped having his press stopped, or being himself prosecuted; but he did not escape without a charge from the Governor, for the future "not to publish any thing relating to or concerning the affairs of this government, or any other of his Majesty's colonies, without the permission of the Governor or Secretary for the time being." He was dealt with more severely and made a much more vigorous stand a few years afterwards. It being near the time of the annual elections, a communication was inserted on the tendency of power to perpetuate itself, and on the necessity of what has since come to be a favorite and familiar doctrine:—Occasional Rotation in Office. It forms No. 31, of "The Busy Body," a series

of essays begun by Franklin in Bradford's "Mercury," and afterwards continued by different hands. It was well written, and though bold in parts, an air of pleasantry took from them much aspect of malignity. Indeed the whole piece is subdued below the standard even of orthodoxy in modern Democratic politics, and it contains much which deserves, and would receive, at all times the admiration of every party.* The editor had observed its language, and in presenting it, says that it was too good to be concealed; that he had "repeatedly invited the learned and ingenious to his assistance, and *given proper caution to his correspondents*," but that, not wishing to take credit for any others' labours, he published this piece unaltered. When it appeared, the Governor made a special summons of the Council, to lay the matter before them. Bradford was

* "To be friends of liberty," it says, "firmness of mind and public spirit is absolutely requisite; and this quality, so essential and necessary to a noble mind, proceeds from a just way of thinking that we are not born for ourselves alone, nor our own private advantage alone, but likewise and principally for the good of others, and service of civil society. This raised the genius of the Romans, improved their virtue, and made them protectors of mankind. This principle, according to the motto of these papers,[a] animated the Romans—Cato and his followers—and it was impossible to be thought great or good, without being a patriot: and none could pretend to courage, gallantry and greatness of mind, without being first of all possessed with a public spirit and love of their country."

a The motto was from Lucan:

"Hæc duri immota Catonis secta fuit
Servari modum, finemque tueri;
Nec sibi sed toti genitum se credere mundo."

ordered to be "immediately taken into custody and examined by the Mayor and Recorder of the City, ... and that his *dwelling-house* and printing-office *be searched for the written copy of said libel* that the author may be discovered, and that the attorney-general commence a prosecution against the said Bradford, for printing and publishing the same."* He was accordingly committed to prison and bound over to the court. His paper of the following week referring to the article; says, that it was supposed that "enough had been said to introduce it, without blame;" that notwithstanding this, it had "given offence undesigned." It thinks that the matter had been misrepresented to the persons who conceived the rigorous usage necessary, and aggravated. However, it gives a second article on the same subject; and with some independence, declares that it had been written and was ready for press before the other was printed, and that "it had not been enlarged, lessened, or altered," "for what has happened upon publishing the other."† What became of the case finally, does not appear. Bradford made no further apology nor submission. No interruption of his press or paper took place; and the prosecution had so good an effect on his reputation, that he was soon afterwards elected a council-man of the

* Minutes of the Provincial Assembly, Vol. III., p. 392. See Weekly Mercury, No. 506.

† See Weekly Mercury, No. 507.

city; which he continued to be for the residue of his life. From this date, some fixed ideas, originating from the press itself, began to be had about its liberty in Pennsylvania; and we find both newspapers and pamphlets commenting on the concerns of government, with far greater freedom than they had done. In 1735, Andrew Hamilton made his great defence of Zenger.*

The history of the trial, so far as it is necessary to be known, was this:—John Peter Zenger was indicted in New York, for a libel against the British Government and the Governor of New York, before the Hon. James De Lancy, Chief Justice of the Province of New York, and the Hon. Frederick Phillipse, second Judge, on the 4th of August, 1735. The defendant was defended by counsel, James Alexander and William Smith; the first step taken by whom, was in the shape of Exceptions to the competency of the court:

"1. Because the commission was granted during pleasure; whereas, it ought to be granted during good behaviour.

"2. That the commission was granted by a Justice of the Common Pleas, whereas, it could only be granted by a Judge of the King's Bench.

"3. That the form of the commission was not warranted by law.

"4. It appears that the commission was allowed by William Cosby, Esq., Governor of the Colony, and without the advice or consent of his Majesty's Counsel of this Colony, without which the Governor could not grant the same.

* Howell's State trials, Vol. XVII., p. 675.

"Wherefore the defendant humbly hopes, that the Hon. James De Lancy will not take cognizance of the same.

"Signed,

"JAMES ALEXANER,

"WILLIAM SMITH."

The exceptions to the Hon. Frederick Phillips, were the same.

These exceptions on the 15th of April, 1735, were offered to the court, upon which the Chief Justice said to Mr. Alexander and Mr. Smith, that they ought well to consider the consequences of what they offered; to which they answered, they had well considered the consequences; and Mr. Smith further said, "that he was so well satisfied of the right of the subject to take an exception to the commission of a judge, if he thought such commission illegal, that he durst venture his life upon that point."

"On the 16th (the first-day,) Mr. Smith asked the judges, whether their honors would hear him upon these two points:

"1. Whether the subject has the right to take such exceptions?

"2. That the exceptions taken were legal and valid.

"To which the Chief Justice said, 'that they would neither hear nor allow the exceptions, for (said he,) you thought to have gained a great deal of applause and popularity by opposing this court, as you did the Court of Exchequer; but you have brought it to that point, that either we must go from the bench, or you from the bar.' He then handed the clerk the following paper:—

"*At a Supreme Court of Judicature, held for the Province of New York, at the City Hall of the City of New York, on Wednesday, the 16th day of April, 1735; present, the Hon. James De Lancy, Esq., Chief Justice; the Hon. Frederic Phillips, Esq., second Justice.*

"James Alexander, Esq., and William Smith, attorneys of this Court, having presumed (notwithstanding they were forewarned by the court of their displeasure, if they should do it,) to sign, and having actually signed and put into Court, exceptions in the name of John Peter Zenger; thereby denying the legality of the judges their commissions, tho' in the usual form, and the being of this Supreme Court. It is therefore ordered, that for the said contempt, the said James Alexander and William Smith be excluded from any further practice in this Court; and that their names be struck out of the roll of attorneys of this Court. PER CUR.

JAMES LYNE, Cl.

"After the order of the court was read, Mr. Alexander asked, whether it was the order of Mr. Justice Phillipse, as well as of the Chief Justice? To which both answered, that it was their order; upon which, Mr. Alexander added, that it was proper to ask that question, that they might know how to have their relief. He farther observed to the court, upon reading the order, that they were mistaken in their wording of it, because the exceptions were only to their commissions, and not to the being of the court, as is therein alleged; and prayed that the order might be altered accordingly. The Chief Justice said, they conceived the exceptions were against the being of the court. Both Mr. Alexander and Mr. Smith denied that they were, and prayed the Chief Justice to point to the place that contained such exceptions; and further added, that the court might well exist, though the commissions of all the judges were void; which the Chief Justice confessed to be true: and therefore,

they prayed again, that the order in that point might be altered; but it was denied.

"Then Mr. Alexander desired to know whether they *overruled*, or *rejected* the exceptions? The Chief Justice said he did not understand the difference; to which said Alexander replied, that if he rejected the exceptions, then they could not appear upon the proceedings, and in that case the defendant was entitled to have them made part of the proceedings, by bills of exceptions; but if they overruled them, then, by so doing, they only declared them not sufficient to hinder them from proceeding by virtue of those commissions; and the exceptions would remain as records of the court, and ought to be entered on the record of the cause, as part of the proceedings. The Chief Justice said they must remain upon the file, to warrant what we have done; as to being part of the record of the proceedings in that cause, he said, you may speak to that point tomorrow.

"Friday, April 18th, 1735.

"Mr. Alexander signified to the court that, on Wednesday last, their honors had said that the counsel for Mr. Zenger might speak to the point concerning the rejecting or overruling of Mr. Zenger's exceptions on the morrow; to which the chief justice answered, that he said you may get some person to speak to that point on the morrow; not meaning that the said Alexander should speak to it, that being contrary to the order. Both Mr. Alexander and Mr. Smith said they understood it otherwise. They both also mentioned, that it was a doubt whether, by the words of the order, they were debarred of their practice as counsel, as well as attorneys, whereas they practised in both capacities. To which the chief justice answered, that the order was plain—"That James Alexander, Esq., and William Smith, were debarred and excluded from their whole practice at this bar; and that the order was intended to bar their

acting both as counsel and as attorneys, and that it could not be construed otherwise." And it being asked Mr. Phillipse whether he understood the order so, he answered that he did."

Zenger being thus left without counsel, the court appointed a gentleman much more obsequious to power, to take charge of his defence, who, after a motion or two—a mere show—permitted the court to have its own way, and Zenger was in a fair way, between the despotism of the court and the subserviency of his lawyer, to have a speedy lodgment in the prison, when application was made by Zenger's friends to Andrew Hamilton, whose fame seems to have spread over the land, for his professional assistance. Mr. Hamilton promptly responded to the call, and although he did not renew the exception which had disbarred Mr. Smith and Mr. Alexander, he took a bold stand; adopting the doctrine of Bradford in its fullest scope; and finally triumphed over both the attorney-general and the court, and obtained for his client a triumphant acquittal. His services appear to have been gratuitous and most chivalric. But Zenger, who was a printer, caused the trial to be accurately and fully reported and published, and the whole cause became one of such notoriety and glory, that Hamilton was applauded to the very echo. A gold box, with appropriate inscriptions, was presented to him, and the freedom of the city conferred upon him. In short, he acquired unexampled reputation,

in obtaining from the jury a verdict in conformity with those principles which so long had been the subject of the most determined, but unavailing conflict between the friends, and enemies of the liberty of the press. It was a triumph which even Erskine, many years after, in the case of the Dean of St. Asaph, and all others during the interval, failed to achieve.

The law for which Mr. Hamilton contended was not sustained by any of the authorities of that day, but obviously well founded in reason and in principle. Yet still, to *this* day, in some of the States where there has been no counter legislation, the judges leave nothing to the jury but the publication and the innuendoes, reserving it to themselves to determine upon the question of libel or no libel, even in a criminal case.

The speech of Mr. Hamilton exhibited great power. But that which contributed more to his success than even his intellectual and legal ability, was his imperturbable composure and firmness throughout the entire proceeding. He was a man of great acuteness, great readiness, and no inconsiderable wit. And it is perfectly apparent that, during the entire trial, he never shrunk for a moment from the brave and judicious performance of his duty.

There are portions of his argument that manifest extensive legal study and a high order of eloquence; all of which, however, with such a tribunal, would have resulted in no benefit to his client, but for what, in

homely phrase, may be called his dogged determination to resist everything like oppression. Few speeches, from that time down to the present, have been attended with more beneficial results, or have shed greater light upon the true principles of the law of libel, or greater glory upon the advocate.

After a rich harvest of unfading honors, Mr. Hamilton returned to Philadelphia, where, on the 4th of August, 1741, he died, and was the subject of the following eulogy from the pen of Franklin, which, for simplicity, strength, and beauty, was at once worthy of the author and his subject.*

"On the fourth instant, died Andrew Hamilton, Esq., and was the next day interred at Bush Hill, his country seat. His corpse was attended to the grave by a great number of his friends, deeply affected with their own but more with their country's loss. He lived without enemies; for, as he was himself open and honest, he took pains to unmask the hypocrite, and boldly censured the knave, without regard to station or profession. Such, therefore, may exult at his death. He steadily maintained the cause of liberty; and the laws made during the time he was speaker of the assembly, which was many years, will be a lasting monument of his affection to the people, and of his concern for the welfare of this province. He was no friend to power, as he had observed an ill use had been frequently made of it in the colonies, and therefore was seldom upon good terms

* "Pennsylvania Gazette," published on the 6th of August, 1741, in which will be found the following eulogy upon Mr. Hamilton, which no doubt was written by Benjamin Franklin, who was the editor of the Gazette.

with the governors. This prejudice, however, did not always determine his conduct towards them, for when he saw they meant well, he was for supporting them honorably, and was indefatigable in endeavoring to remove the prejudices of others. He was long at the top of his profession here; and had he been as griping as he was knowing, he might have left a much greater fortune to his family than he has done. But he spent much more time in hearing and reconciling differences in private, (to the loss of his fees,) than he did in pleading causes at the bar. He was just when he sat as judge, and though he was stern and severe in his manner, he was compassionate in his nature and very slow to punish. He was a tender husband and a fond parent. But these are virtues which fools and knaves have sometimes, in common with the wise and the honest. His free manner of treating religious subjects gave offence to many, who, if a man may judge from their actions, were not themselves much in earnest. He feared God, loved mercy, and did justice. If he could not subscribe to the creed of any particular church, it was not for want of considering them all, for he had read much on religious subjects. He went through a tedious sickness with uncommon cheerfulness, constancy, and courage. Nothing of affected bravery or ostentation appeared; but such a composure and tranquillity of mind as results from the reflection of a life spent agreeable to the best of man's judgment. He preserved his understanding and his regard for his friends to the last moment. What was given as a rule by a poet, upon another occasion, may be justly applied to him upon this,

* * * 'Servetur ad imum
Qualis ab incepto processerit, et sibi constet.'"

The following Lists of Judges and Attorneys General of Pennsylvania, prior to the Revolution, so far as they can be ascertained,

may contribute to aid, in some measure, the recollections of the past, and in that hope are submitted to our readers. The former is taken from the excellent Address of Mr. Peter M'Call, before the Law Academy of Philadelphia, in 1838, of which we regret not to have been able to procure a copy, till the proof sheet of this page was passing through our hands; the other is a compilation by the late Mr. Joseph Reed, co-editor with Mr. Charles Smith, of an edition of the Laws of Pennsylvania:—

JUDGES OF THE PROVINCIAL SUPREME COURT.

1684.

Nicholas Moore.
William Wood.
William Welch.
John Turner.
John Eckley.

1685.

James Harrison.
James Claypoole.
Arthur Cooke.

1686.

Arthur Cooke.
John Symcocke.
James Harrison.

1690.

Arthur Cooke.
William Clark.
Joseph Growdon.
John Symcocke.
William Clark.
Arthur Cooke.
Griffith Jones.
Edward Black.

1693.

Andrew Robeson.
William Salway.
John Cann.

1694.

Andrew Robeson.
Anthony Morris.
Edward Black.

1699.

Edward Shippen.
Cornelius Empson.
William Biles.

1702.

William Clark.
Edward Shippen.
Thomas Masters.

1705.

John Guest.
Joseph Growdon.
Jasper Yeates.
Samuel Finney.
William Trent.

1706.

Roger Mompeson.
Joseph Growdon.
Jasper Yeates.
Samuel Finney.
William Trent.

1715.

Joseph Growdon.
William Trent.
Jonathan Dickinson.
George Roche.

1718.

David Lloyd.
William Trent.

1726.

David Lloyd.
R. Hill.
R. Asheton.

1731.

James Logan, C. J.

1739.

Jeremiah Langhorne.
Thomas Graeme.
Thomas Griffiths.

1743.

John Kinsey.
Thomas Graeme.

1743.

William Tell.

1750.

William Allen.
Lawrence Growdon.
Caleb Cowpland.

1759.

William Allen.
Lawrence Growdon.
William Coleman.

1764.

William Allen.
William Coleman.
Alexander Stedman.

1767.

William Allen.
William Coleman.
John Lawrence.
Thomas Willing.

1768.

William Allen.
John Lawrence.
Thomas Willing.

1774.

Benjamin Chew.
John Lawrence.
Thomas Willing.
John Morton.

ATTORNEYS GENERAL OF THE PROVINCE OF PENNSYLVANIA.

1. John White, 25th October, 1683, and 17th November, 1685. Specially appointed.
2. Samuel Hensent, 16th January, 1685; to prosecute all offenders against her penal laws.
3. David Lloyd, 24th April, 1686.
4. G. Lowther, 23d September, 1706.
5. Andrew Hamilton, 1717.
6. Joseph Growdon, Jun., 5th March, 1725.
7. John Kinsey, 6th July, 1738.
8. Tench Francis, 1741.
9. Benjamin Chew, 27th January, 1755.
10. Andrew Allen, 4th November, 1769. The last Attorney General under the king.

CHAPTER III.

THE JUDICIARY.

APPOINTMENTS—TENURES—SALARIES.

Down to the year 1756, when Lord Mansfield, in the fifty-first year of his age, first took his seat as Chief Justice of the Court of King's Bench, with the exception of Gascoyne, Coke, Hobert, Hale, Holt, Somers, Clarendon, Vaughan, and a few others, there was no Chief Justice, either in the Common Pleas or King's Bench, who, for his good deeds, deserves to be remembered. And even Coke, with all his learning, industry and firmness, was essentially an arbitrary, heartless, selfish tyrant, who led the way, by his brilliant and powerful example, to many of the cruelties and murders, that afterwards stained the criminal jurisprudence of England. Thus it is, that one strong man may do more in the way of evil, than twenty weak ones, as he is quoted as an example and excuse.

Coke is entitled, with all his talents, to rank with the "Bloody Judges," and his praise will be mingled with the censure of all just men, in all time to come. His conduct towards the illustrious though unhappy Raleigh, and his unsparing malignity towards Lord Bacon, both of whom, with all their faults, were infinitely his superiors, will last as long in history as he does, and more than obscure his legal fame. And it was well said by Lord Mansfield, while solicitor-general, in defending himself against the charge of adhering to the pretender,—"If I had been counsel for the crown against Sir Walter Raleigh, and the unfortunate man had been as clearly guilty of high treason as the rebel lords, I would not have made Sir Edward Coke's speech against him, to gain all Sir Edward Coke's estate, and all his reputation." Such were the sentiments of one, who afterwards became the most accomplished judge, in all respects, that ever adorned an English court.

Take Coke for all in all, though a great lawyer, he was a *bad* man, in his private as well as his public relations; and therefore certainly not a *great* man. He would have been long since forgotten, or, if still remembered, remembered only to be condemned, had it not been that his history is so connected with that of the common law, as to render them inseparable. His law reputation, therefore, will probably endure as long as the legal profession lasts.

As the Greek and Roman poets and philosophers are perpetuated by collegiate instruction, so Coke and some of his cotemporaries, being looked to as the founders and pillars of a great science, are still worshipped with a sort of superstitious awe and reverence; yet there have been better philosophers than Aristotle, or Plato; better poets than Homer, or Virgil, and better lawyers than Sir Edward Coke. Still, such is the force of traditionary, scholastic and professional prejudice, that three-fourths of the bar will, no doubt, raise their hands in holy horror, against this extraordinary attack upon the law's anointed.

With the exception of the judges that we have referred to, we repeat, there were few or none, worthy of regard or respect. They were the mere pimps and panders of the crown, and they received their appointments, for the most part, *because* they were so. The law, as they administered it, was just what his majesty pleased, or what judicial popularity was supposed to require. There was scarcely even a pretension to character, decency, or fitness among them. Some of them had been foot-pads—some drunkards and debauchees—some destitute of all learning—some inmates of prisons—some executed, and others deserving to be so. Even the infernal Jeffries, was hardly supreme in his "bad eminence," although literally crushed to death under the heavy curses of an outraged people, and without the aid of a single voice, to say "God

bless him," in his extremity. Since their time, however, judicial manners, morals and talents, have much improved in the mother country; and her judiciary have long continued to be looked upon as objects of esteem and veneration, instead of contempt or abhorrence.

During the reign of Elizabeth, and James the First, the puisne judges of the King's Bench and Common Pleas held, *Quam diu nobis placuerent;* and the judges of the Exchequer, *Quam diu bene se gesserint;* but in 1640, the patents of all the judges ran, *durante bene placito*—afterwards they were changed, and again ran, "*quam diu,*" &c., but this being found inconvenient from those offices not being entirely dependent on the crown, the old form of the patent, "*durante bene placito,*" was restored and so continued until the early part of the reign of George the Third, when the judges ceased to be utterly dependent upon the royal will, or the machinations of ministers, and were placed upon the same footing as with us; holding their offices upon the more reasonable and equitable footing of their own "good behaviour;" the result of which is, that the last century has not only furnished no legitimate successor of Jeffries, or Wright, or Norbury, but no remote imitation of *any* of the monsters who, before the revolution, while arrayed in judges robes, degraded their high calling, and profaned the very sanctity and sacristy of virtue. The waves of innocent blood have at length subsided, and

justice and mercy, moderation and truth, and wisdom, and virtue, now sway the sceptre and suspend the scales, which were for a time wrenched from them by iniquity and cruelty, rashness and rudeness, folly and wickedness. May this salutary and glorious reform be perpetual.

With the American Courts, during somewhat less than a century, incompetency has been the exception, not the rule, and want of honesty has never been charged against an American judge, and perhaps never been suspected. The tenure for "life or good behaviour," has been most salutary, and admirably adapted to our system of government. The results are its best commentary: no judge with us has ever been removed or impeached for *corruption*, or deserved to be so removed or impeached. On the contrary, whatever may be thought of the competency of some of our judges, or the incompetency of what were called Governor Snyder's "common sense Associate Judges," they have, *one and all*, on the score of integrity and general respectability, been unexceptionable. They may have had blemishes or faults; but certainly cruelty or dishonesty was not among them; and it may be generally said, that an abler or purer body of men, has rarely graced the judicial seat in any country.

This difference between the English and American courts has been dependant, no doubt, partly upon the different forms and principles of the governments—

partly upon the modes of appointment, and probably not a little attributable also to the "*si bene gesserint*" clause, provided for by our Constitution, and omitted in the English statute. Until recently, judges with us received their offices from the Executive of the state, with the approval or consent of the senate, and held their posts for life, "or so long as they should behave themselves well."

By the constitution adopted on the 22nd of February, 1838, as appears by the fifth article, their life tenure was changed to an office for years.

CONSTITUTION OF PENNSYLVANIA.

OF THE JUDICIARY.

ART. 5.—SEC. 11. The Judges of the Supreme Court, of the several courts of Common Pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the governor, and by and with the consent of the senate, appointed and commissioned by him. The Judges of the Supreme Court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president Judges of the several courts of Common Pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, *if they shall so long behave themselves well.* The Associate Judges of the courts of Common Pleas, shall hold their offices for the term of five years, *if they shall so long behave themselves well.* But for any

reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them, on the address of two-thirds of each branch of the legislature.

OF AMENDMENTS.

ART. 10.—By the tenth Article, it is provided, that "Any amendments to the Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments, shall be entered on the journals, with the ayes and nays taken thereon; and the Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least one newspaper in every county in which a newspaper shall be published; and if, in the legislature next after chosen, such proposed amendment or amendments shall be agreed to, by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published, in manner aforesaid; and such proposed amendment or amendments shall be submitted to the people, in such manner, and at such time, at least three months after being so agreed to by the two Houses, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the qualified voters of the State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years, &c.

The following amendment, (in pursuance of the authority of the 11th article,) having been agreed to by

the legislature, at the sessions of 1849 and 1850, was ratified by a majority of the qualified voters of the State of Pennsylvania, at the general election, held in a majority of the members elected to each house of the October, 1850, and thereby became a part of the Constitution.

AMENDMENT.

ARTICLE 1.—The judges of the Supreme Court, of the several Courts of Common Pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the Commonwealth, in manner following, to wit: The judges of the Supreme Court by the qualified electors of the Commonwealth at large: the president judges of the several Courts of Common Pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, by the qualified electors of the respective districts over which they are to preside, or act as judges; and the Associate Judges of the Courts of Common Pleas, by the qualified electors of the counties respectively. 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 president judges of the several Courts of Common Pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, *if they shall so long behave themselves well;* all of whom shall be commissioned by the Governor; but for any reasonable cause, which shall not be sufficient ground of impeachment, the

Governor shall remove any of them, on the address of two-thirds of each branch of the legislature, &c.

Thus life appointments, it appears, in February, 1838, were changed to terms for years; and, in 1850, the appointments became elective, instead of "executive with consent of senate:" but the clause of good behaviour still remains, accompanied and sanctioned by the judicial oath.

The proposal to substitute the tenure for years, for tenure for life, was powerfully but unavailingly opposed in the convention at which the constitution was adopted; and although by a constitutional vote of the people, the amendment providing for the election of judges was finally ratified, the passage of the article submitted to the popular vote was strenuously resisted in the legislature, by some of the ablest of its members. It is not necessary to refer to the arguments for or against it; they are best presented in the reports of the debates of the time, to which the curious or inquisitive are referred. Let it suffice that, in this age of experiment, hope triumphed over experience, and the judges became elective and temporary, instead of receiving their appointments as theretofore from the governor, through the senate. Hitherto there has been no reason to complain of the result. The judges, elected through the popular and political vote, have been unexceptionable—competent lawyers, of great experience; of untiring industry, and undoubted honesty. With one or two

exceptions, none of them were very highly distinguished or extensively known as advocates; but probably as much so, as many of their predecessors. This is, perhaps, rather a recommendation than an objection, for we do not agree with Lord Brougham, Lord Erskine, or Lord Campbell, that men of extensive business, and distinguished eloquence at the bar, make the best judges. And the noble lords referred to, who were the most distinguished barristers of their day, cannot themselves be cited as furnishing, in their judicial career, an enforcement or confirmation of their own theory.

In this country, experience has taught the same lesson. James Wilson, who ranked with the first class of lawyers, and who afterwards was raised to the Supreme Court of the United States, gained nothing in reputation by the exchange; but, in the language of one of the ablest of his cotemporaries, "Mr. Wilson on the bench was not equal to Mr. Wilson at the bar." Nor did Jared Ingersoll, Moses Levy, or Charles Huston, all men possessed of the highest legal attainments,—of the most persuasive eloquence,—increase, while, in their judicial posts, the laurels which they had deservedly acquired at the bar. The reason of this, as suggested elsewhere, would seem to be, that the duty of a judge is didactic, that of a barrister argumentative. The former looks upon the whole of a cause without bias or partiality; the latter identifies himself with his client, and, while he views

everything that makes for him with favorable eyes, looks upon everything that operates against him, with suspicion and distrust. A lawyer in full practice, when elevated to the bench, cannot change his habits with his position, or turn the current of his thoughts or his practice back upon itself. This metamorphosis will be attempted, of course, because duty demands it; but it is not a work of ease or of a moment, but of labor and of years. Even Lord Campbell himself seems to adopt those views; and expresses them much better than we could, when he says, in his lives of the chief justices:

"The celebrated advocate, when placed on the bench, embraces the side of the plaintiff or of the defendant, with all his former zeal: and, unconscious of partiality or injustice, in his eagerness for victory, becomes unfit fairly to appreciate conflicting evidence, arguments, and authorities. The man of a naturally morose or impatient temper, who had been restrained while at the bar by respect for the ermine, or by the dread of offending attorneys, or by the peril of being called to a personal account by his antagonist for impatience, when he is constituted a living oracle of the law, puffed up by self-importance, and revenging himself for past subserviency, is insolent to his old competitors; bullies the witnesses and tries to dictate to the jury. The sordid and selfish practitioner who, while struggling to advance himself, was industrious and energetic, having gained the object of his ambition, proves listless and torpid, and is quite content if he can shuffle through his work without committing gross blunders or getting into scrapes. Another, having been more laborious than discriminating, when made a judge, hunts after small or irrelevant points, and obstructs the business of his court by a morbid desire to investigate fully, and to decide conscientiously. The recalcitrant

barrister, who constantly complained of the interruptions of the court, when raised to the bench, forgets that it is his duty to listen and be instructed, and himself becomes a by-word for impatience and loquacity. He who retains the high-mindedness and noble aspirations which distinguished his early career, may, with the best intentions, be led astray into different courses, and may bring about a collision between different authorities in the State, which has long moved harmoniously, by indiscreetly attempting new modes of redressing grievances, and by an uncalled for display of heroism."

But the question is not as to whether the best advocates will make the best judges; but whether judges chosen by a popular and political vote, for a term of years, are more eligible, than judges appointed for life by the executive, and confirmed by the senate.

As to the mere appointing power, it may be said that the people elect the governor and the senate, and that therefore the only difference is, between their voting for the judges *directly*, and those judges being appointed by others, whom the *people* have chosen for the executive or legislature. That, in either case, the judges are *political* judges. But let it be remembered that judges are but men, and subject, to some extent, to human influences; that they are *doubly* subject to them, by holding their appointments for terms of years, and being dependent upon re-election for continuance of office; that this brings them into close connexion with party politics and partizans, upon whom that election directly depends; that those very persons are, from time

to time, suitors or parties before the courts, or exercise, or may exercise, influence over their salaries, or expect favors which no judge would grant, or suspect favors where none could be granted. By this state of things our judges, though better men, are brought into the condition of those government judges who pandered to the whim, will, pleasure, or caprice of the appointing power to secure their places.

"No man," says Lord Brougham,* "can be a judge in England, who is not of a particular party, unless he profess himself to be devoted to one scheme of policy; unless his party happen to be the party connected with the crown, or allied with the minister of the day, there is no chance for him—that man is surely excluded." Nor is the doctrine much better adapted to the latitude of England than of the United States. We are speaking to human nature, and not to individuals, when we seriously ask, How is it possible that judges, who, for the most part, receive their offices in requital of their political party devotion, should, in contemplating their services at the polls—not at the bar—forget the probable reward of continued fidelity to the ruling power?

There is another objection that arises out of "political appointments—terms for years and inadequate salaries;" and especially the latter. You find the judges, from actual necessity—which it is said has

* Brougham's Speech upon the Reform of the Laws of England.

no law—annually presenting their appeals, almost in *forma pauperis*, to the Legislature, for an additional allowance. This is much to be deplored, yet not easily avoided.

But, we are told, the application is made by the *bar*—not the judges. The bar, in truth, have properly nothing to do with it; and if they *had*, they adopt awkward means and unseasonable times, in order to its accomplishment. There is an indelicacy in the movement, that must shock and humiliate even those for whose just pecuniary advantage it is designed. A meeting is got up, as it were, under the very noses of the judges; a committee is appointed to visit Harrisburg; the newspapers teem with mingled hopes and fears of the result; and after a sort of system of log-rolling, nothing is done. Delicate, deliberate, and effective means, should be adopted, corresponding with the moral dignity of the bench, and the honesty and integrity of the bar. The Legislature should, especially, and without solicitation, guard the rights and safety of the judiciary, a co-ordinate branch of the government; and not, in their devotion to mere artificial, financial, or local improvements, "like the base Judean, throw a pearl away, richer than all their tribe."

There are men at the bar who, being unable to rise by direct means, or by force of their own unassisted abilities, endeavor thus to secure favor with the courts. That favor, whether actual or imaginary, attracts clients,

and consequently extends business. How is this object to be attained? By getting up a project for the increase of judicial salaries. Petitions are annually circulated. The toadies and supernumeraries, of course, all sign; those who are indifferent sign, as they are willing to advance the interest of others; and those who are actually opposed (not to the *object* but the *means*) also sign, as they do not wish to incur the antipathies of tribunals—that should have no antipathies—that should ask no favors and fear no frowns. What can be more unfavorable to a due and impartial administration of justice than such a course? It subjects the judges to obligations to the bar, which they may not acknowledge, but still must feel. And it at the same time lowers the reputation of the members of the bar,

> "Who crook the pregnant hinges of the knee,
> That thrift may follow fawning."

I agree with the doctrine of Angelo, that it is "one thing to be tempted, and another thing to fall;" yet from a source of *higher* wisdom we are taught to "PRAY against temptation." But even if the duties of the judiciary should be, as they at present are, impartially and faithfully performed, the very influences to which they *appear* to be exposed, but which they honestly resist, are, by disappointed suitors or vindictive men, conjured up and relied upon to support unfounded slanders, by which the sacred ermine of justice is sullied and disfigured.

Now, the integrity and purity of our *present* judiciary may be proof against all these difficulties and assaults. Still, how long are *they* to last, and who are to succeed them? Ay, there's the rub! Death, party political changes, resignations, casualties, all or any of them, may produce vacancies. How are those vacancies to be filled, as our elections are now regulated? Like the witches' cauldron in Macbeth, the POLLS are made up of every variety of ingredients, and attended with every variety of incantation. Which spell shall prove most powerful? Abolition or anti-abolition—temperance or intemperance—religion or impiety—laws or outlaws—increased or diminished salaries? All these subjects, and a thousand others, will be agitated, and, finally, in one shape or another, find a footing in our courts of justice. There they must be heard and determined; and can any man who looks to men as mortal, and to the justice of the country as co-extensive with the country, and contemporaneous with its duration, look to the crisis, which sooner or later must arrive, without anxious and fearful anticipations.

We remember a judge, as honorable and high-minded a man as ever sat upon the bench, who had exhausted his private fortune, and been reduced to comparative starvation, by the miserable and stinted pittance which the laws allowed; having stated that one of the greatest penalties he endured, arose from his seeing lawyers at the bar engaged in an argument before him

—jurors on the panel—or parties to a suit—to all of whom he owed debts, that he could not at once discharge. "Now," said he, "all of these, either consider me under obligations to them, and expect favor or indulgence, which it would be incompatible with my duty to grant; or, if I wrong them in this, the belief itself renders me unhappy, and impairs my sense of judicial independence; though God knows, I would beg or die, before I would knowingly violate my duty."

This is a painful picture, but to a generous mind, is it worse than the other besetments to which we have referred, which no prudence, or economy, or skill, can guard against, and which require, as Milton says, "a dragon watch, with *un*enchanted eye."

The only cure that can be suggested for the prospective evil, is that which we trust may be applied. It has so turned out, whether by chance or popular wisdom, that just and meritorious men have hitherto been chosen to administer the laws; there is nothing to prevent their continuance during life, without regard, therefore, to social or party prejudices, let all good men unite in confirming them in their present situation. We know what we *have*, but no man knows what we *might* have; and although rotation in office, is a favorite doctrine of the democracy, heaven forbid that it should ever be extended to the judiciary. "Old judges and settled laws—new judges and reform." Bad decisions are

better than no decisions, and variable judgments are worse than none; for they leave men in increased doubt as to their relative or respective rights. If you change the judges as often as the law would allow, by the time they are familiar with their duties, and at home in their seats, and established in their system, you will displace them for new men, who in their turn shall give place to others, and thus produce what Addison calls "a regular confusion," from which nothing but a miracle can redeem you, "and miracles," says a wise man, "are not resorted to by the Almighty, for the purpose of curing the follies, or relieving against the vices of his creatures."

It may be said, that in Pennsylvania we have no limit of age, as they have in New York, and that the course suggested may be attended with disadvantage in the administration of justice, by continuing judges on the bench long after their intellectual vigor and legal competency may have been impaired. Chancellor Kent lived until he was upwards of eighty, in the full possession of all his faculties and all his varied and extensive learning, after having been legislated out of his office of Chief Justice of the Supreme Court of New York, upon arriving at the age of sixty. Chief Justice Marshall of the Supreme Court of the United States, was about the same age at the time of his death, and no man ever imagined that his great mind, or the soundness of his judgment, had in the least

deteriorated. Most of the ablest judges of England were the eldest judges; and in short, without entering into an elaborate argument upon this subject, it may be said, that advanced age is far from being indicative of unfitness for a judicial post; but upon the contrary, it bears with it generally an experience and a dignity, which would rather recommend it to a judicious preference. There may be, to be sure, exceptions—and so there may be at fifty, as well as at eighty; but mere exceptions, scarcely furnish a sufficient ground for general exclusion or proscription. When it happens that age, disease, or infirmity of any kind, unfits a judge for the performance of his duty, he might be placed upon a retiring list, in order to make room for a more efficient successor. True, there is no provision by law for pensions to judges in such circumstances, but there is much reason why there should be. Humanity and justice would both seem to require it. The review of "Lord Brougham's Speech on the Reform of the Law," from which the following passage is extracted, expresses upon this subject, the ideas which we entertain:—*

"The faithful servant of the State, who has devoted his best days to the service of his country, should, when ambition ceases to be a virtue, be invited to his repose. The few remaining years of a valu-

* Brown's Review of Lord Brougham's speech on the State of the Law. published in 1828.

able and venerable life, instead of being exhausted in unavailing efforts to support the burthen which was the glory of past days, should be cherished and sustained by the grateful munificence of the nation he has blessed; thus, the infirmities of the great may be concealed, the benefit of their example secured, and the honor of the people vindicated. Again; rewards of this description might be regulated by the age and condition of the judge, without invidious distinction, and we should thus be spared the distressing spectacle sometimes exhibited, of a plain and palpable struggle between time and eternity—between the grave and the judgment seat.

"To resign those honors, which the hands are too feeble to grasp, and the mind too infirm to enjoy, would scarcely require a groan: but to resign and starve—to relinquish station and the means of life together, is a penalty far beyond what human nature will voluntarily encounter. Hence the administration of justice may, in some instances, become a by-word and reproach, and the fortunes, and liberties, and lives of the community, are totally jeoparded, strange as it may seem, for the purpose of subserving a penurious policy, and avoiding the horrors of increased exposure. Better, much better, would it be, that the public coffers should be drained, than that the judicial character should be thus degraded, and the rights of the community thus despised.

"When ancient senators pointed to their poverty as an evidence at once of their frugality and incorruptibility—even then the gratitude of their countrymen repaid them for their privations and their sacrifices, by honors and triumphs which the wealth of Crœsus was too poor to buy. But the times are changed, and honors are now degraded by an ostensible pecuniary equivalent, which, while it robs the recipients of all glory, consigns them to actual misery. We are told, forsooth, that he is *paid;* not upon the principle that the grateful mind by owing, owes not, but upon the footing of mere purchase and sale. In truth, he never can be paid for the benefits that he confers on his country, or the privations to which he is sub-

jected in the fulfilment of the highest of all public trusts—the faithful and the fearless administration of the laws.

"We have pensioned and half-pay officers, in the army and navy—we have modifications of pay, regulated by being in or out of actual service; and no reason can be conceived, why similar provisions should not be adopted in regard to the Federal and State Judiciary. Certainly there is nothing in the character of military services, calculated to impart to them a higher claim to liberal consideration, than that which may be fairly challenged by the majesty of the laws, and the administration of the justice of the country."

We are aware, notwithstanding what has been said, that there may be objections to retiring pensions, even with any modifications that can be suggested; but certainly, there can be no available objections to the enlargement of salaries. In adopting this course, you enable a judge not only to live in becoming decency and comfort, but to lay up, by a prudent economy, what may protect his family from want, after he has been gathered to his fathers. The judicial salaries have borne no sort of proportion to the progressive business, increase, and wealth of the State. If the judges are what *they* should be, it is perfectly clear the compensation for their services is not what *it should be;* but if we are to adopt the notion, that the worth of a thing is what it will bring—judging from their salaries, the judiciary are of very little value. If this *be* so, get rid of them; if it be *not* so, pay them—at least, sufficiently, to prevent beggary to themselves, and dis-

honor to the State. Tully, truly observes, "FORTES ET SAPIENTES VIROS, NON PRÆMIA, SEQUI 'SOLERE' RECTE FACTORUM QUAM IPSÆ RECTE FACTA." The great and the wise perform great actions, not so much for the rewards attending them, as on account of their intrinsic excellence. Still, the great and the wise, in order to the performance of great actions, or high public duties, must LIVE; and it does not become a nation or a State, to exhaust all the learning and labours of her faithful functionaries, and then to repay them with a MAXIM OR A PROVERB.

CHAPTER IV.

GALLERY OF PORTRAITS—THOMAS M'KEAN, L.L.D.

It is said by a learned and distinguished writer, "that to trace a single word through all its modifications, varieties, and diversities of use, from its origin to the present time, would be superior, in point of interest and utility, to the description of a campaign."* If this be so, what must be the interest, properly considered, of the lives of illustrious men, embracing their intellectual, social, moral, professional, or official character, the value of their services, the benefit of their example to their cotemporaries, and the lasting benefits conferred by them upon posterity.

History is distracted by a multiplicity of diversified events, and diffused over men and natures. Biography concentrates the mind upon a single object, and brings,

* Trench, on Words.

as it were, the hearts of men into a direct sympathetic communion with each other.

We are aware, that when the life portrayed is of itself embellished and rendered redolent by rare moral and social qualities, and when the impression of those qualities remains fresh in the mind and affections of the public, biography languishes under the weight of its task, and often not only falls short of the expectation of the community, but of the merits of the individuals designed to be commemorated and embalmed.

A portrait from life, or a cast taken after death, is tested by traditions, recent recollections, and rigid comparison, and its defects or faults are readily perceived, and unsparingly and deservedly condemned.

It is not therefore remarkable that the sketches of eminent men, however ably and skilfully drawn, frequently degrade rather than exalt the character intended to be exhibited. They may magnify the mean, but invariably diminish the great.

The lives of all who have lived during our time have held a higher place in our estimate, when left to our own direct interpretation and judgment of their actions and motives, than when presented to us through the medium of the description of others.

But, without dwelling upon the difficulties of the task here assumed, or excusing by anticipation its imperfect performance, we proceed at once to the discharge of our duty, which is to pay a grateful and

sympathetic tribute of enduring reverence to departed worth. In approaching the consideration of the judiciary of the several courts created by the constitution and the laws of the Federal and State governments, it would be unnecessary, if not useless, to bestow any attention upon the origin, jurisdiction, or powers of these tribunals, as they are exhibited on the face of the statutes, and are so familiar to all, and particularly to the members of the bar, as to render a studied and detailed exposition of them a matter of supererogation. This is not a treatise upon the laws, or upon the organization of the courts of justice, but upon the various modes of administering the law, and the functionaries through whose official agency they are judicially administered. The laws stand, and we trust ever will stand, and they speak for themselves. The judges have passed, or are passing away, and the "places that once knew them shall know them no more."

As TIME reconciles or controls conflicting DIGNITIES, we have, instead of entering upon the question of precedency between the judges of the Federal and State courts, thought proper to present them in the order of their appointments, leaving their relative or comparative official merits, to the judgment of others. Without further preface we pass then to the first chief justice, after the Declaration of Independence.

THOMAS M'KEAN,

FIRST CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA.
BORN, 1734—APPOINTED, 1777—DIED, 1817.

Thomas M'Kean, one of the illustrious signers of the Declaration of Independence, was the first chief justice of the Supreme Court of Pennsylvania, after the Declaration of Independence. He was appointed to that post on the 28th of July, 1777, and continued therein until the year 1799, when he was elected governor of the commonwealth, and was succeeded as chief justice by Edward Shippen, who, from June 31st, 1791, until the resignation of Mr. M'Kean, had been an associate judge.

Judge Shippen, whom, having referred to, we must, in passing, briefly notice, was the son of Edward Shippen, merchant, and Sarah Plumley, and was born on the 6th of February, 1729, at Philadelphia. The father was one of the considerable men of the province of Pennsylvania; was active in the erection of Nassau Hall, (Princeton,) and also promoted the founding of the University of Pennsylvania. He was also a judge under the British and State governments; founder of Shippensburg; and, though very old at the time, was far from inactive through our revolutionary struggle. Edward Shippen, Jun., the subject of this notice, was sent to London for legal education at the Middle

Temple; and, upon his return to Philadelphia, was, on the 20th of September, 1750, upon producing his certificate of being an utter barrister* of the Society of the Middle Temple, admitted to practice in the Supreme Court of his native State. He was a man of great learning, and a safe and excellent judge, possessed of most valuable experience, having been many years in extensive practice, and having also been upon the bench of the Supreme Court, from the 7th of May, 1791, until he became chief justice, in 1799, upon the resignation of Chief Justice M'Kean.

Chief Justice M'Kean, Judge Shippen, and others of their time, were not only well founded in the prin-

* The importance of legal education at either of the Temples in London has been always looked upon with great respect, and, we think, overrated. It depended altogether on the habits of the student. If industrious and assiduous, he came forth much improved; but he was left entirely to himself, benefited by no prelections from eminent lawyers, or indeed from any one. He enjoyed a sort of legal atmosphere, and that may be said to have been all. Mr. Rawle, who was a student of the Inner Temple, used to say, that all that was necessary, in order to a certificate of "utter barrister," was to prove that you had eaten your dinner regularly during the appointed terms. After this, what becomes of the slander upon the mode of examination for admission, said to be pursued in some of our Western States. Thus:

Examiner. Do you understand the game of brag? Can you make a mint julep? Can you drink it?

Upon these three questions being answered affirmatively, the candidate is considered abundantly qualified, and is admitted to practice, as a matter of course. We can conceive of a bar for which these qualifications would fit a student exceedingly well—but it is a *tavern bar.*

ciples of law, but they were familiar with the minutest points of practice. Several of them had been clerks or prothonotaries, and knew all the duties of the office —the forms of writs, the returns, pleadings, rules, exceptions, and the whole course of proceedings— certainly a most important branch of knowledge, as a want of knowledge of such practical details is very apt, as we have known, to embarrass a judge, and lead to misunderstanding and confusion. They may be deemed small matters, but they have an effect upon judicial reputation, for a judge is expected to know everything. A Jack Tar is reported to have despised the knowledge of the chief justice of the King's Bench, because he did not know what was meant by the nautical terms, "Abaft the binnacle, and douse glim!" That might have been excusable, but not so the want of knowledge of what appertains to a man's own peculiar profession, or sphere of life.

When Judge Shippen became chief justice, he was seventy years old; not a remarkable age, considered in reference to many of the judges of England, and who, at that time of life, would seem, from being called junior judges, to be only in their prime; but, apart from that, Judge Shippen was of a long-lived family, of great vigor of constitution, and fully retained his mental and physical powers until a very short time before his death. He was an agreeable, unassuming, and prepossessing gentleman, of a kind heart, and dig-

nified personal appearance,* and he was beloved and venerated by all who knew him. In December, 1805, feeling the infirmities of years coming over him, and admonished by his own reflections of the importance of some interval between the active concerns of this life and a due preparation for a better, he resigned his situation as Chief Justice; and on the sixteenth day of April, 1806, ripe in years and honors, and full of faith in his Redeemer, surrendered his soul unto God who gave it.

"Nomen in exemplum servabimus ævo."

But to return to Mr. M'Kean. He was born in Chester county, Pennsylvania, on the 19th day of March, 1757. He was of Irish extraction; the son of William M'Kean, who married a lady by the name of Letitia Finney. He studied law in the office of David Finney, a maternal uncle and lawyer of note, at Newcastle, and was admitted to practice in the Supreme Court, in the year 1757; some years prior to which, he had been a clerk of the prothonotary, and afterwards prothonotary and register of Newcastle. Subsequently, in 1762, he was selected to revise the laws; and eventually, as has been said, became chief justice, and finally governor, of Pennsylvania, in which last office he continued for three terms.

* There is an excellent portrait of him in the Law Library, a copy by Nagle, from an original by Stewart, in the possession of Judge Shippen's family.

Judge M'Kean, among those who best knew him, was always considered a sound lawyer and an upright judge. He, however, although theoretically attached to the democracy of the time, was somewhat aristocratic in his practice, he was a stern and an arbitrary man, still one quite susceptible of flattery, fond of official display, and by no means averse to the blandishments of titles. On this subject it is related of him, that shortly after his appointment, a petition was presented to him, directed to the Right Honorable Thomas M'Kean, Esq., Lord Chief Justice of Pennsylvania, upon which he very complacently observed: "These are, perhaps, more titles than I can fairly lay claim to, but at all events the petitioner has erred on the right side." In opening the session of his courts, it was done with great ceremony and form, and the Chief Justice held all his attendants to the most rigid observance of respectful duty. The judges, it is true, had thrown off their wigs, but they nevertheless retained the robes and such other appliances, as probably in their opinion, contributed to make "ambition virtue." In taking their seats at the opening of the court in the city, as well as in the counties—with all their professed republican principles—they followed and imitated, at no great distance, the example of the judges of the English Court of King's Bench. The sheriff, in all his pomp, together with the tip-staves and attendants, assembled at the commencement of the term, and

swelled the retinue of the Chief Justice and his associates, as they proceeded to assume their respective places upon the judicial seat. We mention these ceremonies, not to complain of them, but rather to show, that it was far easier to cast off all allegiance to the mother country, than altogether to abandon or renounce those fashions or follies which were portions of our inheritance.

Chief Justice M'Kean, though always deemed a very able lawyer, and a man of inflexible honesty; was still a man of strong prejudices, jealous of his authority, and rough and overbearing in its maintenance. If the advocates of his time had not been men of exalted and unbending principles, his sternness of judicial deportment would have exercised a most deplorable influence upon the independence of the bar, but the aristocracy of genius can neither be awed nor subdued, and while its possessor cannot but feel conscious of its value, it also secures the unwilling homage of those, however lofty may be their official position, who would presumptuously venture to attempt to put it into "circumscription and confine." A truly great man can always measure himself, and measure others, too, and whatever external tribute he may pay to *official* dignity, he never forgets his *own*. The forms and ceremonies of courts enjoin reverence to the sovereign, yet it has not unfrequently happened, that even there, in the language of Scott, "the *immortal* bows to the

mortal." Nature is so true to herself, that she never doffs her cap to artificial greatness, the *head* may sometimes bend, but the *heart* always holds its place.

We have said that Judge M'Kean was a stern and despotic man; as an instance of it, it is related of him, that while Governeur Morris was addressing him, some remark that he made gave offence to his Honor, who, turning to the counsel, somewhat roughly, commanded him to take his seat. Mr. Morris, who was a man of lofty spirit, replied, "If, sir, you do not wish to hear me, I will cease speaking; but whether I shall *sit* or *stand*, depends upon my own convenience, and I prefer *standing*."

At another time, Mr. Lewis, who was also a firm man, and had, for the most part, great influence with the Court, prefaced a motion which he was about to make, by saying, that the subject was so uncommon, that he scarcely knew in what form to present the application; to which the judge harshly answered, "You have been more than twenty years at the bar, Sir, and if you don't understand how to make a motion, you had better consult your books, and learn."

It need hardly be remarked, whatever may have been his deficiency in civility, that he was a judge of great decision and force of character. During the course of his long judicial life, he never wavered in what his duty seemed to require.

There are many instances exemplifying his inflexi-

bility in the administration of justice, but to refer to them all would be to occupy too much space. Two or three cases will serve to furnish an accurate understanding of his supercilious mode of discharging his official duty.

In 1778, he issued a warrant against Colonel Robert L. Hooper, a deputy quarter-master, charging him with having libelled the magistrates of Pennsylvania, in a letter to Governeur Morris, and commanding the sheriff of Northampton county to bring the colonel before the chief justice at Yorktown. Colonel Hooper waited upon General Greene, at that time next in command to Washington, to know whether the circumstances of the army would allow his absence. General Greene wrote to Chief Justice M'Kean, from Valley Forge encampment, 3d June, 1778, stating that, as the army was just upon the wing, he could not consent to Colonel Hooper being absent, as there was no one to fill his place; and requesting that Hooper might be permitted to enter into a recognizance to appear at any court where he was legally answerable. This letter caused the chief justice to flare up, and produced the following authoritative and peremptory reply:—

"Yorktown, June 9th, 1778.

"SIR:—I have just now received your favor of the 3d instant, and am not a little surprised that the sheriff of Northampton county should have permitted Colonel Robert L. Hooper, after he was

arrested by virtue of my precept, to wait upon *you*, until he had appeared before *me*.

"You say, sir, 'Colonel Hooper waited upon me to communicate his situation, and to know if the circumstances of the army would admit of his absence; but, as the army is just upon the wing, and part of it will, in all probability, march through his district, I could not, without great necessity, consent to his being absent, as there is no other person that can give the necessary aid upon this occasion.'

"I do not think, sir, that the absence, sickness, or even *death* of Mr. Hooper could be attended with such a consequence, that no other person could be found who could give the necessary aid upon this occasion; but what attracts my attention the most, is your observation that *you* cannot, without great necessity, consent to his being absent. As to that, sir, I shall not *ask* your consent, nor that of any other person, in or out of the army, whether *my precept* shall be obeyed or not in Pennsylvania.

"The warrant for the arrest of Mr. Hooper being special, no other magistrate can take cognizance thereof but myself. The mode you propose, of giving bail, cannot be adopted, for many reasons.

"I should be very sorry to find that the execution of criminal law should impede the operations of the army, in any instance; but much more so to find the latter impede the former.

"I am, sir, with much respect,

"Your most obedient, humble servant,

"THOMAS M'KEAN.

"Major-General Greene."

In the case of Respublica v. The Chevalier de Longchamps, he manifests towards the defendant as much severity as he does obsequiousness towards "our great and good ally," the king of France.

The defendant, a count of France, was indicted for having, on the 17th of May, 1784, at the dwelling of the French minister plenipotentiary, in the presence of Francis Barbe Marbois, unlawfully threatened and menaced bodily harm and violence to the person of said Francis Barbe Marbois, he being consul-general of France to the United States, and under the protection of the law of nations and this commonwealth; and that afterwards, on the 19th of May, that he made an assault upon and did strike said Francis Barbe Marbois, in violation of the laws, &c.

The defendant pleaded not guilty.

Under the first count, it was proved that the defendant said to Marbois, "Je vous dishonnerera Poliçon, Coquin;" and repeated the words.

In support of the second count, it appeared that he called Marbois a blackguard, in the public streets, and struck the cane of Marbois, upon which Marbois used his stick with some severity in return. The cause of the attack was the refusal of Marbois to authenticate certain documents for the defendant, who had been an officer in the French army.

The defendant was convicted, and M'Kean, C. J., pronounced the following sentence:—

"You have been guilty of an atrocious violation of the law of nations. You have grossly insulted gentlemen, the peculiar objects of this law, (gentlemen of amiable characters, and highly esteemed

by the government of this State,) in a most wanton and unprovoked manner; and it is now the interest, as well as duty, of the government, to animadvert upon your conduct with a becoming severity; such a severity as may tend to reform yourself, to deter others from the commission of the like crime, preserve the honor of the State, and maintain peace with our great and good ally, and the world.

"A wrong opinion has been entertained concerning the conduct of Lord Chief Justice Holt, and the Court of King's Bench, in England, in the noted case of the Russian ambassador. They detained the offenders after conviction, in prison, from term to term, until the Czar Peter was satisfied, without ever proceeding to judgment; and from this it has been inferred, that the Court doubted whether they could inflict any punishment for an infraction of the law of nations. But this was not the reason. The court never doubted that the law of nations formed part of the law of England, and that a violation of this general law could be punished by them; but no punishment less than death would have been thought by the czar an adequate reparation for the arrest of his ambassador. This punishment they could not inflict, and such a sentence as they could have given he might have thought a fresh insult. Another expedient was therefore fallen upon. However, the princes of the world at this day are more enlightened, and do not require impracticable nor unreasonable reparation for injuries of this kind.

"Upon the whole, the Court, after a most attentive consideration of every circumstance in this case, do award, and direct me to pronounce the following sentence:—

"That you pay a fine of one hundred French crowns to the Commonwealth; that you be imprisoned until the fourth day of July, 1786, which will make a little more than two years imprisonment in the whole; that you then give good security to keep the peace, and be of good behaviour to all public ministers, secretaries to embassies, and consuls, as well as to all the liege people of Pennsylvania, for

the space of seven years, by entering into a recognizance yourself, in one thousand pounds, and two securities in five hundred each; that you pay the costs of this prosecution, and remain committed until this sentence be complied with."

Again, in the case of Respublica v. Oswald,* he showed those stern qualities in a high degree, and they were even rendered more conspicuous, from the contrast presented by the conduct of Judge Bryan, who seemed to have trimmed his sails rather closely to the "popular gale."

The case was this:—On the 12th of July, 1788, Mr. Lewis moved for a rule to show cause, why an attachment should not issue for the publication of a libel by the defendant, during the pending of a suit of Browne v. Oswald. The facts out of which this application arose, stood thus: Oswald having inserted in his newspaper, "The Independent Gazette," several anonymous pieces against the character of Andrew Browne, the master of a female academy in the city of Philadelphia, Browne applied to him, to give up the authors of those pieces, but being refused that satisfaction, he brought an action for libel against Oswald, returnable into the Supreme Court, on the second day of July, and therein demanded bail for £1000. Previously to the return day of the writ, the question of bail being brought, by citation, before Mr. Justice Bryan, at his chambers, the judge, on a full

* 1 Dallas's R., 319.

hearing of the cause of action, in the presence of both the parties, ordered the defendant to be discharged on common bail; and the plaintiff appealed from this order to the Court. Afterwards, on the first day of July, Oswald published, under his own signature, an address to the public, which contained a narrative of these proceedings, the following passages of which were the grounds of this motion:—

"Had Mr. Browne pursued me in this line, without loss of time, agreeably to his lawyer's letter, I should not have supposed it extraordinary; but to arrest me the moment the federal intelligence came to hand, indicated that the commencement of this suit was not so much the child of his own fancy, as it has been probably dictated to and urged on him by others, whose sentiments upon the new constitution have not, in every respect, coincided with mine. In fact, it was my idea in the first progress of the business, that Mr. Browne was merely the hand-maid of some of my enemies among the federalists; and in this class I must rank his great patron, Dr. Rush, (whose brother is a Judge of the Supreme Court.) I think Mr. Browne's conduct has since confirmed the idea beyond a doubt. Enemies I have had in the legal profession, and it may, perhaps, add to the hopes of *malignity*, that this action is instituted in the Supreme Court of Pennsylvania; however, if former prejudices should be found to operate against me on the bench, it is with a jury of my country, properly elected and impannelled, a jury of freemen and independent citizens, I must rest the suit. I have escaped the jaws of persecution through this channel, on certain memorable occasions, and hope I shall never be a sufferer, let the blast of faction blow with all its furies.

"The doctrine of libel being a doctrine incompatible with law and

liberty, and at once destructive of the privileges of a free country, in the communication of our thoughts, has not hitherto gained any footing in Pennsylvania; and the vile measures formerly taken to lay me by the heels on this subject, only brought down obloquy upon the conductors themselves. I may well suppose the same love of liberty yet pervades my fellow-citizens, and that they will not allow the freedom of the press to be violated upon any refined pretence which oppressive ingenuity or courtly study can invent."

Upon this state of facts, after hearing a full discussion from William Lewis, for the motion, and Jonathan Dickenson Sergeant, for the defendant, the Chief Justice observed:

"The counsel, in support of their motion, have argued that this address was intended to prejudice the public mind upon the merits of the cause, by propagating an opinion that Browne was the instrument of a party to persecute and destroy the defendant; that he acted under the particular influence of Dr. Rush, whose brother is judge of this court; and, in short, that from the ancient prejudices of all the judges, the defendant did not stand a chance of a fair trial. Assertions and imputations of this kind are certainly calculated to defeat the administration of justice. Let us therefore inquire, first, whether they ought to be considered as a contempt of court; and, secondly, whether, if so, the offender is punishable by attachment. And here I must be allowed to observe, that libelling is a great crime, whatever sentiment may be entertained by those who live by it. With respect to the heart of a libeller, it is more dark and base than that of an assassin, or than his, who commits a midnight arson. It is true, that I may never discover the wretch who has burned my house or set fire to my barn; but these losses are easily repaired, and bring with them no portion of ignominy or

reproach. But the attacks of the libeller admit not of this consolation; the injuries which are done to character and reputation seldom can be cured, and the most innocent man may, in a moment, be deprived of his good name, upon which perhaps he depends for all the prosperity and all the happiness of his life. To what tribunal can he then resort. It is in vain to object that those who know him will disregard the slander, since the wide circulation of public prints must render it impracticable to apply the antidote as far as the poison has been extended. Nor can it be fairly said, that the same opportunity is given to vindicate, which has been employed to defame him; for many will read the charge who may never see the answer; and while the object of accusation is publicly pointed at, the malicious and malignant author rests in the dishonorable security of an anonymous signature. Where much has been said, something will be believed; and it is one of the many artifices of the libeller to give to his charges an aspect of general support, by changing and multiplying the style and name of his performances. But shall such things be transacted with impunity in a free country, and among an enlightened people? Let every honest man make this appeal to his heart and understanding, and the answer must be—No!

"The true liberty of the press is amply secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society, to inquire into the motives of such publications, and to distinguish between those which are meant for use and reformation, and with an eye solely to the public good, and those merely intended to delude and defame. To the latter description, it is impossible that any good government should afford protection and impunity.

"If, then, the liberty of the press is regulated by any just principle, there can be little doubt that he who attempts to raise a prejudice against his antagonist, in the minds of those who must ultimately determine the dispute between them; who, for that purpose, represents himself as a persecuted man, and asserts that his

judges are influenced by passion and prejudice; wilfully seeks to corrupt the source, and to dishonor the administration of justice: and such evidently was the object and tendency of Mr. Oswald's address to the public.

"Now can that artifice prevail, which insinuates that the decision of this Court will be the effect of personal resentment; for, if it could, every man might evade the punishment due to his offences, by first pouring a torrent of abuse upon his judges, and then asserting that they act from *passion*, because their treatment has been such as would naturally excite resentment in the human disposition. But it must be remembered, that judges discharge their functions under the solemn obligations of an oath; and if their virtue entitles them to their station, they can neither be corrupted by favor to swerve from, nor influenced by fear, to desert their duty. That judge, indeed, who courts popularity by unworthy means, while he weakens his pretensions, diminishes likewise the chance of attaining his object, and he will eventually find that he has sacrificed the substantial blessing of a good conscience, in an idle and visionary pursuit."

Having thus decided the question submitted to the Court, the Chief Justice pronounced the following characteristic sentence:

"Having yesterday considered the charge against you, we are unanimously of the opinion that it amounted to a contempt of the Court. Some doubts were suggested, whether even a contempt of court was punishable by attachment; but not only my brethren and myself, but likewise, all the judges of England, think that, without this power, no court could possibly exist. Nay, that no contempt could indeed be committed against us, we should be so truly contemptible.

"The law upon the subject is of immemorial antiquity, and there

is not any period when it can be said to have ceased or discontinued. On this point, therefore, we entertain no doubt.

"But some difficulty has arisen with respect to your sentence, for on the one hand, we have been informed of your circumstances, and on the other, we have seen your conduct. Your circumstances are small, but your offence is great, and persisted in. Since, however, the question seems to resolve itself into this, whether you shall bend to the law, or the law shall bend to you, it is our duty to determine that the former shall be the case. Upon the whole, therefore, the sentence is, that you pay a fine of £10 to the Commonwealth, be imprisoned for the space of one month, that is, from the fifteenth of July to the fifteenth of August next, and afterwards, until the fine and costs are paid. Sheriff, he is in your custody.*

It is clear, from the style of Chief Justice M'Kean's opinions, that he was a great admirer and imitator of Lord Mansfield, and with whom, at one time, he held an epistolary correspondence. His views seem to have the same frame-work, but while they display more energy, they manifest less judicial dignity and moderation. That he was a great JUDGE, no one will deny; but he had not that enlargement of mind, or scope of attainment, that entitled him to be considered a great *man;* he resembled Holt more than Mansfield. With all the parsimony that has been attributed to Mansfield, it is doubtful whether Judge M'Kean would have

* 1788. 1 Dallas, p. 329. This sentence led to an attempt to impeach the Chief Justice, in the Legislature of Pennsylvania, which was defeated, chiefly by the eloquence of Mr. Lewis.—Vide, Sketch of Mr. Lewis, *post.*

been capable, in his Lordship's circumstances, "when all his valuable property, and invaluable library had been destroyed by a lawless mob," of declining all indemnity from the government. And avoiding all murmurs and complaints, Mansfield brought no action against the Hundred, and when applied to by the House of Commons, through the solicitor of the treasury, for a statement of the value of his property destroyed by the Gordon mob, he simply replied:

"How great soever the loss may be, I think it does not become me to claim or expect reparation from the State. I have made up my mind to my misfortune, as I ought, with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damages I have sustained, it might seem a claim, or expectation of being indemnified. Therefore you will have no further trouble on the subject, from

"MANSFIELD."

The only allusion subsequently made by him, in regard to his irreparable loss, was contained in his speech, vindicating the employment of the military in the suppression of the mob:—

"The noble Duke who last addressed the House, mistakes, in supposing that the employment of the military to suppress the late riots, proceeded from an extraordinary exertion of the royal prerogative, and in his inference, that we were living under martial law, I hold

that his Majesty acted perfectly and strictly in accordance with the common law of the land and the principles of the Constitution, and I will give you my reasons within as short a compass as possible. I have not consulted books, INDEED I HAVE NO BOOKS TO CONSULT!"*

But to return from this episode. It happened, upon one occasion, while the Supreme Court was holding an important session, during a period of great political and public excitement, a large assemblage of persons, and a consequent tumult, occurred, in the immediate vicinity of the court room, and interfered materially with the transaction of business. The Chief Justice sent for the sheriff, and directed him immediately to suppress the riot. The sheriff soon after returned and declared his inability to do so. "Why, sir," said the Chief Justice, "do you not summon your posse to your aid?" "I *have* summoned them," was the reply, "but they are totally inefficient, and the mob disregard them." "Why do you not summon

* Cowper thus refers to his Lordship's lamented loss, in a vein rather more complimentary than poetical:—

"O'er Murray's loss the Muses wept;
They felt the rude alarm;
Yet blest the guardian care that kept
His sacred head from harm.

"The lawless herd, with fury blind,
Have done him cruel wrong;
The flowers are gone, but still we find
The honey on his tongue."

ME?" said the Chief Justice. The sheriff, looking somewhat confused for a time at this direct appeal, at length said: "Well, sir, I DO summon you;" whereupon the Chief Justice immediately left the bench, proceeded to the scene of disorder, and seizing two of the ringleaders, placed them in custody, which, together with the influence of his standing and authority, at once restored matters to peace.

We do not vouch for the correctness of this statement, although it comes from a respectable source, we are somewhat led to doubt it, from the fact that a similar anecdote is related of Lord Chief Justice Holt, whom, indeed, in many respects Chief Justice M'Kean strongly resembled; his model, as we observed, was Mansfield, but difference of temper spoiled the copy.

Holt, it seems, always entertained the impression that the military of England—contrary to the views of Lord Mansfield—could only be legitimately employed against a foreign enemy, and that tumults in the community were to be suppressed by the civil power alone. Upon being required, on one occasion, by the government, through a military officer, to countenance the soldiers in an attempt to put down a dangerous riot, "Return, sir," said his Lordship, "to those who sent you, and tell them that no officer of mine shall accompany soldiers; the laws of the kingdom are not to be executed by the sword. This affair belongs to the civil authority, and soldiers have nothing to do

here." He then ordered his tip-staves and constables to follow him to the scene of outrage and tumult, where the populace, upon his assurance that, if they had suffered wrong, they should have full justice, peaceably dispersed.* This story is also considered somewhat apocryphal, but certain it is, that the same Chief Justice did, in his proper person, with the aid of his court attendants, disperse a riotous assembly at Holborn. This, however, we are told, was not so remarkable, as such had been the practice of the Chief Justices of the King's Bench, from the earliest times down to that period.

During M'Kean's second term of office as governor of Pennsylvania—for he was thrice elected—a committee, consisting of Duane, Lieper, and others were appointed by a town meeting to wait upon him, to inform him that the democracy of Philadelphia were utterly opposed to the nomination of William Tilghman as chief justice of Pennsylvania. The committee were introduced into the executive apartments, and the governor received them in his civil but reserved and aristocratic manner, treating them simply as his constituents; when, however, they announced themselves as the representatives from the democratic party—the sovereign people—he bowed most profoundly, and inquired of them what the great democracy of Philadelphia

* Lord Campbell's life of Chief Justice Holt.

required of him. They proceeded, and stated the purposes of their delegation, and in pretty plain terms gave him to understand that the appointment of Mr. Tilghman would never meet the approval of the democratic party. "Indeed!" said the governor. "Inform your constituents that I bow with submission to the will of the great democracy of Philadelphia; but by G—d, William Tilghman *shall be* chief justice of Pennsylvania."

The governor having vetoed what was deemed an important bill, passed by the legislature, a committee of three of that body was appointed to wait upon his excellency, to remonstrate with him, and to urge the reconsideration of the veto. He received them with his accustomed dignified politeness, and after they had explained the object of their mission, apparently without noticing their communication, he deliberately took out his watch, and handing it to the chairman, said, "Pray, Sir, look at my watch; she has been out of order for some time; will you be pleased to put her to rights." "Sir," replied the chairman, with some surprise, "I am no watchmaker; I am a carpenter." The watch was then handed to the other members of the committee, both of whom declined, one being a currier, the other a bricklayer. "Well," said the governor, "this is truly strange! Any watchmaker's apprentice can repair that watch; it is a simple piece of mechanism, and yet you can't do it! The law, gentlemen, is a

science of great difficulty and endless complication; it requires a life time to understand it. I have bestowed a quarter of a century upon it; yet *you*, who can't mend this little watch, become *lawyers all at once*, and presume to instruct me in my duty." Of course, the committee vanished, and left the governor "alone in his glory."

In 1806, when the House of Representatives of the State of Pennsylvania sent an address to Governor M'Kean, requesting the removal of Judge Breckenridge, the request was utterly refused. The committee attempted to remonstrate with him, stating that the term "*may* remove," in the constitution, meant *must* remove. To which he promptly answered, that he would have them to know, that *may* sometimes meant *wont*.

He would at times, though very rarely, lay aside the rigidity and sternness of his manner, and adopt a familiarity and cordiality that, in the general, were foreign from his disposition. A very worthy man* applied to him for a commission as justice of the peace, but stated very frankly that he had no certificates or backers. "Never mind," said the governor, "I require none; and if any one should ask you how you got the appointment, tell him Thomas M'Kean recommended you, and the governor appointed you," and yet, even

* John Goodman, of the Northern Liberties.

in this, and in similar instances of kindness, it will be perceived, that he exulted more in his own *power*, than in the *benefit* conferred upon others.

On the twenty-sixth of September, 1781, he received from Princeton college, the diploma of Doctor of Laws, and the next year a similar honor from Dartmouth, New Hampshire. On the thirty-first of October, 1785, he was elected a member of the Cincinnati. He also became a trustee of the University of Pennsylvania, and the patron of various political, and philanthropic societies. He was twice married; first in 1762, to Mary, the eldest daughter of Joseph Borden, of Bordentown, New Jersey, who died in 1773; secondly, in September, 1774, to Sarah Armitage, of New Castle, Delaware. By the first wife he had two sons and four daughters, and by the second, five children, none of whom are now living; and most of whom were survived by their illustrious father.

At length, on the twenty-fourth of June, 1817, at the age of eighty-three, he sunk, like "mellowed fruit, to the earth." He died—and all that was mortal of him, was deposited in the burial-ground of the first Presbyterian church, in Market street above Second, in the city of Philadelphia.

Governor M'Kean was a tall, stately, and—notwithstanding his great age—erect person. He usually wore a cocked hat, carried a gold-headed cane, and walked, even to the close of his life, though with a somewhat

tottering step, with great apparent dignity and pride. His courtesy always displayed as much selfishness as suavity, he generally moved through the streets alone, and apparently much absorbed in his reflections. As is known, he was one of the signers of the Declaration of Independence, and if we may use the phrase—which we do in all respect and kindness—he was an actual impersonation, a practical living, walking emblem and memento of that Declaration. Apparently, the two proudest men the city ever beheld—and to be sure they had much to be proud of—were our present venerable subject, and his son-in-law, the Marquis de CasaYrujo, the ambassador of Spain, the father of the lamented Duke of Soto Major, whose melancholy and untimely death recently occurred at Madrid.*

In contemplating the career of Governor, or Chief Justice M'Kean, (who, apart from scanty instruction received in early life, from the Reverend Francis Allison, his preceptor, had but few opportunities of obtaining literary instruction,) we are astonished at the force and expansion of his native genius, even unaided, as it was, by the advantages of a liberal

* This amiable and accomplished nobleman was born in Philadelphia, and upon his father's death, succeeded to the title of Marquis. He afterwards married the Duchess of Soto Major, and, under the laws of Spain, (differing from those of England,) assumed his wife's title. He was ambassador from Spain to England and to France, and ranked highly as an honorable and skilful diplomatist.

education. In this respect he strongly resembled William Lewis. In mere intellectual power, they were equal, if not superior, to most of their cotemporaries; but having unassisted, as it were, elevated themselves upon the ladder of ambition, above the masses, with a natural, but not commendable spirit, they held the courtesies and amenities of life as matters of comparative indifference. They became reserved, haughty, and sometimes overbearing; and from being in advance of those who had enjoyed greater advantages or opportunities, they assumed superiority over those who, with equal native capacity, had been benefited and improved by all the charms, embellishments, and appliances of a refined education.

Competition and equality subdue pride. They impart to us the salutary lesson, that talents, after all, are not so unequally distributed as may by some be supposed; that with equal chances and equal labour men attain equal eminence, when their efforts are judiciously directed; if not in the same departments of life, yet in others of equal utility. This conviction should teach us all, becoming modesty and humility.

Vanity may sometimes attend upon true greatness, but pride—never. Vanity is often the stimulus to great achievements; pride is only their substitute. Pride walks alone through life in assumed self-dependence; vanity lives and breathes only in a crowd. Pride appeals from others to itself; vanity

appeals from itself to others. There is little in this life to encourage either, but the latter is the less exceptionable of the two.* But suggesting, rather than pursuing these reflections, pass we now to Bushrod Washington, an Associate Justice of the Supreme Court of the United States; a model judge, the idol of the bar, and the glory of the American bench.

* As a general thing, it has been well remarked—though certainly not applicable in the present instance—that "your would-be dignified men are great blockheads; they carry themselves loftily and keep at a distance, that their ignorance may not be detected. Men are like ships, the more they contain, the lower they carry their head." There are, to be sure, many illustrious instances to the contrary; Lord Chatham, Lord Erskine, and Mr. Pinckney—but the display for which they were remarkable, arose rather from inordinate vanity, than pride. This was also the besetting sin of Hortensius. He was so devoted to dress and to theatrical gesticulation, that he was accused of having derived a fondness for both from a close study of Roscius, at that time the most distinguished of all the dramatic performers in Rome. But, upon the contrary, it turned out upon investigation, that, instead of he borrowing from Roscius, the latter regularly attended the forum, for the purpose of imitating Hortensius!

CHAPTER V.

BUSHROD WASHINGTON.

WASHINGTON—the proudest and brightest name in the annals of our country—was preceded by James Wilson, James Iredell, William Patterson, and Samuel Chase, in the order in which they are named, as Justices of the Supreme Court of the United States; all of whom, separately, presided from time to time (in the spring and fall of the year,) in the United States Circuit Courts for the district of Pennsylvania. A brief notice of those eminent men, is all that is required, as an introduction to their *more* eminent successor.

Judge Wilson, for many years prior to his appointment, had been a powerful advocate at the Philadelphia bar; but his reputation on the bench, as we are told, was inferior to his fame as an advocate. He held his judicial post, however, from the twenty-ninth of

September, 1789, until 1798, when death relieved him from his official duties.

Judge Iredell was appointed in 1790, and occupied the bench until 1799, when he died, universally esteemed and regretted. William Patterson, of New Jersey, is described as an excellent lawyer, a man of great moral and mental worth, and of extraordinary judicial patience and propriety. He was appointed in 1793, and died in 1806. Samuel Chase, of Maryland, one of the signers of the Declaration of Independence, a man of ripe legal learning, but of a lofty and most despotic spirit, became an associate justice in the year 1796.

Judge Chase appears never to have been in much favor with the *Philadelphia bar*, although its members all united in ascribing to him abilities of no common order. We have spoken of the Philadelphia bar, which may be said at that period, to have virtually embraced the bar of the whole country. Philadelphia was then, let it be remembered, the centre of the Union and the seat of the general government; all the rays of society—science and intelligence—centred upon her; she was the very cynosure of the nation. Yet, with all the competition of learning and accomplishment that this condition of things naturally involved, the legal profession here, always maintained its supremacy; and the glory then acquired—even now, in its departing beams, still fur-

nishes some faint idea of its meridian brightness and fulness.

He must, indeed, have been a proud man, though adorned with high official honors, that even in fancy could elevate himself above such a bar as then graced our courts; and he must have been a bold and presumptuous man, that could hope to overawe it. Judge Chase attempted *both*, and failed in *both;* and by overreaching his legitimate rights, diminished his power. An infant might win such a bar, but a giant could not control it. They stood as one man, with as firm and as pure a purpose as animated their ancestors, who shook off the yoke of foreign oppression and bartered blood for liberty. If the bar should always thus prove faithful to themselves, no court could ever encroach upon their privileges with impunity.

From the moment Judge Chase took his seat, it was obvious, that he had either mistaken himself or those around him. Civility was an essential integral part of the profession; it was extended to all—it was expected from all. It may well be conceived, therefore, what was the surprise experienced by one of the mildest, most pious, and most exemplary men of the time to which we refer, and to whose recollection we owe the anecdote—upon entering the Circuit Court room where Judge Chase presided—to be made a witness to the following discreditable occurrence.

An important case was before the Court, in which a

learned gentleman by the name of Samuel Leake, from Trenton, (in an adjoining State,) was engaged. Mr. Leake was remarkable, generally, for the number of authorities to which he referred, and upon this occasion he had brought a considerable portion of his library into court, and was arranging the books upon the table at the time the judge took his seat; when the following laconic colloquy took place :—

Judge Chase.—"What have you got there, sir?"
Leake.—"My books, sir."
Chase.—"What for?"
Leake.—"To cite my authorities."
Chase.—"To whom?"
Leake.—"To your Honor."
Chase.—"I'll be d—d if you do."

Not a great while after this came on the indictment of Fries, for treason against the United States. Judge Chase and his associate, Judge Peters, held the court; Mr. Rawle was the district-attorney, Mr. Lewis and Mr. Dallas represented the prisoner. Immediately upon the jury being sworn, contrary to all usage, and all propriety, without having heard any portion of the case, the judge submitted in writing, the law, as he intended to lay it down in his charge to the jury. Judge Peters, who knew the Philadelphia bar perfectly well, having told him—to use his own language—that "the bar would certainly take the stud, if that course were attempted."

Nevertheless, Judge Chase handed down his opinion to Mr. Lewis, who refused to receive it, declaring, at the same time, that "his hand should never be contaminated by touching a pre-judged opinion." This led to great embarrassment and difficulty, the judge persisted in his purpose, Mr. Lewis and Mr. Dallas withdrew from the defence, and Mr. Rawle, the district-attorney, was condemned, with great pain to himself, to prosecute for an offence involving life, when the prisoner was undefended. This trial, if it may be so called, resulted in a conviction, and finally led to the impeachment of Chase in 1805, before the Senate of the United States. All the proceedings are fully set forth in the report of the trial and impeachment, published at the time.

The judge was acquitted, and Fries pardoned.

With all these objections to Judge Chase, however, there is a feature in his life that at least shows he was a man of kind feeling, and perfectly sensible to the influence of gratitude.

Shortly after the impeachment referred to before the Senate of the United States, in which Luther Martin made one of his ablest speeches, he (Martin) was engaged in the Circuit Court of the United States for the District of Maryland. It was the infirmity of that great man, at least towards the latter part of his professional life, to indulge in an excess of drinking, which, while it impaired his faculties, rendered him somewhat irritable, and at times offensive in his deportment to-

wards the Court. Bearing in mind the great service he had rendered Justice Chase; while in his cups, he probably presumed upon it. However this may be, upon the occasion mentioned, he repeatedly treated the opinions of the judges with obvious disrespect, until at last he was given to understand that his conduct could be tolerated no longer. This intimation had no effect, and finally the district judge drew out a formal commitment for contempt, and handed it to the circuit judge for signature. Judge Chase, as has been observed, was an able judge, and as arbitrary as he was able; but when the paper was handed to him, gratefully remembering the service which he had received from Martin, after having taken the pen to sign the commitment, he impulsively threw it away, exclaiming, "Whatever may be my duties as a judge, Samuel Chase can never sign a commitment against Luther Martin."

But this distinguished judge was as bitter in his resentments as he was grateful for benefits; and it was understood that he never forgave Moses Levy for the part taken by him in relation to the "impeachment;" and his feelings were manifested in the following way. While Judge Chase sat in the Delaware district, Mr. Levy, being personally interested in a case before him, made an application to postpone the cause, filing his affidavit, in which he swore to certain matters of fact and law, that rendered the postponement neces-

sary. "Very well, Mr. Levy," said the judge, in a manner as cold and pointed as an icicle, "the case must of course be postponed; and, indeed, the court is much indebted to Mr. Levy for his affidavit, for he has sworn to some points of law, of which, I confess, I have always had very considerable doubt."

Judge Chase died the nineteenth of June, 1811, at the age of seventy—born in 1741.

But we have dwelt—though briefly and cursorily—longer than we purposed upon the earlier members of the United States Circuit Court for the Third District. We come now to our especial subject.

BUSHROD WASHINGTON, L.L.D.,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.
BORN, 1761—DIED, 1829.

Perhaps the greatest Nisi Prius judge that the world has known, without even excepting Chief Justice Holt or Lord Mansfield, was the late Justice Washington. It was impossible to conceive of a better judicial manner; and when to that is added great legal acquirement, great perspicuity and promptitude, great mildness, exemplary self-possession, and inflexible courage, all

crowned by an honesty of purpose that was never questioned; he may be said, in the estimation of the bar and the entire country, to have stood among the judiciary, as par excellence, "THE JUDGE." And yet, we have heard it remarked by a most eminent belles-lettre scholar, that Judge Washington's literary reading was so limited that it was questionable whether he even knew who was the author of Macbeth. Lord Tenterden, we are told, did not know the author of Hamlet. Lord Holt and Lord Kenyon were certainly not remarkable for classical attainments; and there is no evidence on record of any distinguished judicial functionary, who was conspicuous for his knowledge of general literature. The law is a jealous mistress, and will bear no rivalry either from the Graces or the Muses, as Blackstone has shown. To know your own peculiar duties well, and to discharge them faithfully, is infinitely better than by too many pursuits—too much diffusion—to waste or misdirect the powers of the mind. It is related of Dr. Par, that when a gentleman complained to him of having too many irons in the fire, that is, being too variously engaged, the learned pundit replied, "That is a great mistake; put them *all* in, tongs, poker, and all." This may, in some rare instances, perhaps, answer pretty well; but it not unfrequently happens, that those who adopt this philosophy, sooner or later *burn* their fingers.

Judge Washington concentrated all his mind and

learning upon one great object—the faithful discharge of his official duties, and thereby avoided the annoyance and distraction, if he lost the distinction, of diversified learning. He was a classical scholar, of great early promise, but was never elevated to office by his uncle, (the Father of his country,) who studiously avoided every imputation of undue partiality to his kinsmen. President Adams, however, upon succeeding to the post of Chief Magistrate of the Union, in the year 1798, conferred upon Bushrod Washington, still a young man, being only thirty-seven years old, the appointment of Associate Judge of the Supreme Court of the United States. This appointment, and that which speedily followed, the Chief Justiceship of JOHN MARSHALL, were enough in themselves to secure a lasting obligation of the country, to the appointing power.

Upon Washington's appointment, he entered at once upon his duties, and continued to perform them with punctuality, fidelity, and distinguished ability, to the close of his valuable life, which occurred in the city of Philadelphia, on the twenty-sixth day of November, 1829.

The members of the Philadelphia bar, in commemoration of his worth, placed over the judgment seat, where he had so long presided, a marble tablet, the inscription upon which, was furnished by Joseph R. Ingersoll and Joseph Hopkinson, two of the most prominent and eloquent members of the bar. We must

not withhold this two-fold tribute to the virtues of the departed, and the gratitude of the survivors.

INSCRIPTION.

THIS TABLET
records the affection and respect of the members of the
Philadelphia Bar,
for
BUSHROD WASHINGTON,
an Associate Justice of the Supreme Court of the United States;
alike distinguished for simplicity of manners
and purity of heart;
fearless, dignified, and enlightened as a judge,
no influence or interest could touch his integrity
or bias his judgment;
a zealous PATRIOT and a pious CHRISTIAN.
He died at Philadelphia, on the 26th of November, A. D. 1829,
leaving to his professional brethren a spotless fame,
and to his country
the learning, labor, and wisdom of a long judicial life.

Judge Washington was a man of about five feet six inches high, with a finely-chiselled, feminine face, and of a slender and feeble frame, though not deficient in activity. His eyes were black, his hair brown, tinged with gray; his forehead expansive, and marked with thought, and his whole bearing indicating the most perfect modesty, gravity, and dignity. He rarely smiled, but his smile was as artless as that of an infant. He never held conversations upon the bench or in the court

room. The moment he entered the temple of justice, he was every inch a judge.

During a trial he took but few notes, but kept his eye fixed upon the witness and counsel. He never addressed the audience, nor seemed to know they were present. We never knew him to speak even to the crier, but once, and that was upon an occasion when the court room being very much crowded, the proceedings were somewhat interrupted. The crier bellowed silence, over and over again, when the judge, turning towards him in the most composed and quiet way, said: "Mr. ——, it seems to me, that you make much more noise than you suppress, and if I should have occasion to speak again upon the subject, it will be to your *successor*." This rebuke at once restored matters to their propriety. But the taciturnity of the Circuit Court judge had always been too common, to render the silence of Judge Washington so remarkable; for Judge Patterson is well remembered to have tried a case that lasted seventeen days, and without ever asking a question.

Before Judge Washington, no just cause could fail; no artifice succeed, whatever might be the talent of its advocate. The judge had no partialities, no prejudices, no sectional or party bias. The proudest man was awed, and the humblest man was sustained before him. He encouraged the weak and repressed the powerful. To the young and the inexperienced members of the bar, he was always attentive and indulgent; he listened to

them with great patience and with marked courtesy. As an instance of this, I recollect, shortly after I was admitted to the bar, having been concerned in the case of Zelin & Rhoads v. Governor Snyder, Mr. Binney and Mr. Rawle being my colleagues, and Messrs. Bellas, Chauncey and Kittera, representing the defendant. It was an important ejectment for a large tract of land. As junior counsel, it became my duty to open it, which was done; but upon turning round to call the witnesses, who were present when I commenced my speech, to my astonishment they had all disappeared; they were necessary to prove the possession of the defendant. Here was a dilemma, as I thought, —perhaps erroneously—produced by the management of the adverse party. I at once stated the difficulty to the Court; Judge Washington, who appeared to understand it as I did, replied in the kindest way, "We will wait a moment, sir, perhaps they will return." After waiting about ten minutes, which seemed to me like an hour, he turned towards me, and said: "I believe the case must go on." In my extremity I called upon Mr. Bellas, one of the opposite counsel, who, living in the vicinity of the *locus in quo*, I presumed must be acquainted with the subject. The counsel objected to being sworn, on the ground that he was not bound to disclose what might injuriously affect his client. "Why not?" replied the judge, with more than usual fire in his eye, "you are not asked to

state anything confided to you by your client; but the relation of client and counsel, does not impart to the counsel any exemption from the obligation to testify to what he independently knows; if you know, therefore, you must state who was in possession of the land. Were it otherwise, when a member of the bar has knowledge of a fact important for the case of one party, it would only be requisite for the other party to employ him, and thereby defeat the purposes of justice—let him be sworn."

There was one occurrence, and only one, that is known, indicating undue excitement on the part of the judge. The Honorable Richard Peters was the District Judge of the United States, for Pennsylvania; he was a man of great honesty of purpose and infinite wit, but certainly not a profound lawyer; and as often happens, with those of confined views, he had rather loose notions of equity; instead of considering it, as Blackstone does, as that rule, whereby the defects of the law arising from its universality were remedied, he looked upon it as a matter of abstract justice. With these opinions, he not unfrequently somewhat crossed Judge Washington in his views, and no doubt this course, long continued, rendered the Circuit Judge unusually sensitive. Upon one occasion, when a case was presented to the Court, in which the construction of the law bore with some hardship upon the defendant, and Judge Washington decided accordingly, Judge

Peters was overheard to say, "That may be law, but I am sure it is not equity." "Equity!" replied his learned brother, "What's equity? d—n equity."

During the argument of the case of Sinnickson's Will, before the Circuit Court at Trenton, New Jersey, in the year 1822, although but shortly after my admission, I attended the court regularly, and dined with the older and more distinguished members of the bar, at Bispham's hotel; among those at our table, were Richard Stockton, William Griffith, and other eminent men, and to my surprise, Judge Washington, himself, formed one of the company, which was certainly contrary to his usage in any other part of his circuit. Upon these occasions he showed great discretion, modesty and cheerfulness, and at least, furnished one instance of his courage and humanity, which should never be forgotten, and which shall be related in its order.

Mr. Stockton, who was a man of great intellectual power, and whose frankness sometimes overstepped some of the modern refinements, generally took the lead in conversation. Washington started no subjects, but simply answered, when appealed to. The first topic was the arrival of the Spanish ambassador, Don Vives. "I am informed," said S., "that he cannot speak or write a word of English. How is that?" "I don't know," said the Judge, "but if that is the case, he is in an awkward condition, for Mr. Adams, (the Secretary of State,) will not allow him

much time to learn the language." From this, they passed to Mr. Middleton's Russian mission; the salaries and private fortunes of ministers, &c., and lastly, to the United States Supreme Court and the limitation of the judicial tenure in New York. "I have great admiration," said Stockton, "for Chancellor Kent; he is undoubtedly one of the ablest men of our time —what an absurdity to displace him by legislative enactment, and thereby deprive the State and the country of the benefits of his great legal learning and experience, at the very period when they would be most useful. Now, if Chief Justice Marshall should die, which heaven forbid, what a reproach would it not be to New York, if Chancellor Kent should be appointed to his place; nothing would rejoice me more. I tremble at the thought of a mere political appointment to the Supreme Court, the anchor of our hopes."

This struck me as a rough remark, as addressed to Judge Washington, who—at least at Nisi Prius—was equal to either of them as a judge; but he simply smiled an approval of the sentiment, and the theme was changed. Mr. Stockton again addressed him, saying, "I have known you and Griffith here, man and boy, for over thirty years, and there are about half a dozen men whom I should like to see together with you, at my table—yourselves, of course; Sitgreaves, of Easton; Gaston, of North Carolina; and Dessaussure, of South Carolina." The colloquists then joined in discussing

the position and abilities of the persons referred to; when, passing from that subject, Mr. Stockton inquired, "Have you seen the account of the melancholy position in which Governor Desha, of Kentucky, has been placed by the crime of his son?" "It is a sad affair," said the Judge. "But," rejoined Stockton, "the worst of it is, that the son, having been convicted, the Governor, his father, must now decide between signing the death-warrant or a pardon." "And that, you consider a difficulty?" said the Judge. "Certainly," replied the interlocutor; "Why, I would like to know, now, what you, an upright, impartial, and inflexible judge, would do in such a case?" "*Do!*" was the reply; "Do you doubt, Mr. Stockton, what I would do?" his eye sparkling, and his little figure expanding by the side of his gigantic friend; "why, sir, I would PARDON HIM AT ONCE; the time has long gone by, when it was deemed either natural or honorable to play the Roman father."

Such were the sentiments of a man who never was a father, but who spoke from his own magnanimous and heroic feelings. It was the same generous emotion that swayed his immortal uncle, in his sympathies for the unhappy Andre; the merciful effect of which sympathies nothing could have prevented, but the imperative demands of devoted patriotism.

It is not my province to invade the sanctity of domestic life, even to witness its virtues; but I cannot

but notice the tenderness and self-sacrificing spirit of Judge Washington, as manifested towards his wife.

Mrs. Washington was an accomplished woman, but of a highly excitable and nervous temperament. She never was happy in the absence of her husband, and, therefore, with the exception of the time when he was compelled to be in court, his hours were invariably spent with her. For some years after his appointment, say until 1810, before her infirmity became confirmed, he entered into social and convivial parties, and shared fully in their enjoyments; but the moment he found that even his temporary absence disturbed his wife, he abandoned those scenes entirely, and from thenceforth, apart from his imperative official obligation, he seemed to live alone for her. The moment the clock struck three, the hour of adjournment, he passed immediately to his lodgings, and remained there until next morning at ten o'clock, the hour of meeting. During the intervals of official labor he read to her, conversed with her, and consoled her in all her actual or imaginary sufferings, and, in short, seemed to consider it a matter of happiness, as well as duty, to contribute to the gratification of all her caprices.

Even towards the close of life, when the facilities of travel were much improved, Mrs. Washington, who had a great terror of railroads or steamboats, always insisted upon accompanying her husband upon his circuit. The consequence was, that he was condemned twice a year

to the tedious journey from Mount Vernon to Philadelphia, Trenton, and Pittsburg, in his own carriage and with his own servants, a matter of serious delay and inconvenience. Still he never complained, and if he were to speak of it in her presence, it was rather in a sportive than repining spirit. She became thus so almost identified with him, that she survived him but twenty-four hours. He died on the 26th of November, 1829, and his wife died suddenly next day, on the road near Philadelphia, while following his remains to Mount Vernon.

The conjugal relations of Chief Justice Marshall somewhat resembled those of Judge Washington, and their friendship and affection towards the aged and excellent partners of their bosoms were alike. Mrs. Marshall was also subject to serious nervous affections, which at times rendered her particularly irritable and whimsical, and taxed the forbearance and patience of her husband to the utmost. This great and good man, however, humored her in every possible way, and soothed her with the most constant and inexhaustible tenderness.

Judge Marshall resided near the Hill, in Richmond, and it so happened, that a miller resided in the same place above him. The miller had a mill some distance below the house of the Chief Justice, which he visited every morning before day-break, upon horseback, making no inconsiderable noise, with the clattering of his horse along the pavement. Mrs. Marshall

declared that this disturbed her morning rest, and would be the death of her, and with an overrated notion of the power of a Chief Justice, she called upon her husband to put an end to this annoyance, and to punish its author. "I have no power to punish," said this admirable man, "and perhaps I have not even the right to complain of a man in the regular pursuit of his own calling, but I will see what can be done." Accordingly, he called the next day upon the miller, praised his horse—asked if he would sell him—the price, &c. The price was a high one, but he became the purchaser; yet before closing the purchase he said to the vendor, that he desired to make it part of the contract that—as he (the miller,) might get another horse—in future, he would visit his mill by the back road, and not pass by way of the street. This was agreed upon, and all parties were satisfied.

Judge Washington was as brave as he was modest, and as *prudent* as his uncle. Of himself, apart from his being affined to the greatest man that "ever lived in the tide of time," he would have been an object of respect and veneration; but still it cannot be denied, that the beloved name of Washington cast a halo around his brows, and while at the same time that it gave an earnest of a godlike nature, exercised an influence over the public opinion, too sacred to be lightly disregarded or invaded. He would have given glory to any name—but that name around which the hearts of

a nation clung, was sufficient to reflect and impart additional glory, even upon the rarest and highest worldly distinctions. Added to this, known as it was, that the judge was the favorite relative of a man, who never misplaced his favors or affections, it is scarcely possible to conceive of any prestiges or auspices more favorable than those which he enjoyed. How he justified and fulfilled them all, all who knew him must know; and one who knew him well, as a lawyer, and who was himself an eminent judge, has justly portrayed his character in the following eloquent and graceful tribute to his memory. It is so much better than any thing we could say, as to require no apology for its introduction; it would rather require an apology for its omission.

Judge Hopkinson thus speaks of him, in a discourse delivered a short time after his decease:—

"Few, very few men, who have been distinguished on the judgment seat of the law, have possessed higher qualifications, natural and acquired, for the station, than Judge Washington. And this is equally true, whether we look to the illustrious individuals who have graced the Courts of the United States, or extend the view to the country from which so much of our judicial knowledge has been derived. He was wise, as well as learned; sagacious and searching in the pursuit and discovery of truth, and faithful to it beyond the touch of corruption, or the diffidence of fear: he was cautious, considerate, and slow in forming a judgment, and steady, but not obstinate, in his adherence to it. No man was more willing to listen to

an argument against his opinion; to receive it with candor, or to yield to it with more manliness, if it convinced him of an error. He was too honest and too proud, to surrender himself to the undue influence of any man, the menaces of any power, or the seductions of any interest; but he was as tractable as humility, to the force of truth; as obedient as filial duty, to the voice of reason. When he gave up an opinion, he did it not grudgingly, or with reluctant qualifications and saving explanations; it was abandoned at once, and he rejoiced more than any one, at his escape from it. It is only a mind conscious of its strength, and governed by the highest principles of integrity, that can make such sacrifices, not only without any feeling of humiliation, but with unaffected satisfaction."

During a trial, in which eminent counsel were concerned—the case of the Atlantic—after the charge of the learned Judge, in placing certain documents before the jury, a difference arose between the opposing counsel, which led to expressions of some harshness, and appeared to tend to something like an open rupture. For a moment, Judge Washington supposing it would pass over, seemed to take no notice of it, but as the altercation increased in violence, he placidly and mildly turned to the counsel and said, in a subdued voice: "Gentlemen, Philadelphia is celebrated throughout the Union, for the talents and courtesy of its bar; I trust, nay, I know, that you would be unwilling to be considered exceptions to that character." All difficulty was at once over, and the Court pursued its business as if nothing had occurred.

One morning at the Circuit Court, (at that time holding its session in Independence Hall,) in the midst of an important cause, a gentleman of the first eminence at the bar, *rushed*, rather than *walked*, into court, and in a loud voice appealed to Judge Washington and all the bar and suitors, to accompany him at once to the Centre Square, where he desired to address them upon the attempted overthrow of the American Republic, by the influence of foreign governments and domestic traitors, through their emissaries amongst us. He spoke for a few minutes, and then seizing his hat, with intense excitement rushed into the street. He was a great favorite with the bench and the bar; every one of his legal brethren seemed utterly appalled. The only individual unmoved was Washington, he comprehended the whole matter at a glance; he listened to the speaker with his customary attention, turned to his associate apparently to consult, as though the address were nothing unusual; and upon his departure simply looking to the bar, directed the case—which was upon trial, and which had been thus unhappily interrupted—to proceed, as though nothing extraordinary had happened.

During the trial of Lieutenant Hand, of the United States Navy, for an attack upon the house of M. Dashkoff, the Russian minister, several foreign ambassadors were present; some of them as witnesses. Among them was Don Onis, the minister of Spain. At his

request, Mr. Alexander James Dallas, at that time District-attorney for the United States, mentioned publicly to the Judge, that Don Onis was in attendance, but not in compliance with a subpœna that had been issued. "It is well," replied the Judge; "since he is *here*, Mr. Dallas, it is scarcely worth while, by inquiring *how*, to agitate a national question—let the case proceed."

In a cause of great magnitude, in which the law was somewhat counter to the prejudice or sympathy of the case, the court laid down the legal principles boldly and conclusively, but after being out a short time, the jury gave a verdict directly *against* the charge. Mr. Chauncey rose to move for a rule for a new trial. "Take your rule," said the judge; "but all argument is unnecessary. I set aside the verdict."

But, while he was thus resolute in regard to the law, only show him that he had stated a fact too strongly for one party or the other, or had omitted any portion of the evidence that was essential to a just view of the case, and he was just as prompt to afford relief or redress—holding it, in the language of Lord Mansfield, to be more magnanimous to retract when wrong, than to persist in error.

When he delivered a charge, it was not in the form of a written opinion, but of a speech, with his eye fixed upon the jury. His language was simple. He covered every topic that belonged to him as a judge, and

avoided everything like encroachments upon the just privileges of the jury. Perhaps he was the only judge whose integrity was never doubted by any man; and the only judge who, in the entire consciousness of his own unswerving rectitude, would not have regarded the doubts or the reproaches of the whole world.

In laying down the law, or in the explanations of its technical terms, he was unequalled. I give but a single instance of the latter, as *instar omnes*. In the case of Murray v. Dupont, 3 Washington C. Court Reports, page 37, which was an action for malicious prosecution, in which the probable cause was as usual the turning point, he gives, in a few words, a definition which no words can improve. "Probable cause," says the judge, "is a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves, to warrant a cautious man in the belief, that the person accused is guilty, of the offence with which he stands charged."

His courage was equal to his justice. Unlike those judges who talk like Cæsar, while they tremble in their shoes, Washington did not seem to be sensible to fear, yet he was the last person to say so. He never spoke of fear, because he never knew it; and courage, so far from being a matter of boast, was, with him, but another word for duty. Yet with all these great qualities, he was so modest and unpretending, that the encomium passed by Governor Dinwiddie

upon General Washington, in his youth, "Your modesty is only equalled by your merit," was equally applicable to his nephew. His whole life was a practical exemplification of his lofty moral feeling; and it would seem, therefore, to be unnecessary to invoke special instances of the humility and grandeur—moderation and magnanimity of his character. But there is one case—a perilous case—in which the qualities to which we have referred were eminently displayed. We refer to the case of the United States v. Michael Bright,* with a brief notice of which we shall conclude this hasty and scanty memoir.

"During the war of our revolution, Gideon Olmstead and others, having fallen into the hands of the enemy, were put on board of a British sloop, as prisoners of war, to be conducted to New York. During the passage, Olmstead and his companions rose on the British crew, took the vessel, and steered for a port in the United States. When within five miles of the port, a brig belonging to the State of Pennsylvania, came up with them and captured the sloop as a prize. She was brought to Philadelphia, and there libelled in the Court of Admiralty of the State. Olmstead and his associates filed their claim, and a judgment was rendered, giving one-fourth of the prize to them, and the remainder to the brig, that is, to the State of Pennsylvania, her owner. Olmstead appealed to the Court of Appeals, established by Congress, where the sentence of the Court of Admiralty was reversed, and the whole prize decreed to Olmstead; and

* The statement of this case is chiefly taken from Judge Hopkinson's Eulogy upon Washington.

process was issued, directing the marshal to sell the vessel and cargo, and pay the proceeds accordingly.

"The Judge of the Court of Admiralty delivered to David Rittenhouse, then Treasurer of the State, the sum to which the State was entitled by the judgment of that Court, but which by the decree of reversal belonged to Olmstead. This money, in the form of certificates, was in the possession of Mr. Rittenhouse at the time of his death, and then came into the hands of his daughters, as his representatives. The property was in this situation when Olmstead filed his libel in the District Court of the United States, then established under the new constitution, praying for the execution of the decree of the Court of Appeals. A decree was given by the District Court, according to the prayer of the libel. This was in January, 1803. Thus far the State of Pennsylvania had made no movement to assert her claim; but it was now necessary for her either to surrender her pretensions to this money, or to come forward and defend her citizens, who were holding it only for her use, and in doing so were exposed to the whole power of the federal judiciary. Accordingly, on the second of April, 1803, an act was passed by the legislature of Pennsylvania, requiring the representatives of Mr. Rittenhouse to pay the money into the State Treasury, and directing a suit against them should they refuse. The governor of the State was also required to protect the just rights of the State, by any further measures he might deem necessary; and also to protect the persons and property of the ladies from any process which might issue out of the federal court, in consequence of their obedience to this requisition. The act of assembly declared the exercise of jurisdiction by the Court of Appeals was illegally usurped, in contradiction to the just rights of Pennsylvania; and that the decree of reversal was null and void; so of the decree of the District Court. Pause for a moment to observe the awful positions in which these two sovereignties —that of the United States and that of Pennsylvania—are now

placed. The United States were bound to support, with their whole force, the execution of the judgment of their court; and the governor of Pennsylvania was ordered by its legislature to resist the execution of that judgment with the whole force of the State. We tremble even now to look back at the precipice on which we stood. A false step on either side might have been ruin to both. Nothing but the most calm and consummate prudence, the most disinterested and magnanimous patriotism, could have brought us safely through this mortal crisis.

"The District Court of the United States hesitated to proceed. The question was one of great delicacy; the anticipated conflict terrible in the extreme. The process was suspended, that the case might be submitted to the Supreme Court; which, after a hearing, stood firmly to the constitution and the law, and commanded the District Judge to issue the process required. It was issued. With what an agonizing anxiety the result was awaited. Was a civil war to tear the entrails of the State? and citizen to meet citizen in a deadly strife? Was our happy and prosperous career doomed to be so short? Was this glorious Union to dissolve in blood, after a few years, which had proved its unparalleled excellence; had poured, plenteously, bounties upon our land; had raised us from weakness, poverty, and obscurity, to the power and dignity of a great nation: which had given liberty, security, and wealth to a virtuous and industrious people? was all to be shattered and lost in an unnatural conflict? The process was issued; and the officer of the court had no choice but to execute it; and to compel obedience to it by the means given to him by the law. General Michael Bright, commanding a brigade of the militia of Pennsylvania, received orders from the Governor immediately to have in readiness such a portion of the militia under his command as might be necessary to execute the orders, and to employ them to protect and defend the persons and property of the representatives of Mr. Ritten-

house from and against any process founded on the decree of the District Court of the United States. A guard was accordingly placed by General Bright at the houses of these ladies; and he, with the other defendants in the indictment, opposed, with force, the efforts of the marshal to serve the writ issued to him. The process, however, was served; and the State relieved the ladies, not by waging war upon the United States, but by paying the money according to the judgment of the court. This is enough of the history of this interesting case for our present object. It was for this resistance to the process of a Court of the United States, that General Bright, and others of his party, were indicted, and brought to trial before Judges Washington and Peters, holding a Circuit Court of the United States."

In the course of the trial, and in deciding the various questions of law which arose in it, the extraordinary judicial qualifications of our Judge were shown in full relief. His learning, his patient hearing, his clear and discriminating sagacity; and above all, his unhesitating fearlessness, were all conspicuous. No judge was ever better entitled to exclaim, "*Fiat justitia; ruat cœlum.*"

This cause lasted several weeks, during all which time there was the greatest popular agitation. Rumors, terrors, and threats of every kind, were put into circulation. The State-right's men affected to hold the power of the general government in contempt, and the authority of the Court in derision. It was publicly proclaimed, that Judge Washington would never dare to *charge against the defendants;* or to pronounce sen-

tence against them, if they were convicted. But the people did not know him, they were incapable of appreciating his rare moral and judicial qualities. He was too intrepid to be bullied—and he DID charge decidedly against the defendants; they WERE convicted, and he SENTENCED them. There is one circumstance connected with this trial which is entitled to be noticed, in the conclusion of this memoir.

Upon the close of the speeches of the counsel, a vast multitude of anxious auditors, and many of those who maintained, that the Judge would at last shrink from a conviction, assembled in the room where the Court then sat, (the same room now occupied by the District Court of Philadelphia, up stairs.) The argument being ended, the Judge turning to the crier, said to him, in the mildest and most composed way, "Adjourn the Court, to meet to-morrow morning, in the room on the ground floor of this building. This is an important case—the citizens manifest a deep interest in its result, and it is but right that they should be allowed, without too much *inconvenience to witness* the *administration of the justice of the country; to which,* ALL MEN, GREAT AND SMALL, ARE ALIKE BOUND TO SUBMIT."

CHAPTER VI.

WILLIAM TILGHMAN, L. L. D.,

BORN, AUGUST, 1756—APPOINTED CHIEF JUSTICE, 1806—DIED, APRIL, 1827.

In the biography of Chief Justice Tilghman, we have drawn extensively upon the eulogy pronounced by Mr. Binney, and we rely for our justification in doing so, upon two considerations. First, that the characteristic circumstances of the life of the Chief Justice are therein more authentically set out; and secondly, because the style and merit of the eulogist are almost as deserving of admiration, as the virtues which he commemorates. The chief difficulty encountered in this part of our work, is in making any selection or extracts from a production, in which all the parts are so admirably fitted and adjusted, as to be essential to each other, and to be equally entitled to regard. Like severing the Graces, in destroying the grouping you impair the

beauty, symmetry, and effect of each individual figure. When Dr. Johnson, among his Lives of the Poets, introduces that of Dr. Parnell, he does so with these remarks: "This is a task which I should very willingly decline, since the life of Parnell has been lately written by Goldsmith, a man of such variety of power and such felicity of performance, that he always seemed to do best that which he was doing; a man who had the art of being minute, without tediousness; and general, without confusion; whose language was copious, without exuberance; and easy, without weakness; what such an author has told, who would tell again?"

If Dr. Johnson, with this preface, satisfied himself with an abstract from the production of one whom he thus praised, we certainly require no apology for our drafts upon the labors and learning of such a man as Binney. Besides, the admirable eulogy referred to, with the exception of its insertion in the fifteenth volume of Sergeant and Rawle's Reports, may be considered as out of print; and assuredly, those who have heard it, or read it, and know its value, would not willingly acquiesce in its loss. Substantially presenting it in this shape, although it can add nothing to the fame of its author, and is by no means necessary to the memory of the departed, it will undoubtedly give value to this work, so as to leave us at some loss to determine, whether we are influenced in what we thus do, by sordid selfishness, generous sym-

pathy, or the spontaneous admiration of genius and virtue.

The law, let it be remembered, is the only sovereign in a republic. The judge is the right hand of the law, and the ruler of the people, and in the language of Divine inspiration, "He that ruleth over men, must be just; ruling in the fear of God. We should provide out of all the people, able men, *such* as fear God—men of truth, hating covetousness, and place them over men, and let them judge them." Men, unlike Felix, looking for money, that he might loose Paul; or leaving his prisoner in bonds, that he might show the populace a favor. Unlike Pilate, sacrificing the innocent to the rampant and unholy clamor of a bloodthirsty mob. Unlike the "atrocious Star-Chamber Judges," who, to serve the king, or gratify their own cruelty, trampled upon all laws, divine and human, and recklessly and wantonly sacrificed some of the noblest of the human race. And if there ever was a man whose principles and practice were modelled in strict conformity to these requirements, it was the subject of this sketch, to whom the attention of all men—and especially of the judiciary—is earnestly recommended.

William Tilghman was born on the twelfth of August, 1756, upon the estate of his father, in Talbot county, on the Eastern shore of Maryland.

His paternal great-grandfather, Richard Tilghman, emigrated to that Province from Kent county, in Eng-

land, about the year 1662, and settled on Chester river, in Queen Ann's county.

His father, James Tilghman, a distinguished lawyer, is well known to the Profession in Pennsylvania, as Secretary of the Proprietary Land-office.

His maternal grandfather was Tench Francis, the elder, of this city, one of the most eminent lawyers of the Province, the brother of Richard Francis, author of "Maxims of Equity," and of Dr. Philip Francis, the translator of Horace.

He entered college in the year 1769; Dr. Smith being then the Provost, and Dr. Francis Allison, the Vice-provost, the latter of whom instructed the students in the higher Greek and Latin classics; and such was the devotion to literature, of the eminent pupil of whom we are speaking, that after he had received the Bachelor's degree, and was in the ordinary sense, prepared for a profession; he continued for some time to read the classics, with the benefit of Dr. Allison's prelections.

In February, 1772, he began the study of the law in this city, under the direction of the late Benjamin Chew, then at the head of his profession, afterwards Chief Justice of the Supreme Court of Pennsylvania, and at the close of the High Court of Errors and Appeals, its venerable President.

From 1776 to 1783, partly on his father's estate, and partly at Chestertown, whither his family had

removed, he continued to pursue his legal studies, reading deeply and laboriously, as he has himself recorded, and applying his intervals of leisure to the education of a younger brother.

In 1788, and for some successive years, he was elected a representative to the legislature of Maryland.

In 1793, a few months previous to his marriage with Miss Margaret Allen, the daughter of Mr. James Allen, he returned to this city, and commenced the practice of the law, which he prosecuted until his appointment by President Adams, on the 3d of March, 1801, as Chief Judge of the Circuit Court of the United States for this circuit.

The Court in which his judicial ability was first made known, had but a short existence. It was established at the close of the second administration of our government; and although this particular measure was deemed by wise men on all sides, and is still cited by many of them as the happiest organization of the federal judiciary, yet, having grown up amid the contentions of party, it was not spared by that, which spares nothing. In a year after its enactment, the law which erected the court was repealed; and the judges who had received their commissions during good behavior, were deprived of their offices, without the imputation of a fault.

After the abolition of the Circuit Court, Mr. Tilghman resumed the practice of his profession, and con-

tinued it until the thirty-first of July, 1805, when he was appointed president of the Court of Common Pleas in the First District.

He remained but a few months in the Common Pleas. In the beginning of the year 1806, Mr. Shippen, the Chief Justice of the Supreme Court, yielded to the claims of a venerable old age by retiring from the office, and on the twenty-fifth of February, Mr. Tilghman was commissioned in his place by Governor M'Kean, himself a great lawyer and judge, and interested as a father, in the court which he had led on to distinguished reputation in the United States.

From the time that he took his seat on the bench, at March term, 1806, for the space of more than ten years, he delivered an opinion in every case but five; the arguments in four of which he was prevented from hearing by sickness, and in one by domestic affliction; and in more than two hundred and fifty cases, he either pronounced the judgment of the court, or his brethren concurred in his opinion and reasons without a comment.

His attention, from the beginning to the end of the twenty-one years that he presided in the Supreme Court, was undeviatingly given to every case; and he prepared himself for all that required consideration at his chamber, by taking an accurate note of the authorities cited by counsel, and of the principal heads and illustrations of their arguments.

In addition to these strictly official duties, the legislature of Pennsylvania committed to the judges of the Supreme Court, in the year 1807, the critical duty of reporting the English statutes in force in this Commonwealth. The duty is called *critical*, for so undoubtedly it was considered by the chief justice.

The labors thus recited, entitle this eminent judge to the praise of great industry; a virtue which it is an offence against morality to call humble, in one who is the keeper both of his own talents, and, not seldom, of that of others also. It was, however, industry of the highest order—a constant action of the intellect, practically applied.

Chief Justice Tilghman could have done as much with this bar, by the force of his authority, as any judge that ever sat in his seat. His investigations were known to be so faithful, his reasoning so just, and his convictions so impartial, that there would have been a ready acceptance of his conclusions, without a knowledge of the steps that led to them. He asked, however, for submission to no authority so rarely as to his own. You may search his opinions in vain for anything like personal assertion. He never threw the weight of his office into the scale, which the weight of his argument did not turn. He spoke and wrote as the minister of reason, claiming obedience to her, and selecting with scrupulous modesty such language as, while it sustained the dignity of his office, kept down

from the relief, in which he might well have appeared, the individual who filled it. Look over the judgments of more than twenty years, many of them rendered by this excellent magistrate, after his title to unlimited deference was established by a right more divine than kings. There is not to be found one arrogant—one supercilious expression, turned against the opinions of other judges; one vain-glorious regard towards himself. He does not write as if it occurred to him that his writings would be examined to fix his measure, when compared with the standard of great men, but as if their exclusive use was to assist in fixing a standard of the law.

But his great work, that at which he labored with constant solicitude, but with scarcely a passing hint that he was engaged in it, is the thorough incorporation of the principles of scientific equity with the law of Pennsylvania, or rather the reiterated recognition of the bench, that, with few exceptions, they form an inseparable part of that law.

The distinction of law and equity is well understood by the profession, but difficult to explain to popular apprehension. It is a great but prevalent mistake, to suppose that a court of equity is the reproach of the common law, whereas it is its praise—at least the praise of its illustrious origin. The common law, being originally the law of freemen, of that Saxon stock from which is derived the freest race upon earth, left nothing

to the discretion of the judge or the monarch. It was itself the great arbiter, and ruled every question by principles of great certainty and general application. In its earliest day, a day of comparative simplicity, its general principles and forms embraced and adjusted almost every transaction; and when they did not, the authority of the common law courts was legitimately extended by new writs, devised in the then incipient chancery.

In the department of penal law, he was relieved by his office from frequent labors, although he annually presided in a Court of Oyer and Terminer for this county. His knowledge of this branch of the law was extensive and accurate. His judgment in it, as in every other, was admirable. His own exemption from moral infirmity might be supposed to have made him severe in his reckonings with the guilty; but it is the quality of minds as pure as his to look with compassion upon those who have fallen from virtue. He could not but pronounce the sentence of the law upon such as were condemned to hear it; but the calmness, the dignity, the impartiality, with which he ordered their trials; the deep attention which he gave to such as involved life, and the touching manner of his last office to the convicted, demonstrated his sense of the peculiar responsibility which belonged to this part of his functions. In civil controversies, such excepted as, by some feature of injustice, demanded a notice of the

parties, he reduced the issue pretty much to an abstract form, and solved it as if it had been an algebraic problem. But in criminal cases, there was a constant reference to the wretched persons whose fate was suspended before him; and in the very celerity with which he endeavored to dispose of the accusation, he evinced his sympathy. It was his invariable effort, without regard to his own health, to finish a capital case at one sitting, if any portion of the night would suffice for the object; and one of his declared motives was to terminate as soon as possible that harrowing solicitude, worse even than the worst certainty, which a protracted trial brings to the unhappy prisoner. He never pronounced the sentence of death without severe pain; in the first instance, it was the occasion of anguish. In this, as in many other points, he bore a strong resemblance to Sir Matthew Hale. His awful reverence of the great Judge of all mankind, and the humility with which he habitually walked in that presence, made him uplift the sword of justice, as if it scarcely belonged to man—himself a suppliant—to let it fall on the neck of his fellow man.

The practice of the law is not without its trials to a judge of the happiest temper. The efficiency of the advocate, in some causes, depends upon his giving the rein to his ardor, and in moving with a velocity which kindles others as well as himself. These rapid movements are unfriendly to a nice selection of phrases,

and to that deference to the opposing sentiments of the court, which the due order of a judicial tribunal demands. It argues little against the judge or the advocate, that in cases like these, there should be momentary lapses of temper. But whose memory is so unfaithful as to record one such incident in the judicial life of Chief Justice Tilghman? He knew the respect of the bar for him to be so cordial, that he never suspected offence; and they knew his integrity and fidelity to the law to be such, that they never placed his judgment, on any occasion, to the account of prejudice, partiality, or impulse. The reign of sound law and impartial justice in the Supreme Court of the State, has therefore been the reign of courtesy and kindly feelings between the bench and the bar; and though dead, he will continue to speak, as if living, in favor of this natural and delightful union.

Upon the whole, his character, as a judge, was a combination of some of the finest elements that have been united in that office. Among those which may be regarded as primary or fundamental, were a reverential love of common law, and a fervent zeal for justice, as the end and intended fruit of all law. The former was enlightened by laborious study in early life, the latter was purified, like the constitution of his whole mind, by a ceaseless endeavor to ascertain the truth. In the service of these exalted affections he never faltered. His effort in every cause was to

satisfy them both; and by attention to the researches of others, patient inquiry for himself, and a judgment singularly free from disturbance of every kind, he rarely failed to attain his object. Other judges may have had more learning at immediate command,—none have had their learning under better discipline, or in a condition more effective for the duty on which it was employed. His mind did not flow through his opinions in a stream of exuberant richness, but its current was transparently clear, and its depth was never less than the subject required, however profound. He was, moreover, equal to all the exigencies of his office, and many of them were great, without any such exertion which appeared to disturb the harmony, or even the repose, of his faculties; and he has finally laid down his great charge, with the praise of being second to none who preceded him in it, and of leaving his countrymen without the expectation or the desire of seeing him surpassed by those who shall follow him.

His moral qualities were of the highest order. It has been said, that the panegyrists of great men can rarely direct the eye with safety to their early years, for fear of lighting upon the traces of some irregular passion. But to the subject of this discourse may with justice be applied the praise of the Chancellor De Aguesseau, that he was never known to take a single step out of the narrow path of wisdom; and that, although it was sometimes remarked he

had been young, it was for the purpose not of palliating a defect, but of doing greater honor to his virtues.

Of his early life, few of his cotemporaries remain to speak; but those few attest, what the harmony of his whole character in latter years would infer, that his youth gave presage, by its sobriety and exemplary rectitude, of all that we witnessed and admired in the maturity of his character. It is great praise to say of so excellent a judge, that there was no contrariety between his judgments and his life,—that there was a perfect consent between his public and his private manners,—that he was an engaging example of all he taught,—and that no reproach, which, in his multifarious employment, he was compelled to utter against all the forms of injustice, public and private, social and domestic,—against all violations of law, from crime down to those irregularities at which, from general infirmity, there is a general connivance,—in no instance, did the sting of his reproach wound his own bosom. Yet it was in his life only, and not in his pretensions, that you discerned this his fortunate superiority to others. In his private walks he was the most unpretending of men. He bore constantly about him those characteristics of true greatness, simplicity and modesty. Shall I add, that the memory of all his acquaintance may be challenged to repeat, from his most unrestrained conversation, one word or allusion, that

might not have fallen with propriety upon the ear of the most fastidious delicacy.

The temper of the Chief Justice was singularly placable and benevolent. It was not in his power to remember an injury. A few days before his death, he said to two of his friends, attendant upon that scene, "I am at peace with the world. I bear no ill-will to any human being; and there is no person in existence to whom I would not do good, and render a service, if it were in my power. No man can be happy who does not forgive injuries which he may have received from his fellow-creatures."

On the last anniversary that he ever saw, he begins his paper with the prophetic declaration,

"This day completes my seventieth year, the period which is said to bound the life of man. My constitution is impaired, but I cannot sufficiently thank God that my intellects are sound, that I am afflicted with no painful disease, and that sufficient health remains to make life comfortable. I pray for the grace of the Almighty, to enable me to walk during the short remnant of life in his ways. Without his aid, I am sensible that my efforts are unavailing. May I submit with gratitude to all his dispensations; never forget that he is the witness of my actions, and even of my thoughts, and endeavor to honor, love, and obey him, with all my heart, soul and strength."

That "remnant of life" to which his last memorial refers, unfortunately for us, was short, as he had predicted; but he walked it as he had done all that went

before, according to his devout aspiration. He continued to preside in the Supreme Court with his accustomed dignity and effect, until the succeeding winter, when his constitution finally gave way, and after a short confinement, on Monday, the thirtieth of April, 1827, he closed his eyes for ever. It will be long, very long, before we shall open ours upon a wiser judge, a sounder lawyer, a riper scholar, a purer man or a truer gentleman.

Having contemplated the jewel—the mind, let us turn for a moment to the casket—the body, that contained it.

Judge Tilghman's person was slightly formed; he was about five feet eight inches high, with mild gray eyes, fine teeth, handsome features, and of the most gentle and amiable expression of countenance. The portrait of him in the Law Library bears a perfect resemblance to the original. It is a copy taken by Neagle, from a painting by Stewart, in the possession of the late Mrs. Greenleaf, the sister-in-law of the Chief Justice. His voice was very sweet, though not strong, and his deportment upon the bench was marked by that attention which springs only from a conscientious desire of a faithful performance of duty. Though he was nearly seventy-one years old at the time of his death, his hair retained its original color of dark brown. It was thin, and carefully combed down from the centre of the crown, on either side, with the most pristine simplicity.

He was too mild and gentle ever to have made an energetic debater; in addition to which, he spoke somewhat quickly, and with occasional hesitation. His language was never figurative, and its chief strength consisted in its clearness and simplicity, which was, in truth, characteristic of his mind. He was without the least affectation, vanity, or parade. He performed his duty because it *was* his duty, not to secure the approval of men; and he did it with undeviating punctuality and ability. He had a great regard for a dignified administration of justice; and the only time that we ever observed him to be disconcerted upon the bench was upon one occasion, when, the business of the day having terminated, his associates rose suddenly, and were walking off without a formal adjournment, when, turning to them, with his usual modesty,* but with some evidence of mortification, he said, "*Gentlemen, shall we adjourn, run away, or resign?*"

That he was a man of courage no man can doubt; but it was so tempered by mildness and moderation, and he was uniformly treated with so much respect

* Of all the judges of whom juridical history has furnished any account, there is none whom Chief Justice Tilghman so strongly resembled as Sir John Eardly Wilmot; whose purity, modesty, and utter absence of ambition, were certainly never surpassed, and scarcely ever equalled.—Vide his life, written by his son, and the notice of it in Lord Campbell's Chief Justices.

by all the members of the bar, that it is to be doubted whether he ever had occasion to rouse himself into any display of energy, firmness, or authority. Yet, with all his merits, and certainly he had no superior in those respects, his judicial manner was not equal to Judge Washington's, though superior to any other man that ever held his seat upon a Pennsylvania Bench. They were equally learned in the law, or, perhaps, Tilghman's reading was the more comprehensive of the two. They were equally confided in by the public; but the advantage of Washington over Tilghman, consisted in his imperturbable composure, "his masterly inactivity," until the hour of action arrived, when he struck an unerring and final blow. Whether he had less timidity than his great rival, it is difficult to say, but he showed less, perhaps, than any man that ever held a similar post.

Judge Tilghman's appointment to the Circuit Court, which has been mentioned, was the last act of the administration of John Adams. He was one of the *midnight* judges, as they were called; but it may be truly said, that no mid-*day* judge ever surpassed him, in the lustre of his official fame, or will survive him in the memory of all by whom he was known.

CHAPTER VII.

H. H. BRECKENRIDGE, L. L. D.

BORN, 1748—DIED, 1816.

One of the most extraordinary men that, perhaps, ever held a seat upon the judicial bench of the Supreme Court of the State of Pennsylvania, was Hugh Henry Breckenridge. He was born in Scotland, in 1748, of humble parents, with whom he came to this country, at the age of five years. He, almost unassisted, pursued his course of early life, in "shallows, in miseries," and in poverty. The very difficulties thus encountered, imparted to him that energy of character, that persevering industry, which finally raised him to high judicial honors. After having obtained, as he best might, a very scanty education, he, at the age of sixteen, became a teacher in a subordinate academy in Maryland. Here he remained for nearly two years. During that time, though his salary was very limited, by

means of the most rigid economy, he succeeded in laying up a sufficient sum to enable him to enter Nassau Hall, (Princeton College,) of which Dr. Witherspoon was at that time president. He was in the next class to Luther Martin, James Madison, and William Bradford. He graduated in the year 1774, and in 1777, became a chaplain in the army.

In 1778, he commenced the study of the law, with Samuel Chase, afterwards one of the judges of the Supreme Court of the United States; and in 1780 was admitted to practice in the Supreme Court of Pennsylvania, at which time Thomas M'Kean was chief justice, and Edward Shippen and Jasper Yeates associate justices.

In 1799, Chief Justice M'Kean, having been elected governor of Pennsylvania, and having resigned his judicial position, Judge Shippen became chief justice, and Mr. Breckenridge was appointed in his place. In 1806, Judge Tilghman succeeded Judge Shippen as chief justice, and Judges Yeates and Breckenridge retained their places as associate judges.

After his appointment, Breckenridge lived with his accustomed moderation, and by dint of economy, secured to himself a moderate competence, leaving at his death, which happened in 1816, a comfortable subsistence for his family; and at the time owing no one anything, and nothing being due to *him* but a quarter's salary.

He was a man of considerable genius and humor, as his "Modern Chivalry," and "Law Miscellany," abundantly prove. But his eccentricities were at times so great as almost to amount to insanity; if one half the traditions in regard to him are entitled to our reliance.

There never appeared to be much cordiality between the associate judges; on the contrary, it might be said that there existed a want of harmony, if not a decided enmity between them. Indeed, two men of more dissimilar appearance and habits could scarcely be imagined.

It is related of Judge Breckenridge, that, being a nervous man, upon one occasion, when he and Judge Yeates had as usual taken their seats at the opposite ends of the bench, before the arrival of the chief justice, Judge Yeates was employed eating an apple, and probably, from the difficulty in masticating, making more noise than was agreeable. Judge Breckenridge bore it for a long time, with some signs of impatience, until at length, being unable to endure it any longer, he turned petulantly to his learned brother, and exclaimed, "I think, sir, you once informed me that you had been to London, visited Westminster Hall, and saw Lord Mansfield on the bench." "Yes, sir," said Judge Yeates, "I had that honor." "Pray, sir," was the tart reply, "did you ever see his lordship munch a pippin on the bench?" This ended the colloquy.

Judge Yeates was a tall and portly personage, and about seventy years of age, of a handsome, florid, and benignant face, with full, large, blue eyes; dressing with considerable neatness, with hair perfectly white, and in short, a fine representative of a gentleman of the old school.

Judge Breckenridge was about the same height and age, perhaps rather younger; somewhat bent in the shoulders; dark, sallow complexion; small, black, penetrating eyes, deeply set in his head; face much wrinkled; sunken mouth, caused probably from the loss of teeth; and hair of "sable silvered." His dress, if it might be so called, was the most careless that could be conceived; and his *address*, if possible, worse than his *dress*. Wearing a rusty, unbrushed black coat, and vest, and with very little difference in color between them and his shirt. In the coldest weather he sat with his breast entirely open; his small clothes without suspenders, and neither exactly on, nor off; his beard unshaven, and his hair undressed; with large, ungainly boots; cravat twisted like a rope, and his whole demeanour apparently anything but attentive, to the business of the court.

This is the most favorable portrait that could be drawn of his exterior. Indifference to appearance had given place with him to utter contempt of it. He has been known to sit upon a trial, at a case at Nisi Prius, with coat and jacket both off, boots drawn, and feet

propped up against the desk; and this, too, while surrounded by the most polished and distinguished men that ever graced a judicial tribunal. Some of his excesses were such as to forbid description, consistently with regard for the memory of an otherwise worthy and estimable person. He was nevertheless a man of undoubted integrity, and by no means deficient in intellectual power; but those qualities rendered his aberrations from the *bienseance* of society the more remarkable and inexcusable. So much for the appearance, habits, and manners of the associates.

Judge Yeates was an excellent lawyer, and not unambitious of high character, in judicial as well as classical literature. Judge Breckenridge, though a ripe scholar, and by no means deficient in legal lore, took but little pains to exhibit his knowledge in his written opinions; and, as has been justly said of him, in the most of his discussions even of the gravest subjects, intermingled some facetious story, or a quotation from ancient or modern poets, either in the way of merriment or ridicule. Judge Yeates was a great lover of society, and entered deeply into the enjoyments and pleasures of convivial or fashionable life. Judge Breckenridge, on the contrary, was reserved and misanthropic. He resolved never to dine out, for fear his host might some day be a suitor in his court. He seemed to shun social or convivial scenes, and to hold communion only with himself. The *former* delighted in the

world as it was created for him—as he found it; the *latter* created a world of his *own*, and each seemed to dwell in his appropriate and opposite sphere.

It could scarcely be reasonably supposed, that two such men should ever *agree*, unless to *disagree;* and it so turned out that, in all the numerous decisions pronounced by the Supreme Court, while Judge Breckenridge was upon the bench, there were very few in which he agreed in opinion with Judge Yeates, and never in *any* case did he unite with him against the chief justice. The reports themselves will show this, without reference to particular cases.

This diversity may have been attributable to a radical difference between the two men. For his moderate means, Breckenridge may be said to have been a liberal though an exact man. Judge Yeates was a man of great wealth, but of a fondness for accumulation, which, whatever may have been the generosity of his feelings, prevented its exercise. These differences may have contributed, with other causes, to the estrangement we have mentioned; but, however it may be, our business is not to explain or adjust quarrels, but to describe men. One thing is certain, that no two men were more irreconcilably opposed, in almost every respect, than the subjects of this notice.

But to advert more particularly to Judge Breckenridge, to whom this sketch is mainly directed.

At an early period of his judicial career, the Judges

of the Supreme Court, be it known, rode the circuit, severally holding the Nisi Prius in the different counties. Upon one of these occasions, when Judge Breckenridge was about starting for Chester, a lawyer, who was scarcely less eccentric than the subject of this notice, and who, himself, afterwards became a Judge of the Supreme Court, called upon Breckenridge, and proposed to accompany him to the county town.

"He was," said the lawyer, in relating the occurrence, "a wonderful man; he never permitted me to be alongside of him during a journey of more than twenty miles. For a while he rode ahead of me, and when I came up to him, he would fall in the rear; and when I slackened my pace, so that he might come up, he would again start ahead; at length, however, in this irregular and unsociable way, we reached the place of our destination. We there parted, and put up at different houses.

"In the evening of our arrival, I called, as a matter of courtesy, at his lodgings, when, after some questions, he inquired as to the state of the issue list. I informed him, and told him I had the first case upon the list; he asked what it was about? this, also, I told him; and he then requested to know what was the evidence and the legal principles upon which I relied? Here I hesitated, saying, that I did not wish to contribute to a pre-judgment of the cause. 'Never fear,' said he, 'I shall not be biased.' Whereupon, I pre-

sented the whole matter to him. He said nothing, and shortly after I took my leave.

"Next morning, as expected, the case was called; I opened it fully, and I thought, triumphantly presented the facts, and submitted my law. The opposite counsel rose to reply, when, to my infinite mortification and astonishment, the Judge told my adversary he need not say any thing; that the plaintiff had no case, and he should direct a *non pros*, which he accordingly did, forthwith."

I have nothing to say, as to the dignity of this proceeding, but I feel compelled to observe, that if ever a lawyer *deserved* a *non pros*, it was the counsel in this case, who was so much mortified and ashamed at *getting* it.

This, to those who knew Judge Breckenridge, will be deemed a highly characteristic anecdote. But we regret to turn to another of a less favorable stamp, in which the wit is surpassed by the impropriety.

In a famous Ejectment, tried in the Nisi Prius, before Judge Thomas Smith, in one of the interior courts of the State, Judge Breckenridge, at that time at the bar, was concerned for the plaintiff, whose claims to a verdict, were considered somewhat doubtful. The client, upon being inquired of, said his witnesses were all ready, and prepared, in common phrase, "*to toe the mark;*" "but," added he, "I am afraid of the judge—don't you think a couple of *joes* would, if paid

to him, be serviceable to us?" "Pooh," said the counsel, "the judge would not listen to such a hint, or would probably charge against you, or commit you;—perhaps twenty *joes* might answer your purpose, but they had better pass through my hands." "Well," said the plaintiff, "it's a valuable farm, and I have no objection;" and accordingly handed over the money. Upon this being done, Breckenridge approached Judge Smith and spoke to him for a while, and then resumed his seat. The Judge commenced his charge to the jury, described the points in issue with great clearness—presented the plaintiff's claim and his evidence; then took up the defence, and after brushing away subordinate matter, (during all which time the plaintiff showed the greatest anxiety,) at last came to the turning point, which he determined for the plaintiff, who, unwilling to contain himself any longer, exclaimed, "Ah! now the *joes* begin to work." Breckenridge, some years after, while upon the bench, related this story upon a festive occasion, in the presence of Judge Smith, who rebuked him sharply, for having thus slandered him and degraded the character of justice; and, it is said, never afterwards admitted Breckenridge into his confidence.

There are other odd reminiscences related of him, which may throw additional light upon his idiosyncracies. During the time, as has been said, the circuits existed, a friend of the Judge, riding in his carriage

in the western part of the State, while a prodigious storm of wind and rain prevailed, saw a figure approaching, which resembled, what might be conceived of Don Quixote, in one of his wildest moods: a man, with nothing on but his hat and boots, mounted upon a tall, raw-boned Rosenant, and riding deliberately through the tempest. On nearer approach he discovered it to be Judge Breckenridge, and upon inquiring what was the cause of the strange phenomenon, Breckenridge informed him, that seeing the storm coming on, he had stripped himself and put the clothes under the saddle; "because," said he, "though I am a *judge*, I have but *one suit*, and the storm, you know, would spoil the *clothes;* but it could'nt spoil *me*."

In order to understand the full application of this last notion, strange as it may seem, after what has been said of the Judge's personal habits, it should be mentioned, that he was a great devotee to shower-baths, which he regularly continued the year through, and upon some occasions, when the luxury of a regular bath could not be obtained, he would place himself behind the grating of a basement window, or some similar contrivance, and employ some sturdy servant from the outside, to dash a bucket of water upon him through the grating, while in that position.

Notwithstanding these whims and caprices, he was by no means deficient in firmness and fortitude. His laborious youth, his self-sacrificing and persevering in-

dustry, in a word, give abundant evidence of the indomitable will. But though possessed of courage, his disposition was to avoid quarrels of all kinds; he abhorred duelling, and always preferred wit to bravery. Having, during the Revolutionary war, severely lampooned General Lee, (at that time one of the ruling, though discontented spirits, of the American army,) he was hotly pursued by the irritated officer, for the purpose of personal chastisement. The Judge, however, succeeded in reaching his house, and entering and locking the door, he rushed up stairs and looked out of the window upon his enraged pursuer. "Come down, sir," said the General, "and I'll give you a cowskinning." "I won't," was the ready reply, "if you'll give me TWO."

His contempt for duelling has been mentioned. It is reported, that while a young man, he was challenged by an English officer to fight a duel—we do not answer for the truth of this, but there is an incident related in his "Modern Chivalry," not at all unlike it, and though referring to another, may have been the origin of its being ascribed to the author of that work. The following answer to the alleged challenge, is no doubt, the production of Breckenridge, and is in entire conformity to his views, as always entertained and expressed :—

"I have two objections to this duel matter—the one is, lest I

should hurt you; the other is, lest you should hurt me. I don't see any good it would be to me, to put a ball through your body; I could make no use of you when dead, for any culinary purpose, as I would a rabbit or turkey. I am no cannibal, to feed upon the flesh of men. Why, then, shoot down a human creature, of whom I could make no use? A buffalo would make better meat; for, though your flesh might be delicate and tender, yet it wants the firmness and consisteney which take and retain salt. At any rate, it would not do for a long sea voyage. You might make a good barbacue, it is true, being of the nature of a raccoon or oppossum; people are not in the habit of barbacuing anything that is human now. And, as to your hide, it is not worth taking off, being little better than a two-year-old colt! So much for you.

"As to myself, I do not like to stand in the way of anything that is hurtful. I am under the impression that you might hit me. This being the case, I think it most advisable to stay in the distanee. If you mean to try your pistol, take some object, a tree, or a barn door about my dimensions; if you hit that, send me word, and I will acknowledge that if I had been in the same place, you might also have hit me."

This is not quite equal, for its reasoning, with a case which we remember of a member of the bar, who was very irritable, sending an invitation to fight, to a much younger man, who at once declined the honor, in these words:—

"It is against my conscience to fight a duel, unless the damnation were as great to *refuse*, as to *accept*, a challenge. But my *reason*, as well as my *conscience*, is against it. I am a young man, full of life, and with everything around me to make life agreeable—suc-

cessful *now*, and full of hope for the *future*. You, on the contrary, are an old man, your hopes and your life both declining; in addition to which, your temper is so unhappy, that I suppose you at times would thank any one to blow your brains out; whereas, I am so happy that I desire to live, and have much to live for. I ask you, then, whether we occupy an equal footing? In any event, I should lose *everything*—and you, *nothing*."

In 1805, Chief Justices Shippen, Yeates and Smith were brought before the Senate, charged with oppression, in regard to an individual who was committed, (as in the case of Oswald,) for a libel touching a suit pending in court. The judges were all acquitted. In this case Judge Breckenridge manifested great magnanimity. He was not embraced by the impeachment, but as he approved of the conduct of the court, he requested to be permitted to share in the fate of his brethren. The House took him at his word, and sent up an address for his removal; and here it was that the Governor, as heretofore described, when waited upon by a committee, who urged upon him that the terms, "may remove," in the Constitution, meant "must remove," promptly replied, that he would have them to know, that "*may*" sometimes meant "*wont*." We scarcely know which to admire most, the chivalry of Breckenridge, or the firmness and independence of M'Kean; and we have therefore thus noticed this anecdote, in the sketches of both of them, as equally honorable to both.

To look at Judge Breckenridge, you would have supposed him to be an ascetic. Not at all; on the contrary, he was always mentally engaged either in some amusing fancy, or in reflecting upon the fantastical fashions, or ridiculous pretensions or extravagances of the day.

He always stood up stoutly for the legal, local and literary superiority of Pennsylvania. He used to relate with great gratification his triumph over a gentleman of Virginia, who 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 enclosure* for ever." But, said Judge Breckenridge, I soon put him down, by referring to that act of the Legislature of Virginia, which is entitled "A supplement to an act to amend an act, making it penal to alter the *mark* of an *unmarked* HOG."

He facetiously maintained, that the only unqualified SLAVE IN PENNSYLVANIA, WAS A CANDIDATE FOR OFFICE THE DAY BEFORE THE ELECTION. From these instances, together with some extracts, to be furnished hereafter, from his miscellany, it may be easily perceived that he was an acute, though an amusing, rather than a grave thinker.

Judge Breckenridge wrote some ephemeral poems, which we merely mention, but cannot pause upon, as they are not properly within the limits of this work. They are creditable to his genius, but will not outlast his memory. "Modern Chivalry," another production

of his pen, which has passed through several editions, is replete with wit and satire. It is said, we know not with what truth, to have originated in revengeful feelings, produced by the author's having been refused membership in the Philosophical Society of Pennsylvania.* There are some passages in the work that might probably be pressed into the support of this notion, but the more obvious tendencies of the work seem to be directed against duelling and absurd military display.

The vein of the judge was almost always humorous and ironical; and perhaps this production, and much that is contained in his "Law Miscellany," published in 1814, some two years before his death, will present about as accurate a view of his general mode of thought as can at this time possibly be obtained. We say at this *time;* for, in an undertaking of this kind, we repeat, it is not to be disguised, while it is much to be regretted, that in our country we are assisted by but few memorials of the departed—in the career of the living, the dead are too often forgotten. In contempt of all hereditary pride or ancestral glory, there is scarcely a boy among us that is disposed to acknowledge that he ever had a great grandfather; and this country, it is therefore feared, will never furnish material for the Historical Society; at all events, never until she shall arrive at the years of discretion. We

* Dubitatur.

have, in the language of Bacon, "no knowledge of antiquity, and no antiquity of knowledge."

In concluding this outline of Judge Breckenridge, we cannot, perhaps, do better than present to our professional reader some of his views, as expressed in his Miscellanies, in regard to the "Res Angustæ Domi" men,—the best modes of advancement in business,—and the no less important subject of avoiding bad habits among the youthful members of the bar, in order to the attainment of future eminence. These extracts not only contain excellent advice, but afford an insight into the peculiarities of the mind of their author :—

THE "RES ANGUSTÆ DOMI" MEN.*

"*Boys are men too soon*, and, therefore, *always boys*. We see the skilful husbandman repressing the luxuriance of his grass, by cutting; *or lopping* his tree, to give it base, and make it spread. The American genius is vigorous abundantly; but there is an impatience to appear, in the capacity of men, and to undertake a pro-

* Judge Breckenridge must have borrowed the thought from the following circumstance:—When he was at Princeton College, he complained to Dr. Witherspoon, the president, of the difficulties he encountered, and observed that he felt the full force of the "Res Angustæ Domi" doctrine. "Aye, but remember, my young friend," said the Doctor, "it is the '*Res Angustæ Domi*' *men* that always succeed!"

fession; which cannot but be in the way of *attaining a great eminence.* A lofty structure requires a deep and broad foundation. 'Nor would Italy,' says the poet, 'be raised higher by valor and feats of arms, than by its language, did not the fatigue and tediousness of using the file disgust every one.'

> "'Nec virtute foret clarisve potentius armis,
> Quam lingua Latium; si non offenderet unum
> Quemque poetarum limæ labor et mora.'—*Horace.*

"The not having the means of support in going through a regular course of education, and waiting a reasonable time for an admittance to the bar, is a reason with many for this haste; but impatience is the cause with more. With those that want means, there is, usually, industry and perseverance, to make up for this; but it requires industry and perseverance. A medium between easy and narrow circumstances is desirable, but not the possession or prospect of an estate, independent of the practice. For when there is such a prospect, or possession, the necessary exertions cannot be excited that will make a lawyer. It may be said to be as easy, in the language of the scripture, with a view to another object, for a camel, or cable, as some suppose it ought to be translated, to go through the eye of a needle, as for the son of a rich man to become a lawyer; or, in fact, almost anything else that requires labor. Such must remain amongst those, the *fruges consumere nati.* The Novi homines, the res angustæ domi men can alone surmount the drudgery of acquiring a knowledge of the law; or sustain the practice. Were I to depict the making a man a lawyer, I would change a little the image of that moral painting in the tablature of Cebes, where the virtuous man is represented as climbing a rock, two female figures (sisters) *self-government* and *perseverance*, standing above, and extending their hands to encourage him. I would represent one clambering

up a precipice, and poverty, like an old and ugly witch, with a flail, urging from below.

——"'Duris in rebus urgens egestas.'"

MODE OF ADVANCEMENT IN LEGAL PRACTICE.

"To give a hint that is worth a Jew's eye, as the phrase is, to the young practitioner of law—let him endeavor to recommend himself to the older and abler of the profession, by showing that he can be serviceable in a cause into which he may have had the good fortune to be introduced. It cannot be expected of him to do much in the higher department of conducting a suit, or arguing the cause upon a point of law; and perhaps not much in convincing a jury as to the conclusion of fact which his client's interest requires to be drawn. For it requires an intimate knowledge of the human heart, from reflecting upon the operations of our own passions, or from our experience and observation of those of others, to enable to persuade the mind; and to this, in the nature of the case, the young cur of the profession cannot but be greatly incompetent. But it may be expected, and ought to be expected of him, that he will do, what he can do; and to which, until he acquires experience, he may be competent. And this is the taking care of the docket; watching the entries of rules; searching the docket; copying a declaration, or statement, or a notice, or a paper-book for a court of error, &c. Giving audience to a client, and keeping him off from the leading counsel, who is otherwise engaged in his behalf, and to better purpose than listening to him, though the client may not be able to comprehend this. Nevertheless, it is what the younger practitioner can do; for as to the client, he measures your attention to his cause, and the interest you take in it,

by the hearing you give him. The younger in the practice may take all or some of these matters on himself; for it is the maxim, and ought to be, "*Juniores ad labores*,"—matters of mere labor let the junior take.

In the course of all this business, the younger counsel will find himself well rewarded by the information he will acquire of the practice, from the corrections and directions of the older in the profession. But it is oftentimes the case, that the younger will be for doing what they are not capable of doing; and from a false sense of honor and obstinacy of silly pride, they will not do what it may be in their power to do. The consequence is, the elder counsel will not find his account in being coupled with them, and, therefore, will neither take the pains to instruct, nor exert himself to get them employed and brought forward in a cause.

"The false pride of the younger counsel may take the alarm at being thought to act a subordinate part in all these inferior matters, and especially the being thrown as a tub to the whale, to keep the client off; but he will find his account in it, for, by his hearing patiently, and seeming to understand, he will gain the good-will and confidence of the client, who will very probably attribute to him his success in the cause, if he should happen to succeed. In the *petit guerre* of the trial, there will be occasions when a judicious leading counsel may safely suffer him to speak. For the discharge of artillery, even where there is but flash and smoke, may do something by the sound; it may check the progress of an enemy, until the column is formed in another quarter. At the same time, by managing the piece, the young artillerist will acquire a facility, though he has but powder; and may be the better able to direct it when he comes to have ball.

"It is the county and circuit courts, chiefly, that I have in my eye in giving these prescriptions, where, in the country, a great deal of business presses all at once upon the counsel, and it is of moment

to have some person in the cause that will do the hearing business, without which a client will not be satisfied. He will sit by you even in court, and injure himself by disturbing you. I once was put out of humor by one who interrupted me in this manner at an important point—an exception to evidence. He jogged me, and I gave him a pretty smart jog in return. He was what is called a back-woods man, and a hunter. 'I had him (the opponent) in my eye,' said I, 'his defeat in my eye; my rifle raised; and now, by that jog on the elbow, I have lost my shot.' * * * * *

"Again, on being applied to, for the purpose of advice as to the bringing a suit for a client, you will doubtless advise according to the best of your judgment. But take it to be the case that you have been consulted, and the evidence fairly disclosed to you, and you have approved the bringing suit, the plaintiff, in your opinion, having the law clearly in his favor. But, upon trial, though he proves all that he had undertaken to prove, and the defendant nothing to overthrow it, so as to change the law, which you had pronounced to be in his favor, yet the decision of the court has been against you, what are you then to do. I will not say what you are to do, but I will state to you the address of a young practitioner whom I once knew, not overburthened with legal knowledge, at least not the greatest lawyer in Christendom, who happened to be in the predicament of which I speak, and being upbraided by his client with the usual language, 'did you not tell me, I had the law on my side?' 'And did I not tell the court so, too,' says the advocate. 'Did you?' says the client. 'Ay, did I; to their faces; I told them you had the law on your side.' The governor can give commissions, but nature only can give sense. What could a client have more to say?"

AVOIDING BAD HABITS AMONG THE YOUNG MEMBERS OF THE BAR.

"Lastly, I come now to say a little, on, perhaps, a more important point; that of self-preservation from bad habits. These are frequently acquired from mere imitation, or the idea of being a fashionable fellow; such as smoking segars, which is detestable in a young person, and never fails to exhibit to me the evidence of a bad family education, or indulgence. Or, if not proceeding from that source, the effect of puppyism, which bespeaks a mind naturally little, and of the *petit maitre* kind. Imitators are contemptible everywhere; such as at London, or Paris, your opera-glass coxcombs. The wearing spectacles, some years ago, was common in Philadelphia, among the young men, because there happened to be a few great men there, in the profession of the law, that wore spectacles: Wilson, Lewis, Coxe, and Wilcox. They wore them because they needed them; on account of the convexity of the visual orb. But the use of glasses by their imitators, when they walked the streets, was from an affectation of being thought learned men, because they resembled such in a nearness of vision, and the necessity of using lenses on the nose. It was more pardonable in a blind man whom I once knew, who wore spectacles to make people believe that he could see.

"But the segar excites thirst and leads to intemperance. When the mouth is parched, you must wet the whistle; recourse must be had to something to moisten it. That which was at first unnecessary, and mere wantonness of indulgence, becomes a habit, and cannot be got rid of, but increases until the individual becomes the slave of tobacco, and of spirituous liquor. I never see a young person with a segar in his teeth, but I give him up, as one that will never come to much. In early life there can be no necessity for

narcotics, or use in them, as a sedative; nor is there any necessity for the use of stimulants, when the animal spirits are of themselves gay, and sufficiently volatile. These things ought all to be reserved for a more advanced age, if used at all, and the beginning too soon with the use of them is unnatural and destructive.

"The situation of the greatest danger to a young practitioner of law is a remote county town, where amusements are few, and a literary society is wanting. The attending the courts is, to all, a scene of inducement to intemperance, it being the lawyer's harvest; and as on that occasion, as with agricultural men, so on this with the lawyer, there is a latitude of mirth and convivial indulgence, to which those are the most exposed whose society, from wit or song, or other talent, is the most courted. There can be no profession where it behooves to be so much upon guard, in these respects, as the practitioner of the law. Intemperance of living at the county courts, and sitting up, perhaps at cards, '*hath cast down many wounded; many strong men have been slain by it.*' It is owing to these causes and circumstances, in a great degree, that so few succeed in the profession of the law, which, I will admit, will, in a republic, where the law governs, always have the first place as *an order or rank of men.*"

CHAPTER VIII.

JOHN BANNISTER GIBSON, L.L.D.

BORN, NOV., 1780—APPOINTED, JUNE, 1816—DIED, MAY, 1853.

JOHN BANNISTER GIBSON was born on the eighth day of November, in the year 1780; and on the morning of the third of May, 1853, as the State House clock, which, for more than thirty-five years, had summoned him to his judicial labors, struck two, he breathed his last, in the seventy-third year of his age, full of years and full of honors; and what is better, full of faith in his Redeemer. He died in the embraces of an affectionate and beloved family, to whom he bequeathed, if no other fortune, the rich legacy of an enduring Fame. He was the son of Colonel George Gibson, a gallant soldier of the Revolution, who was killed at St. Clair's defeat by the Indians in 1799.

In a letter written by Judge Gibson, a short time

before his death, in answer to an inquiry in regard to his *maternal* ancestry, he furnished all the details upon that subject which are necessary; and we therefore adopt them as more reliable than those which might be derived from any other source.

"My mother," says he, "was Ann, the daughter of Francis West, descended from an Irish branch of the Delaware family, possibly before it was ennobled. The peerage is English, and, I believe, an existing one. The family name is West. Her mother was a Wynne. Owen, the head of the family, is, or was, the first commoner in Ireland. Through the Wynnes, we are connected with the Coles, Earls of Enniskillen. Another connexion, not perhaps so respectable, was the famous Colonel Barre, the intimate associate of Wilkes. My mother was born at Clover Hill, near Sligo, in 1746, and came to this country in 1754 or 1755. She died in February, 1809. I believe her father had been a Trinity College boy, for he spoke Latin, after the fashion of the day. My mother, who was certainly a well educated woman, directed my course of reading, and put such books into my hands as were proper for me. My father's collection of from one to two hundred volumes (among them Burke's Annual Register,) I read so often, that I could almost repeat pages of them yet. My poor mother struggled with poverty during the nineteen years she lived after my father's death; and, having borne up till she saw me admitted to the bar, died. She certainly was a clever woman, but the little talent of the family came from my father's side. I should say genius, for he had no business talents whatever. He was celebrated as a humorist, and was a wit. Though without any single positive vice, he never could advance his fortune, except in the army, for which he was peculiarly fitted."

Having shed as much ancestral, direct and collateral light upon our subject as the occasion requires, we return now to the topic with which we set out.

The opportunities for education during his youth were exceedingly limited. With the preliminary aid of his mother, however, and the instruction afforded afterwards at a school house or shanty, about a mile from his home, on the banks of Sherman's creek, he acquired a knowledge of reading, writing, and arithmetic. At this school he remained three years, at the charge of twenty shillings a year, and it is not improbable that his general improvement might be fairly graduated by its expense. After leaving the school, for some years his habits became sedentary, and the advantage of self-instruction, and his devotion to books, so far advanced his knowledge as to qualify him, in the year 1797, at the age of eighteen, to enter the grammar school attached to Dickinson college. Here he remained two years, and made not merely rapid, but extraordinary, progress, astonishing not only his rivals, but his professors. He was of course rapidly promoted, and finally entered the junior class of the college in 1800, in the twentieth year of his age.

He was a cotemporary and rival of William Wilkins, of Pittsburg, afterwards so distinguished in the annals of this State and country, and George Bullit, a gentleman of Virginia, a young man of the first talents and attainments. It is enough to say, that, with such com-

petitors, even with the disadvantage of early imperfect culture, he successfully, if not triumphantly, maintained his post. He passed with great distinction through the studies of the senior class, and in the early part of 1801, without matriculating, he commenced the study of the law under his celebrated kinsman, the late Judge Duncan, and was admitted to practice after the usual course of reading, in the month of March, 1803. During his connexion with Dickinson college, (we mention this as an illustration of his attachment through life to medical science,) he was in the habit of frequenting the office of one of the oldest practitioners of medicine of that period and place, Dr. M'Coskrey, the father of the present Bishop M'Coskrey. Here, as might be supposed, he acquired a taste for the study of physic, which he never lost—poring, as he did, for days at a time, over the volumes contained in an extensive, and systematic scientific library.

The knowledge here derived, in after time, as we know, was not unfrequently put into practical application upon many occasions, during his official sojourn in various parts of the State. We have no time to exhibit in detail the numerous occurrences of this kind; but almost the very last opinion he delivered, furnishes a brief but sufficient instance of his attainments. We refer to the case of Smith against Cramer, pronounced but a little month before his decease. It was a question, as to the admission of evidence, to show the

insanity of ancestors, for the purpose of corroborating other testimony, tending to establish the insanity of a testator.*

"I admit the deposition without hesitation, notwithstanding the dicta of Mr. Shelford, (Treat. on Lunacy, 59,) and Mr. Chitty, (Med. Jurisp. 355,) that 'it is an established rule of law not to admit proof of insanity in other members of the family in civil or criminal cases.' Established! When, where, and by whom? Certainly not by the House of Lords in McAdam v. Walker, 1 Dow's Par. Ca. 148, the only case cited for it, for the question there was avowedly dodged. That High Court would not shock common sense by affirming the order of the Scotch Court of Session; nor would it gratuitously reverse it, when the decision could be safely put on another ground. The authority of a judgment appealed from, and left in dubio, cannot be very great. Sir Samuel Romilly's argument against the evidence, was rested on the fecundity and interminableness of collateral issues; and Mr. Chitty seems to have had a glimpse of the same idea, when he said the course is to confine the evidence to the mental state of the party. But every new fact, though it open a new field of inquiry, is not collateral. It may bear directly on the fact in contest; and, where it does so, it is not in the power of the Court to shut it out. A collateral issue is such as would be raised by allowing a party to put a question to a witness on cross-examination, in regard to a fact palpably unconnected with the cause, in order to afford an opportunity to discredit him by contradicting him; but does not proof of hereditary madness bear directly on the condition of the mind, which is the subject of investigation? What if the point had been ruled by the Chancellor and law judges in the House of Lords? Profoundly learned in the

* 1 American Law Journal, page 353. February, 1853.

maxims of the law, they were profoundly ignorant of the lights of physiology; yet, free from the presumptuousness of which ignorance is the foster-father, they refused to rush on the decision of a question to which they felt themselves incompetent. Mr. Chitty fancifully puts the solution of questions of insanity on the doctrine of legal presumptions. 'As the imputation,' he says, 'is contrary to the natural presumption of adequate intellect, the deficit should be established by *direct* and *positive* evidence, and not merely be conjectural or probable proof.' If that be law, a question of insanity is the only one in which positive evidence is required, and circumstantial evidence to corroborate is rejected. Why is evidence of an old grudge admitted against a prisoner, as a remote proof of malice, if the remote proof of hereditary insanity may not be given by him to rebut it; and why should the presumption of sanity be allowed to overbear the presumption of innocence, the strongest of them all? I admit that hereditary insanity will not itself make out a case for or against a member of the family; but to say that it may not corroborate what Mr. Chitty calls direct and positive proof, without defining it, staggers all belief. In a measuring cast, it ought to prevail. He says harsh conduct, bursts of passion, or displays of unnatural feeling, will not, *of themselves*, establish insanity. Be it so. But because the springs of such actions are concealed, are they never to be laid bare, and shown to be seated in the blood? When it is admitted by Mr. Chitty and Mr. Shelford themselves, that insanity is a descendible quality, they give up the argument. There can be nothing unreasonable in referring wild, furious, and unnatural actions, not otherwise accounted for, to the aberrations of a mind, the reflex of that of a crazy father. Mr. Taylor, a distinguished lecturer on Medical Jurisprudence in Guy's Hospital, London, says that, 'in making a diagnosis of a case of insanity, the first question put is commonly in reference to the present or past existence of the disorder in other members of the family. There can be no doubt, from

the concurrent testimony of many writers on insanity, that a disposition to the disease is frequently transmitted from parent to child, through many generations. M. Esquirol has remarked, that this hereditary taint is the most common of all the causes to which insanity can be referred.' (Taylor on Med. Jurisp. 502.) M. Esquirol was, in 1838, and perhaps is still, the principal physician of the hospital for the insane at Charenton, in France, and a member of the Royal Academy of Medicine, at Paris. His tables of insanity are held in high repute by not only the physicians of France, but of Europe. Well might Mr. Taylor say that these things ought to be borne in mind by medical jurists. The knowledge attained by men, of a subject with which they have grappled all their lives, ought surely to prevail against knowledge gleaned from the hornbooks of a profession to which the gleaners did not belong. Strange that a source of information, open to every one else, should be closed to those who are to pass on the fact. Every man has observed that there are families, through which insanity has been handed down for generations; and why should the probability of hereditary madness be excluded, when probabilities in other cases are weighed; especially when it is known that a proclivity to theft, intemperance, lying, cheating, and almost all other moral vices, are as transmissible as gout, consumption, deafness, blindness, and almost all other constitutional diseases? It is supposed by the million that insanity is a disease of the mind, not of the body. Ridiculous. If it were, it could never be cured; for the mind cannot take physic, or be separately treated; yet the statistics of the insane exhibit a great number of cures; and the time is fast coming when insanity will be considered the most manageable disease that flesh is heir to.

"An objection to an inquisition, which does not disclose the specific nature of the ancestor's infirmity, might stand in a different light; but testimony, which brings the fact of madness home to him, ought to be received like evidence of family likeness, which, though

less reliable, was allowed to be corroborative proof of paternity in the Douglass Peerage Case, in 1767, and again in the Townsend Peerage Case, in 1843. Lord Mansfield said in the former, that he had always considered likeness, as an argument of a child being the son of a parent; that a man may survey ten thousand people, before he sees two faces exactly alike, and that, in an army of a hundred thousand men, every man may be known from another; that if there should be a likeness in feature, there may be a difference in the voice, gesture, or other characters; whereas family likeness runs generally through all of these; for that in everything there is a resemblance, as of features, voice, attitude, and action. Might he have not added the diathesis of the brain? He doubtless might if the point had been mooted. In prosecutions for bastardy, the practice in the Quarter Sessions was, in my day, not exactly to give the child in evidence, but to put it before the jury, sometimes by the prosecutor, and sometimes by the putative father. But ancestral irregularity in the action of the brain is more frequently transmitted than any resemblance in form or feature; and it is difficult to imagine an objection to evidence of it, for purposes of corroboration."

In the year of his admission to the Bar, he left the scenes of his boyhood, by the advice of his friends, and commenced practice at Beaver county, one of the remotest parts of the State, but, in the language of Johnson, "Slow rises worth by poverty oppressed;" and very soon, discontented, if not disgusted, he abandoned the place of his first choice, for ever.

Leaving Beaver, he afterwards attempted to settle himself at Hagerstown, Maryland, but with no better success; and finally returned, in 1805, to Carlisle.

There he opened his office, and for some years seemed to have a reasonable share of the legal practice of Cumberland county, and maintained his ground with such men as Duncan, Watts, Bowie, of York, and Charles Smith, of Lancaster, lawyers, who, at the time of which we speak, had but few equals in the State.

Notwithstanding his professional employment, however, his versatility or eccentricity of genius, led him readily to engage in almost every amusement or merriment that was suggested; and when the students of Dickinson college gave theatrical exhibitions at the United States barracks, he not only directed the stage arrangements, but actually painted the scenery. And what now (nearly fifty years after,) must strike us with no little surprise, a most distinguished lawyer took the part of prompter, and Francis Gibson, an elder brother of the Judge, who recently died, became leader of the orchestra, on account of his superior knowledge of the violin. The times have changed, and we have changed with them.

It was about this period of his professional career, that a friend called upon him, with the information that a fellow-member of the bar had grossly and wantonly assailed his (Mr. Gibson's,) character; whereupon, Gibson, who was a man of herculean strength and lofty spirit, meeting the alleged slanderer soon after, inflicted upon him, publicly, severe personal chastisement. But what was his dismay to learn,

shortly after, that his informant had made a mistake in his report, and that *another* person was the calumniator. To add to his perplexity, a challenge was received from the victim of his hasty and misdirected severity. "This," said Gibson, "is a bad business, and it is difficult to *mend* it; but, at least, having got into it, I will *complete* it. I shall accept the challenge, of course; I am bound to do so, for my folly, if not my fault; but, before I am shot, I must at least perform an act of justice, and having now found out the real slanderer, I will *flog* him at once;" which was accordingly done. Upon the matter being explained to the challenger, and an ample apology made, the duel, we are happy to say, was avoided, and the whole affair amicably adjusted, through the friendly interference of the late Judge Duncan.

In 1810, Mr. Gibson became a member of the Pennsylvania legislature, and soon after his term of service expired, in 1812, was appointed President Judge of the Court of Common Pleas, for Tioga county. On the eighth of October, in the same year, he was united in marriage to Sarah Galbraith, the daughter of a retired Revolutionary officer, a lady of no inconsiderable intellectual accomplishments, and of a most amiable disposition.

Upon the death of Judge Breckenridge, in 1816, Judge Gibson was translated to the Supreme Court by Governor Snyder, where, while Tilghman was the

Nestor, he may be said to have been the Ulysses, of the Bench.

We may be here permitted to mention, (a fact not generally known,) that a short time after taking his seat, he was solicited by a committee from the democratic portion of the legislature, to suffer himself to be put in nomination for the office of Governor of Pennsylvania. This honor, however, he promptly declined, having determined to direct all his energies and time to the duties of the situation which he had assumed. In 1827, he succeeded the lamented Tilghman, as Chief Justice of the Supreme Court of Pennsylvania, and the spotless mantle of his predecessor, as all shall witness, was borne by him for more than twenty years, if not with equal grace, with equal lustre.

It would seem, that before directing our attention to the mind, we should bestow a passing notice upon the person. Judge Gibson was a man of large proportions; in height, about six feet four inches, and of a muscular frame. His face was full of intellect, sprightliness, and benevolence, and of course, eminently handsome; his manners were remarkable for their simplicity, warmth, frankness, and generosity. There never was a man more free from affectation or pretension of every sort. It has been said by one of his associates, that he was not a good hater; but no man ever truly said that he was not a

good friend, and a most agreeable, convivial, and estimable companion.

He was a deep student, but not a close student; he worked most effectively, but he worked reluctantly. His mind was too comprehensive to admit of ready concentration. The veins of his learning crossed each other and diverted attention, but when he brought the lens of his mind to a focus, its power was resistless, and every man seemed to perceive and to feel it, but himself.

Unlike Washington, he was not a good Nisi Prius Judge. In the conflicts of a jury trial, he was not a good listener; he would not unfrequently be employed in writing poetry or drawing some fancy sketch, when the bar supposed he was closely engaged in noting the course of the evidence, or preparing his opinion. And in rather a merry way, he once remarked, that he had reached at last the object of his highest ambition, which was to keep his eye fixed upon a dull speaker, while his thoughts were employed with more agreeable objects. "This," he added, "is certainly a great judicial triumph."

He, as has been said, liked the law as a science, but abhorred it in its practical and minute details. He never could have been an eloquent, forensic speaker; but he was, if we may use the phrase, an eloquent thinker, and a most agreeable colloquist. He was, at times, a little rough; but still, even then, the benignity and pleasantness of his countenance satisfied every

one that the harshness of his manner, sprung from no bitterness of the heart.

The court was about to rise one day, the usual hour of adjournment having come, when a zealous young gentleman insisted upon reading a petition for a *quo warranto*. The Chief Justice expressed his unwillingness to hear it. "I have a constitutional right to speak," said the advocate. "That is true," said Gibson, "but the constitution does not compel us to listen; but if you insist upon it, go on, and as Sir Toby Belch says, '*be curst and brief.*'"

To say nothing of hatred, he entertained no anger, and never seemed to imagine that he had excited any in others. If you would remind him of some occasional severity of remark, he would seem to have been utterly unconscious of it, and almost led you to suppose that the offence rather arose from your captiousness, than from his design. As he bore no grudge to others, he rendered it difficult for others to bear any towards him. Take him for all in all, he was a man of rare endowments, of a harmonious, moral and intellectual, judicial and social structure; and, although we may find others superior to him in some one great quality, in the combination of his talents, "he spoke unbonnetted to as proud a fortune as that which he had reached"—the Chief Justiceship of the State of Pennsylvania.

Chief Justice Tilghman died on the thirtieth of

April, 1827, and on the eighteenth of the following month Judge Gibson was appointed to supply his place. From that period, conscious of his responsibilities, and bearing in mind the high judicial standard established by his predecessors, he appeared to devote all his great powers to the fulfilment of the duties of his vocation; so that, as an honorary reward of his distinguished abilities, he some time after received from the University of Pennsylvania, the degree of Doctor of Laws, which was soon followed by a similar degree from the University of Cambridge.

On the nineteenth of November, 1838, he resigned his commission as Chief Justice, and was at once re-appointed by Governor Ritner. The constitution of 1838, substituting a term of years, for life appointments, having been approved by the people, the commissions were to expire at intervals of three years, in the order of seniority, from first of January, 1839. By resigning, Judge Gibson, under this law, instead of being subject to the shortest term—three years—would hold the longest—fifteen years. "The proposal," says Mr. Porter, "seems to have been made by his associates and accepted by Mr. Gibson, with slight consideration."* We should think so; for there certainly never was a more *injudicious* step among judicious and judicial men! It injuriously affected the whole court, and no reasoning can excuse, much less justify it.

* William A. Porter's Essay upon the Life, Character, and Writings of Chief Justice Gibson, page 53.

Judge Gibson, if he were not guilty of a fault, certainly committed a great mistake in this resignation; or rather, in accepting a renewed appointment. He never could satisfy any one, nor do we think he ever satisfied himself—when he came to reflect—of the propriety of the course thus adopted. It was perfectly useless for him to say, that when he resigned, there was no understanding that he should be re-appointed. The object clearly was to prolong his term of office; otherwise, having resigned, why did he accept the renewed appointment to the same post? Nay, his very statement, that at his time of life and with his means, his condition would have been that of "penury and want," shows that the resignation was not intended, but had for its object a longer continuance in office.

The reference to the acquiescence of the other judges in the measure adopted by him, implies also, that his object was to remain on the bench; and shows, plainly, that he gave up the post, that it might be restored with greater advantages—advantages, too, at the expense of his associates. The act itself was wrong, and the reasons assigned for it make it worse, as they show a consciousness of the very error which they attempt to palliate.

From the moment of the unhappy surrender of his own sense of right, Judge Gibson never was the man he had previously been—he was humbled, by the perpetual consciousness that he had acted indiscreetly,

and placed his high character in jeopardy or doubt. His companions on the bench, though too generous to show it—and however regardless of their personal interests—felt that the integrity of the tribunal was compromised; and the public at large looked upon this judicial strategy with surprise and evident disapproval.

It is hard, to be sure, as we have elsewhere said, to relinquish office and the hopes of life together; but it is because it *is* hard, that it is sometimes magnanimous. "'Tis the rough brake that virtue must go through." No one can doubt our high regard for the Chief Justice, but that regard rests upon his virtues—not upon his defects; and all commendation of the former, would be fulsome flattery, if we did not condemn the latter. This was but a spot, the only spot upon his escutcheon; but it was an *odious* spot, and to attempt to excuse it, would be to recommend it to judicial favor and imitation. Place it on the ground of a solitary indiscretion, and the influence of unhappy circumstances, if you will, but never attempt to justify for him, what, with his great head and excellent heart, he was unable to justify to himself.

The public, out of regard for his great services, dealt liberally with him;* they overlooked this single in-

* Almost the only reference we ever heard made to this matter, was its having been once said, in no unkind spirit, that just after the Chief Justice's resignation he attended the Episcopal church, of this city, when the clergyman took for his text, 2 Kings, twentieth chapter and sixth verse:—"I will add unto thy days, fifteen years."

firmity—they never cast it in his teeth while living, nor upon his memory when dead. Let it then die forever—or, at all events, not be *revived* to be *excused.*

Judge Gibson would have been a great physician, a great general, a great historical painter, an eminent professor of music,* but he never could have been a

* Judge Gibson, as an *amateur* musician, was perhaps unequalled in the United States. He was a perfect devotee to the violin, to which he always resorted as a relief from the severity of his judicial toils. This habit led, though very remotely, to no inconsiderable exposure and embarrassment. The way of it was this:—

When, as Chief Justice, presiding at a Superior Court at Williamsport, he one morning entered the bar room of his hotel, and, observing a violin lying there, he picked it up, and drew from it, as usual, some exquisite strains of harmony. A gentleman who was present, however, reminding him that it was the Sabbath-day, he immediately relinquished the instrument, and apologized for his forgetfulness. A short time after this the story got wind, and a political adversary of his, who conducted a newspaper, published a highly-colored account of the occurrence, very much to the annoyance of the Chief Justice. Indeed, so much did he feel himself aggrieved, that, instead of treating the matter with indifference or contempt, he came out in a rival journal with an explanation of the whole affair, excusing himself for an apparent infraction of the Sabbath, by alleging that he had forgotten the day. It so happened that, some years after this, one of his associates was brought before a committee of the Legislature upon a charge of incompetency, on the ground of inferiority of judgment and want of memory.

The Chief Justice was subpœnaed before the committee to give testimony; and, though very reluctantly, he gave evidence calculated to support the charges. He was then handed over to the respondent, who conducted his own defence, for cross-examination, when the following mortifying, though somewhat ludicrous, dialogue took place:—

Associate.—"You say, sir, that you consider my memory defective?"

distinguished attorney. He had a detestation of minute labors, and complicated or diversified details. Give him the question, and no man could grasp it more firmly, or dispose of it more readily, or divest it more clearly of the fallacious reasoning by which it was attempted to be assailed or supported, but he would not descend into details. He delighted in ratiocination, but abhorred the laborious detail of heterogeneous facts, which too often tend to bewilder and confound rather than to enlighten and direct the mind. Among eminent painters and sculptors, the ascription of merit is

Chief Justice.—"I have said so, and I regret to think so."

Associate.—"Did you ever know me upon any occasion to forget the Lord's holy day—the Sabbath?"

Chief Justice.—"I have no such recollection."

Associate.—"You have stated that you consider my judgment impaired?"

Chief Justice.—"Such is my belief, and I have had some opportunities of knowing."

Associate.—"Pray, sir, did you ever know me to be guilty of the weakness and folly of answering a paragraph in an obscure country newspaper, charging me with playing the fiddle on Sunday, and to put my defence against the charge—upon the ground of my having forgotten the day?"

This was, of course, unanswerable. The Associate triumphed, and all further proceedings were abandoned. There are emergencies in life which, even when the human faculties are almost extinct, seem to recall them in their pristine vigor, and this was one of them. We have heard it said, that the Associate referred to, had never been known, in his best days, to manifest greater ability than in the management of his own cause upon this memorable occasion.

regulated by the difference between those who resort to minor details, and those whose genius generalizes the work, and thereby produces the desired effect upon the beholder. The latter always holding the most distinguished position. Composition, as it is called and subordination, being the loftiest branches of the arts, since they manifest most mind; and mind *in* everything, *is* everything.

In his social intercourse he had this remarkable quality, in which he strongly resembled Alexander Hamilton. He rarely spoke on the subject of law. Poetry, music, and painting were his themes, and his great delight; and for a good joke, or an agreeable and harmless story, very often at his own expense, (traits which he probably derived from his father,) no man was his superior. He used to relate, with infinite humor, his first adventure in professional life :—

"I was," said he, "brought up like a young savage, in leaping, hunting, boxing, and all other athletic employment. Study scarcely sobered me. At length, in 1803, after having been struggling with adversity for years, I was admitted to practice, and determined to make my commencement as far from the scene of my early folly or faults as possible. I, therefore, at the instance of Mr. Wilkins, made choice of Beaver county, on the river Ohio. By hard scuffling, I succeeded in purchasing a small horse or cob, some fourteen hands high; and having taken leave of my fond mother and my friends, I accordingly set out in search of professional adventures, with scanty purse and saddle-bags, and an empty green bag. Not like Dr. Syntax, in search of the picturesque, but

like a poor lawyer, in pursuit of a brief. Some short distance from Beaver, I was particularly struck with the ridiculous appearance made by myself and horse; the animal, as I have said, was too short, and I was too long; my feet nearly reached the ground. Added to this, the character of my equestrian equipment was by no means calculated to relieve me from my embarrassment. Just in the midst of this quandary, I heard rapidly approaching from behind, a horseman, who was almost immediately by my side; and with the familiarity of the times and place, he saluted me with, 'Well, stranger, would you like to swop horses?' Before answering, I took a glance at his animal, which appeared to be some seventeen hands high, and though rather raw-boned, much better adapted to my size than the horse I rode. Suffice it to say, that after a little chaffering, the swop was made, and I paid five dollars to boot; the trappings were removed, and every thing being adjusted, the Yankee mounted, and it appeared to me, that he at once infused new life into my beast, for he set off in a gait that he had been utterly unused to. Rider and horse were soon out of sight, and mounting my new purchase, I could not but perceive that he seemed all at once, to have *lost* as much alacrity as the other had gained. However, as I have said, I mounted him, but had not proceeded a hundred yards, before he fell flat upon his nose and threw me over his head. This led, of course, into an examination of his condition, upon which I found that the horse was actually stone blind. I was lawyer enough, even then, to know that as this was a patent defect that I was bound to look to, and as *I* was not blind, the blindness of the *horse* gave me no right of action, even if I could have found the defendant; so I pocketed the loss, and the Yankee pocketed my five dollars, and rode off with my horse. This was my first adventure, and from such an ominous beginning, it is hardly to be supposed that my career in Beaver—which, thank heaven, was but short—was very prosperous. I gained experience, however, if not in swopping horses, in

avoiding it; and in future I looked at the eyes, as well as the size, of a horse; in other words, to alter the lines of a poet—'I rate no horse's merit from his size.'"

The late Chief Justice was not what would be called a refined modern gentleman; that is, a man in whom the arts of society had suspended, if not extinguished, the charms of nature. With sufficient amenity and courtesy, his great value consisted in the generous outbursts of the heart, in defiance of those conventional restraints which station and official position would seem to impose upon ordinary men. He was sincere, but never ostentatious. He adopted, in the exercise of his charitable feeling, the divine injunction, "Let not thy left hand know what thy right doeth." No man ever heard him speak of his own virtues, and no one ever heard him deny the virtues of others. If you will visit an obscure burial-place in the town of Harrisburg, you will there find a plain, but tasteful monument, with this inscription: "To Joseph Jefferson, the comedian. 'Alas, poor Yorick! I knew him well; he was a fellow of infinite humor.'" That tomb was erected to the memory of our old friend Jefferson; and the inscription furnished from Hamlet, by the Chief Justice of Pennsylvania.

A portrait of the late Judge Kennedy, one of the Associates of the Supreme Court, was presented to the Court by an artist of considerable ability. It

remained in the court room for some years, not even graced with the compliment of a frame, though abundantly festooned with cob-webs. A short time before his death, however, Judge Gibson caused it to be refreshed and beautifully framed, and presented it to the only surviving daughter of the deceased Judge, in a manner so affectionate and delicate, as largely to enhance the value of the gift. These simple touches of nature are, it is true, but small matters in themselves; but they still speak for the heart, and from their rarity, become great in great men.

If there be any virtue that vouches for all other virtues, it is charity; therefore, to say of such a man that he was an affectionate husband, devoted father, a tender relative, and a fast friend, is to say no more than all that are capable of appreciating his character, will readily concede. He was indeed the very heart of his domestic and family circle. No circumstance could weaken, and no time could cool, the strength and fervor of his attachment; and if we were permitted to trench upon his last moments, we may well believe that, next to the consolation of his God, his chief happiness was in dying as he lived, surrounded by those he loved.

A short time before his decease, after speaking with grateful affection of the kindness and attentions of his brethren of the bench, and his friends generally, while surrounded by his sorrowing family, he turned to them and said, "I *feel* that I am approaching the GREAT AUDIT,

and I know that, as a sinner, I stand in need of an advocate. Send for a clergyman." To that just and merciful Audit he calmly and faithfully resigned himself, in full reliance, not upon his own merits, but upon the redeeming influence of a Saviour's love.

We cannot do better, in taking leave of our lamented subject, than to present to our readers a passage from the address of his successor in office, Chief Justice Black, in announcing to the Supreme Court the bereavement they had sustained by his death:—

"Judge Gibson was well appreciated by his fellow-citizens; not so highly as he deserved, for that was scarcely possible; but admiration of his talents and respect for his honesty were universal sentiments. This was strikingly exhibited when he was elected in 1851, notwithstanding his advanced age, without partisan connections, with no emphatic political standing, and without manners, habits, or associations calculated to make him popular beyond the circle that knew him intimately. With all these disadvantages, it is said he narrowly escaped what might have been a dangerous distinction—a nomination on each of the opposing tickets. Abroad, he has for very many years been thought the great glory of his native State. Doubtless, the whole commonwealth will mourn his death. We all have good reason to do so. The profession of the law has lost the ablest of its teachers, this court the brightest of its ornaments, and the people the steadfast defender of their rights, so far as they were capable of being protected by judicial authority."

CHAPTER IX.

GALLERY OF PORTRAITS.

THE BAR.

HAVING recalled some of the lineaments of those illustrious personages who adorned the judgment seat of the State and the Union, and presented them, through their virtues, as models for the present generation, let us now introduce a class of men, belonging to the same professional family, not less eminent in their appropriate department; and reflecting as much light *upon* the judges, as they ever derived *from* them. We refer, of course, to the MEMBERS OF THE BAR—a body of men who have done as much for the permanency and glory of this republic, as ever was done by the heroes of the revolution, for the achievement of its liberty.

Cicero, in his speech for Murena, contrasts the qualities of a civilian with those of a soldier, and attempts to show that *martial* is superior to *legal* reputation;

but we are informed by equal authority, that, in a free State, the advocates are always those who have most power and ascendancy. Nor is this wonderful; for, in the language of the civil law, "armed warriors, whose weapon is the sword, are not the only soldiers of the empire. Advocates, too, fought for imperial Rome, when they exerted the glorious gift of eloquence in supporting her government; in defending the lives, and fame, and fortunes of their fellow-citizens; in upholding the cause of the poor and needy, and in helping them to right, who suffered wrong."

"Sallust," says Judge Breckenridge, "has made it a question, which requires the greatest talents—the task of a general or that of a historian? *That* may be made a question, yet I consider the task of the historian as far behind that of the ORATOR. I can conceive of nothing approaching nearer the power of an angel than the management of an argument with the human mind, requiring an intuitive knowledge of the heart, to distinguish what can persuade—those resources of argument which can lead the understanding—that presence of mind, which gives command of language, and which, from sober reasoning, can ascend to the regions of imagination, descending and remounting as occasion may require.

"Great generalship requires great judgment, but not more than a game of chess. An equal judgment and presence of mind are required in the orator. The sur-

prise of sudden emergencies calls for the talents of a commander, but not less talents are displayed, where, in the course of a trial, the evidence takes a sudden turn, and the front of your defence or attack must be changed. A trial is the image of a field of battle. But to presence of mind and judgment, the faculty of eloquence must be superadded; that wonderful arrangement of ideas that must appear almost miraculous. An able lawyer could not but make a great general, but it does not follow that an able general would make a great lawyer; for the province is more extensive and the task greater. A few campaigns will form a general, but the able lawyer is the work of years; *viginti annorum lucubrationes.*"

What is the pride, pomp, and circumstance of war, compared with the still and mental parts of man, when they engage in conflict. When mind meets mind, then comes the tug of war. It is the conflict of the immortal powers of our nature—angel against angel.

But leaving the comparison to be carried out, and the result determined by impartial arbiters, let us present, in a brief and cursory way, some of the practical claims to victory, which are preferred in behalf of the profession of our choice.

WILLIAM LEWIS, L. L. D.

BORN, 1750—DIED, AUGUST, 1819.

It must not be expected that I should enter into the professional history and position of every member of the bar, nor must the omission to do so, be construed as a disparagement to those not specially noticed. There are many young men, now commencing their forensic career, who, in all human probability, will reach as high a round on the ladder of professional fame, as those who, being much older, are of course more prominent, and are therefore designated as examples of what talent and industry may accomplish, and as inducements to those more youthful, to persevere in their arduous course, in order that *they*, in their turn, may enlighten and encourage others, by whom *they* may be followed, in reaching the lofty pinnacle of FORENSIC fame.

Taken as a whole, there is no body of men in the United States—perhaps it may be said, in the world—who have exhibited more moral grandeur and unswerving integrity, than the members of the bar. Certainly none have displayed more patriotism, public spirit, intelligence and controlling influence, in the creation, administration, and preservation of the admirable system of government in which they have had the happiness to live. This remark is applica-

ble, if not equally applicable, to almost every member of the legal profession. Their devotion to the country; their energy, their charity, their liberality, and their fidelity, if equalled, have certainly never been surpassed, by any other class of our fellow citizens. And when it is remembered that they have more power, that they have perhaps fewer restraints, that they embrace a much wider and more important sphere of action—that to them is often confided the property, the lives, the liberty, the character, and hopes of thousands; when, in short, they stand as shining and peculiar lights in every community, it is certainly wonderful that so few spots should be detected upon the disk of their fair fame. While centuries have rolled over this glorious profession, and embraced but one Jeffries, one Scroggs, and one Norbury; the pages of time are redolent with the fame of such men as Gascoyne, Hale, Somers, Foster, Hardwicke, Wilmot, Mansfield, Marshall, Washington, Tilghman, and others of the same constellation, who shed an undying lustre upon themselves, their country, and the world.

Among the first class of those who flourished in Philadelphia, fifty—and more than fifty—years ago, and who stood pre-eminent not only in this State, but in the nation, and who succeeded to our Wilsons, our Shippens, our Dickensons, and our Hamiltons; all of whom had passed to "that bourne whence no traveller returns," though still gilding the horizon of life with the beams of

their departed glory—were Lewis, Rawle, Ingersoll, Tilghman, Dallas, Hopkinson, Jonathan Dickenson Sergeant, Reed and Bradford. All of whom, except the last three named, were personally, and some intimately, known to me; that is to say, as distinguished men might be supposed to be known, to a comparative boy.

The office in which I read law, (that of the late William Rawle,) necessarily brought me into subordinate intercourse with these eminent men, and my almost perpetual attendance at court, from the age of fifteen until their respective deaths, supplied the opportunity of noting their brilliant career, and of admiring, and endeavoring humbly to imitate, their relative talents and lofty virtue.

They all differed, and yet they may be said to have been all equal. The superior address of one, was made up to others, by superior strength; the more distinguished eloquence of some, by the deeper legal learning of others; some figured most before the court in banc; some were omnipotent with a jury; some exhibited greater skill in land cases, and some in mercantile, and others in what may be called personal actions; and still others in the higher order of criminal, or crown law; while some combined *all*, though each in an inferior degree; but by being *second* only in *every* department, ranked with the *first* in the *respective* branches, of jurisprudence.

Lewis, our present subject, was, for the most part, a self-taught man, but of great natural power and ca-

pacity. It is said, that he was originally, a boy in an humble position, upon a farm in an adjoining county, and that having, some years before the Revolutionary war, driven a load of hay into the city, he dropped into the court, at that time in session, and became so enamoured with the arguments of counsel, that he at once resolved to throw off his rural *gaberdine*, and assume the *toga virilis*.

Having thus determined on his future career, he shortly after entered the office of Nicholas Waln,* an eminent barrister, of some eighty years ago, rather as an attendant, than as a regular student; and continued there for some four or five years, employing those hours not occupied by other service, in the most sedulous and zealous devotion to the acquisition of a knowledge of the law.

It is related of him, and no doubt truly, that as he came last into the office, and as his condition was comparatively humble, the young gentlemen students, (many of whom afterward obtained deserved distinction,) occasionally took the liberty of subjecting him to menial services, such as sending him on errands, and deputing him to do what properly be-

* Mr. Duponceau, in a publication of his, (he having been a student of Mr. Lewis,) states, that "Mr. Lewis read law with George Ross." This has never been my understanding, and at the time of the burial of Mr. Waln, in my presence, Mr. Lewis said to Mr. Rawle, "I am going now, impressed with mingled gratitude and grief, to follow my old MASTER, Nicholas Waln, to the narrow house appointed for all living."

longed to themselves. On one of these occasions, when he was directed to bring some water, to carry their letters, or something of the sort, he peremptorily refused, and upon the return of their preceptor to the office, a formal complaint was preferred against the offender. "Well," said Mr. Waln, "it is true, William has but little education, and holds but an humble station, but he has still *some* rights, and it seems to me that the best mode of graduating men, is to test them by the standard of knowledge, and that the man who knows *least*, should serve the others. Now, I will examine you all, and if William knows less than the rest of you, he shall serve you." Accordingly the examination took place, and to the surprise of all, he proved to be, notwithstanding "all the bars against him," the best read student in the office. Thus ended the controversy on the score of precedency and authority.

His probation passed, it need hardly be said that he was admitted, after a most satisfactory examination, on the fourth of September, 1773, a member of the Philadelphia bar, where he held his post amongst the proudest of his competitors until his death, which occurred on the fifteenth day of August, in the year 1819, in the sixty-ninth year of his age.

Mr. Lewis's career was a manifestation of the aristocracy of mind. His powers of reasoning were of the highest order. During his whole life, his energy and

perspicuity were unabated; and in his last speech, like a dying taper, he emitted some of his brightest flashes just before expiring. His manner of speech was rough but most powerful; his voice somewhat harsh, but loud and clear, and clarion-like; it had but few modulations, but from its sonorousness, it could be heard and understood at a great distance.

A most remarkable matter connected with Mr. Lewis was, that he spoke the English language with extraordinary purity, notwithstanding his early associations and habits, which always exercise so great an influence upon the eloquence and literature of after life, had been such, as to debar him of those advantages which are so essential to advancement in professional and public life. No other man at the Philadelphia bar, with his opportunities, or, rather, with his want of opportunities, has ever equalled him as a forensic speaker, and yet but few of his speeches have been reported. Whether he resembled Mr. Pinckney, in refusing publication, on the ground that *rumor* was better than *print*, we cannot say. Perhaps there is another reason. It is much to be regretted that phonography was unknown during his time; and Mr. Thomas Lloyd, an aged and imperfect stenographer, was almost the only reporter, and by no means very accurate.

Lewis had but little flexibility of feature, and not much pathos; but he nevertheless often roused the feelings,

and always commanded undivided attention. His was the "*aureum flumen orationes*," in an extraordinary degree. His wit was keen but rough, and in sarcasm he had no equal. Conscious of his own strength, he used it unsparingly, and sometimes without mercy, to those by whom he was opposed.

I remember one instance, especially, out of many that I have witnessed, which left a lasting impression upon my memory—the last criminal case in which I ever knew him to appear. It was an indictment found upon a charge made by the Bank of North America against an individual who had counterfeited and passed the notes of that institution to a very large amount. Mr. Lewis appeared for the prosecution; and a very distinguished, thorough-paced criminal lawyer, (though not blessed with very frank or prepossessing features,) represented the defence. The evidence against the prisoner was clear, if not entirely conclusive; and his counsel found it necessary, inasmuch as his client was a man of considerable personal attraction, and of a placid and interesting face, to rest a portion of his argument upon his appearance. "Do you think, gentlemen of the jury," said he, in conclusion, having dwelt for some time upon the enormity of the crime of forgery, "do you think that *such* a man could be capable of perpetrating *such* an offence? Can you suppose that so calm and fair a countenance could mantle over so false and foul a heart?" Mr. Lewis

then rose in reply, and I recollect his exordium as though it had been uttered yesterday :—

"For twenty years, gentlemen of the jury," said he, "I have retired from the agitation and tumults of criminal practice, but for much more than twenty years I have been the counsel for the Bank of North America. They took me by the hand when a comparatively young man, and when I stood in need of friends; they have applied to me now, under the idea that my humble services may be useful; and gratitude forbids me to withhold those services. I am entirely at their command. Thus far for myself, now for the case. The prisoner's counsel has placed his defence mainly upon his countenance. What does such a reliance result in? If a good countenance is to pass for an acquittal, a bad countenance must pass for a condemnation; doctrine that you will at once abjure, and which sympathy for my learned antagonist forbids me to allow, for, in that case, he himself would stand a wretchedly poor chance."

This is not given as a specimen of the eloquence of Mr. Lewis, but as exhibiting his occasional severity, a severity in the exercise of which the manner was, if possible, more withering and insufferable than the matter. His sarcasm or rebuke was seldom accompanied by a smile, unless it were a smile of derision or contempt. In this respect, he differed widely from his more generous and polished cotemporaries—Jared Ingersoll, William Rawle, and Alexander James Dallas, all of whom were remarkable for their personal dignity and professional courtesy and decorum.

Though he was most distinguished in the higher order

of crown cases, as they were then called, he was always at home at the bar, or elsewhere, in every discussion in which he engaged. He was a proficient in commercial law, and he was particularly disposed to exhibit his knowledge before those who professed to be most familiar with its principles, usages, and customs. The late Robert Waln, a thorough-bred merchant, on hearing Lewis discuss the commercial relations between this country and Europe, at a dinner at which they were both guests, observed to the party assembled, "that Mr. Lewis seemed as familiar with commercial affairs as if he had been the head of a counting-house all his life." "Let me tell you, sir," said Lewis, "that a competent lawyer knows *everything* that a merchant does, *and a great deal more*."

Like most men who have, by force of their own innate genius, "got start of the majestic world," he was somewhat overbearing and opinionative, and in the consciousness of his own great powers, made but little allowance for the comparative feebleness of others. In his victories, he granted no quarters to the vanquished. For some time after the admission of the elder Dallas to the bar, he threw discouragements in his way, and at times manifested so much vindictiveness towards him, as at last to result in an open rupture, which was, however, reconciled by the interference of their mutual friends, and ever afterwards there remained entire harmony between them.

For much of his life, his business was very extensive at the bar; and it is not a little remarkable that, although his early education was the most shallow and imperfect, he had cultivated such an acquaintance with the best authors, and bestowed so much attention upon language, that he became one of the most classical speakers at the bar; and upon subjects of philology and logic, he was particularly expert.

His eloquence resembled more that of Demosthenes than Cicero—it was a torrent, and not a gentle and translucent stream. It broke down, instead of undermining opposition, and often terrified rather than persuaded the jury into a verdict. He spoke as a master everywhere, and, although he often manifested a want of judgment, perhaps, in selecting or arranging his points; overlooking those that were strong, and relying on those comparatively weak, he never left those weak points without converting them into strong ones, and leaving the minds of his hearers in doubt, whether *his* judgment or their *own* was in error. There were some early instances of that occasional want of perspicacity and judgment to which I have referred, one of which he used to relate himself.

Towards the end of the last century, he was engaged in a case of great importance in point of principle, and upon the result of which a vast amount of property depended. He bestowed upon his preparation weeks and months of his time. The argument

was to be heard before the Court in New York; and, as he was to be opposed to Chancellor Kent, Ambrose Spencer, and other eminent members of that bar, he was induced, from considerations of fame as much as money, to leave no effort unemployed.

"'Well,' said he, 'I thought no man could be better prepared, and no man could have a better cause. My points and my argument, as I had arranged them, appeared to be unanswerable; and, assured of success, on the day before that fixed for the hearing, I arrived in New York. Next morning, at eleven o'clock, the argument was to commence.

"About an hour before the opening of the court, I was called upon by Alexander Hamilton, who informed me that Mr. Kent was indisposed, and Mr. Spencer absent, and in this emergency he (Mr. Hamilton) had just been retained, but that he had little knowledge of the case and no means of obtaining it. 'In these circumstances,' said the great little man, 'would you have any objection to giving me a sketch or foreshadowing of your views, in order that I may turn the matter over in my mind, and at least know something of what I am compelled to discuss.' 'By all means,' said I, considering my claims infallible, and telling him so; and I proceeded briefly to state the history of the case, the points of my argument, and the authorities by which they were sustained. He thanked me, left me, and in an hour afterwards we met again in court, and the argument at once proceeded. I spoke for several hours. The judges seemed to be convinced, and I was perfectly satisfied with the cause and myself. During the argument, Mr. Hamilton took no notes, sometimes fixed his penetrating eye upon me, and sometimes walked the chamber, apparently deeply interested, but exhibiting no anxiety. When I had finished, he immediately took the floor, and commenced his reply. What was my amaze-

ment when, in his first sentence, he acknowledged all my points, and denied none of my authorities, but assumed a position which had never entered my mind; to the support of which, directing all his great powers, in one fourth the time employed by me, he not only satisfied the court, but convinced me that I was utterly wrong. In short, after all my toil, and time, and confidence, I was beaten—shamefully beaten."

With all his eminence, Mr. Lewis was a careless man, negligent of his papers, negligent of his dress, indifferent to the comforts and cleanliness of his office, mingling very little in social intercourse, and usually, in the close of his career, bestowing but scanty attention upon the preparation of his cases. Indeed, he never was an industrious and systematic man; if he had been, (said Mr. Rawle,) few lawyers could have compared with him.

Some years before his death he retired to his country seat, near the falls of Schuylkill, and seldom visited the city. There he died, on the fifteenth of August, 1819, and was buried in the burial ground of the Friends' Society, of which society he was a professed member.

Mr. Lewis was a man of six feet high. In his advanced age, he had a slight stoop in the shoulders, which, however, he lost in the animation of discussion, when he seemed to stretch his frame to its utmost limit.* He used but one gesture, which was that of

* There is an excellent, though not highly finished, portrait of him, in oil colors, in the Law Library, painted in early life by Mr. John Nagle, while a pupil of the late Gilbert Stewart. It is a copy of a portrait by

raising his right arm almost perpendicularly, and as though in the act of throwing a tomahawk, and sometimes bringing it down with great violence upon the desk. His appearance, when in the full excitement of a speech, was such as not only to enlist the court and jury, but the entire audience. It stirred men's blood, and caused the hair to stand on end.

I remember, in very early life, to have heard his cotemporaries and compeers say, that, upon one occasion, when he was engaged in a very important forensic struggle, during the time when Philadelphia was the seat of the federal government, a deputation of Indians, then upon a visit to President Washington, was introduced into the court room, with their interpreter, and while there, listened with great apparent attention to the argument of Mr. Lewis. My informant, stepping up to the interpreter, requested him to ask his savage companions what they thought of the speaker, to which the immediate reply was, "*He is a great warrior.*" This serves to convey some idea of his action and energy in debate, from the effect produced upon these children of the forest; but it had very little foundation in point of truth, for, perhaps, courage was the least remarkable of the qualities of this great man.

Mr. Lewis was a steadfast friend and a generous

Stewart, and gave an early but bright promise of Nagle's present eminence. This portrait was presented to the Law Library Company, by the late Joseph Head, Esq.

enemy. He was faithful to his clients when convinced they were right, but he did not consider himself bound to them, "right or wrong."

As an instance of this, having been engaged by an influential citizen to defend him in a case of considerable magnitude, in the course of the trial it became apparent that the client had grossly misrepresented the case, and had in fact been guilty of a gross fraud; whereupon Lewis threw up his brief, and when called upon to speak for the defendant, he promptly declined. "Will you not speak?" said the client. "No, sir;" said the counsel. "What, then," said the suitor, "have I paid you for?" "You have paid me," replied the indignant advocate, "that you might have justice done, and justice will now be done, without my further interference."

With all his masterly powers, toward the latter part of his career his carelessness and negligence increased. I remember to have heard one of the most distinguished of his friends say, that it seemed almost impossible for Mr. Lewis ever to find a paper that had been left with him, and that, too, even at a period when he was engaged in every important cause, and his voice daily heard in every court. From my knowledge of his office, I think that readily accounted for. His table and desk generally exhibited a huge and confused mass of documents, all apparently thrown heterogeneously together, and so covered with dust, and redolent of tobacco

smoke, that it might be thought their repose had not been disturbed for months. The other portions of the office showed equal indifference to cleanliness and order, so much so as to induce me, upon returning from one of my calls, to remark, in a playful way, that no one could visit Mr. Lewis's office without committing a larceny; as he not only brought away his own coat, but a coat of dust besides.

The condition of his office, as thus described, however, was not so remarkable *then* as it would be *now*. It was, to be sure, much worse than most of those of men of his rank, but none of the offices of that day were—on the score of cleanliness, order and comfort—to be compared to those of the last quarter of a century: papers, of course, especially those of a remote date, were often lost or mislaid, and woe to the unhappy student, whose fate it might be to search for them. He was doomed to days of wearisome examination, mounting to the top of an overgrown and overloaded book-case, upon a precarious ladder, and shrouded as it were, in the accumulated dust of twenty or thirty years, seeking what he had never seen, and what, as it often happened, he was likely never to see; and further, what perhaps, if found, would have been a poor equivalent for his annoyance and sufferings encountered in making the discovery.

Lawyers' offices, from the year 1820 until 1850, were palaces, embracing a suite of rooms appropriately and

magnificently furnished, books and papers in perfect order, and where the effluvia of a segar or the annoyance of tobacco juice, or the temptation even of a spittoon, was rarely, if ever found. In the increase of the profession, however, from two hundred to five hundred members, no inconsiderable change has taken place within the last few years. I am no advocate for a palace, and I am decidedly opposed to a hovel, but there is a happy medium which might be adopted, that would be creditable to the counsel and comfortable to the client—next to doing things well, is to do them agreeably.

Having thus given a general account of Mr. Lewis's professional course and character, the difficulties which he encountered and subdued, his personal habits and mode of speech, it may reasonably be expected that some specimens of his oratory should be supplied to the reader, confirmatory of the lofty opinion entertained and expressed of him by all those who knew him in his palmy days, and traced his luminous course to "the house appointed for all living."

In complying with this reasonable expectation, we are aware that a speech in type is a very different matter from a speech delivered. If Patrick Henry's fame depended upon the report of his speeches, instead of the effects which they produced, we should be at a loss to conceive how he could have acquired such deathless renown.

This difference is attributable to various causes, combining to produce dramatic effect. The court—the jury—the issue—the surrounding populace; the interest of the contending parties and their respective friends—the presence of the bar—the natural excitement of the occasion—all tend to impart animation and vigor to a speech, and to confirm the sentiment of Cicero, that "no man is an orator without a multitude." Still, without any of these advantages, and without even a statement of the issue under discussion, which our space will not allow, we may, by a few excerpts from the forensic efforts of this great advocate, furnish some faint idea of the grasp of his intellect, and the power of his eloquence. The attempts will prove, to be sure, comparatively tame and uninteresting. Like a Chinese portrait, preserving, with great exactness the features and proportions of the picture, but utterly destitute of that warmth, and grace, and life, and soul, which constitute its true resemblance and chief value. Action, which is said to be the essence of oratory, is utterly wanting. The impassioned declamations, the varied tones of the voice, the fixed and penetrating eye—the spirit that displays itself "from every joint and motive of the body"—are neither to be appreciated nor imagined. To be understood—to be felt—they must be seen and heard. Still, as we cannot revive the dead, their past works must *speak* for them.

It is said that upon a nobleman, inquiring of Charles James Fox whether he had read Sheridan's great speech at Liverpool hustings, he said, "No, how does it read?". "Admirably," was the reply. "Then," observed the great statesman, "it was not worth a d—n."

Every one familiar with the efforts of true oratory, can appreciate the truth of this rough remark. It is also said that Mr. Pinckney, who, for eloquence, had few, if any, superiors, considered that a speech spoken and a speech written, (as we have elsewhere said,) were such different things, that he always, when he could, withheld from publication his oratorical efforts, knowing the insufficiency of type to convey any just idea of the real value of professional or parliamentary elocution, and prefering rather to trust to rumor and tradition, than to a stenographer or a printer. Nevertheless, it may be expected, after what has been stated of Mr. Lewis's great forensic powers, that this humble memento of a most distinguished man should be attended, at least, by some brief abstracts from his professional arguments. There is but one case that we shall take leave to refer to: that of his defence of Chief Justice M'Kean before the Legislature of Pennsylvania, upon an attempt to impeach him, arising out of his judgment in the case of Respublica v. Oswald, already adverted to in the memoir of the Chief Justice. In excuse for the meagre materials left to us, after a lapse of scarcely more than half

a century, it may be observed, that phonography at that time was unknown, and short-hand writing was so little practised, and confined to so few persons, and those so incompetent, that it must have given an advocate more pain in reading his reported speeches, than he derived pleasure, or profit in delivering them. Still, however, with all these qualifications and allowances, some notion may be formed from the speeches that are extant, of the mind, at least, if not of the action of the speaker, and with this explanation, we present this imperfect specimen.

The substance of Mr. Lewis's speech, as a member of the Legislature of Pennsylvania, in September, 1778, upon the memorial of Eleazer Oswald, calling for the impeachment of Chief Justice M'Kean and his associates, for imprisoning the said Oswald under an attachment, and extending the imprisonment beyond the limit of the sentence, 1 Dallas, 330 :—

"Mr. Lewis began with commenting upon the origin, nature, and purposes of a state of society, which, he said, was principally formed to protect the rights of individuals; and, of those rights, he pathetically described the right of enjoying a good name, to be the most important and most precious. He observed, that the injuries which could be done to any other property, might be repaired; but reputation was not only the most valuable, but, likewise, the most delicate of human possessions. It was the most difficult to acquire; when acquired, it was the most difficult to preserve; and when lost, it was never to be regained. If, therefore, it was not as much protected as any other right, the aged

matron and the youthful virgin, (since purity of character is the palladium of female happiness,) while they are fettered by the habits and expectations of society, are exposed and abandoned by its laws and institutions. But this evil is effectually removed, when we consider the bill of rights as precluding any attempt to restrain the press, and not as authorizing insidious falsehoods and anonymous abuse. The right of publication, like every other right, has its natural and necessary boundary; for, though the law allows a man the free use of his arm, or the possession of a weapon, yet it does not authorize him to plunge a dagger in the breast of an inoffensive neighbor.

"Mr. Lewis then proceeded to consider the immediate subject of complaint. He stated it to be two-fold: 1st, That the Chief Justice had protracted Mr. Oswald's imprisonment beyond the legal expiration of his sentence; and, 2dly, That the imprisonment itself was unconstitutional, illegal, and tyrannical.

"On the *first* point, he observed, that it was, indeed, a serious charge, if Mr. Oswald could prove that a single justice had arbitrarily altered, or counteracted, the record of the court, in order to accomplish the imprisonment of a citizen. But how was the charge supported? The opinion given by the Chief Justice to the jailer, was not given in his judicial capacity; and though a paper, said to be a transcript from the records, was shown to him, yet it was not subscribed by the prothonotary, nor was it under the seal of the court. This, therefore, could not be a sufficient document to set aside his recollection of the sentence; it was no legal evidence of the fact which it stated, Gilb. Law of Ev. 23, and the little time that elapsed between the opinion given to the jailer, and the directions for Mr. Oswald's release, we may fairly presume to have been consumed in examining the records.

"On the *second* point, he engaged in a long and ingenious disquisition upon the nature of what is called *the liberty of the press;* he represented the shackles which had been imposed upon it during

the arbitrary periods of the English government; and thence deduced the wisdom and propriety of the precaution, which declares in the *bill of rights*, that the press shall not be subject to restraint. He gave an historical narrative of the British acts of parliament and proclamations, which debarred every man of the right of publication, without a previous license obtained from officers, established by the government to inspect and pronounce upon every literary performance; but observed, that this oppression (which was intended to keep the people in a slavish ignorance of the conduct of their rulers) expired in the year 1694, when the dawn of true freedom rose upon that nation. 9 vol. Stat. at large, p. 190. Since that memorable period, the liberty of the press has stood on a firm and rational basis. On the one hand, it is not subject to the tyranny of previous restraints; and, on the other, it affords no sanction to ribaldry and slander;—so true it is, that to censure the *licentiousness*, is to maintain the *liberty* of the press. 4 Black. Com. 150, 151, 152. Here, then, is to be discerned the genuine meaning of this section in the *bill of rights*, which an opposite construction would prostitute to the most ignoble purposes. Every man may publish what he pleases; but, it is at his peril, if he publishes anything which violates the rights of another, or interrupts the peace and order of society;—as every man may keep poisons in his closet, but who will assert that he may vend them to the public for cordials? If, indeed, this section of the bill of rights had not circumscribed the authority of the legislature, this house, being a single branch, might, in a despotic paroxysm, revive all the odious restraints which disgraced the early annals of the British government. Hence arises the great fundamental advantage of the provision, which the authors of the constitution have wisely interwoven with our political system; not, it appears, to tolerate and indulge the passions and animosities of individuals, but effectually to protect the citizens from the encroachments of men in power.

"It has been asserted, however, that Mr. Oswald's address was of a harmless texture; that it was no abuse of the right of publication, to which, as a citizen, he was entitled; and, in short, that in considering it as a contempt of the court, the judges have acted tyrannically, illegally, and unconstitutionally. But let us divest the subject of these high-sounding epithets, and the reverse of this assertion will be evident to every candid and unprejudiced mind: for, such publications are certainly calculated to draw the administration of justice from the proper tribunals; and in their place to substitute newspaper altercations, in which the most skilful writer will generally prevail against all the merits of the case. But it is moreover the duty of the judges to protect suitors, not only from personal violence, but from insidious attempts to undermine their claims to law and justice. Hence, Lord Chancellor Hardwicke, (who was an ornament to his country, and not one of whose decrees, during the period of twenty years which he sat as chancellor, was ever reversed,) has described three sorts of contempts—1st, Scandalizing the court itself; 2dly, Abusing parties who are concerned in causes there; and 3dly, Prejudicing mankind against persons, before the cause is heard. 2 Atk. 471. And in 2 Vesey, 502, though no reflection was cast upon the court, and the offender pleaded ignorance of the law, yet, it is expressly laid down, that ignorance was not an excuse, and that the reason for punishing was, not only for the sake of the party injured, but also for the sake of the public proceedings in the court, to hinder such advertisements which tend to prepossess people as to those proceedings. A similar doctrine is maintained in 1 P. Williams, 675. And 4 Black. Com. 282, pronounces the printing, even true accounts of a cause depending in judgment, to be a contempt of the court.

"But it has been said, that this cause was not depending in court, when the offence was committed, because the address was published *on the first of July*, and the writ against Mr. Oswald was not returnable until the *succeeding day*. This idea originates

in an ignorance of the constitution of our courts, which, in this respect, differs essentially from the constitution of the courts of England. *There*, all original process issues out of the Court of Chancery, and is made returnable into the King's Bench or Common Pleas; so that, in truth, the writ gives the jurisdiction, and, of course, until it is returned, the court cannot take cognizance of the cause. *Here*, however, the original process issues out of the very court into which it is returnable, and is usually tested the last day of the preceding term. It is absurd, therefore, to say that the jurisdiction of a court, by whose authority a suit is actually instituted, can be thus suspended and parcelled out.

"With respect to the address itself, Mr. Lewis analyzed its offensive parts, in order to show that it treated the judges with indecent opprobrium; that, in some respects, it was inconsistent with truth, and that, in its general operation, it was intended, and could not fail, to excite resentment against Browne, the plaintiff, and compassion for Oswald, the defendant, in the cause.

"He now proceeded to consider the *mode* of punishment, which formed a material part of Mr. Oswald's complaint; and, in support of its legality, referred, generally, to the authorities which he had already cited. He observed that much declamation had been wasted upon this topic; and that the proceeding by attachment had been vehemently reprobated as the *creature* of the Court of Star Chamber. Though that court might have employed the process of *attachment* (of which, however, he did not recollect an instance,) yet, he insisted, that it was idle and absurd to consider it as the *creature* of a jurisdiction, whose own existence was of a much later date, than that of the subject to which we are told it gave birth. To prove this, he stated that the Court of Star Chamber was not instituted until the year 1368; that Magna Charta was confirmed, at least, one hundred and thirteen years before that time; and, as all the authorities concur in declaring that the process by attachment is as ancient as the laws themselves, and that

it was confirmed by Magna Charta, its origin is consequently long antecedent to that of the Court of Star Chamber. 4 Black. Com. 280, 281, 282, 283, 284, 285.

"But, he argued, with great strength and perspicuity, that the process of attachment, which in practice was multiplied into innumerable uses, was essential to the administration of justice; and that if the exercise of this power was suppressed, the courts themselves might as well be annihilated. He represented, that it was an established principle in law, that one court could not punish a *contempt* committed against another; then, continued he, how shall the Common Pleas repel an injury of that nature? It is not vested with any criminal jurisdiction; it cannot empanel a grand jury, nor try an indictment; the only remedy therefore which the case can admit, is by an attachment. He applied the same reasoning to the Supreme Court; and with respect to the Orphans' Court, the Court of Admiralty, and the Courts of the registers of wills, &c., he observed, that their proceedings, according to the civil law, were totally independent of juries; and that, consequently, if they were deprived of the process of attachment, it was in vain for them to decide and to decree, for they would then be without any means to enforce obedience to their decisions and decrees. Nay, he added, that, without this power, the legislature itself would be exposed to wanton insult and interruption; and that letters, such as he had received, menacing his existence for his conduct on the present occasion, might be written and avowed with absolute impunity. He then enumerated many instances in which gross injustice would take place, but for the intervention of this summary proceeding. Where a sheriff refuses, or neglects, to return a writ; or to pay money which he had received upon an execution; where an inferior court refuses to transmit a record; a witness, or juryman, to attend or to be sworn; and where a defendant in ejectment refuses to pay costs, after a nonsuit, for want of a confession of lease entry and ouster;—in all these and many other cases he

demonstrated, that the great, efficient remedy, was by an attachment to be issued against the delinquent.

"In tracing the antiquity of the process by attachment, he remarked, that, it was admitted to be a part of the common law by the most authoritative writers; and that the common law was a compound of the Danish, Saxon, Norman, Pict, and civil law. 1 Black. Com. 63. As, therefore, the attachment is derived from the civil law, and the civil law was introduced into England by the Romans, early in the first century, he thought it impracticable at this day to ascertain its source; but insisted that enough appeared to prove it to be of immemorial usage, and a part of the law of the land.

"He then adverted to the leading objection made by the advocates for Mr. Oswald, that, however the process of attachment might be legal in England, it was not so in Pennsylvania. From a decision in the time of Judge Kinsey, he showed, that, before the Revolution, an attachment had issued for a contempt, and that the party had, in fact, answered certain interrogatories filed by order of the court; so that, it only remained to inquire, whether any alteration had been introduced by the constitution of the State. In the twenty-fourth section of that instrument, it is declared, that, "the Supreme Court, and the several Courts of Common Pleas of this Commonwealth, shall, *besides the powers usually exercised by such courts*, have the powers of a Court of chancery, so far as relates, &c." Now, as it appears by the case which occurred while Mr. Kinsey was chief justice, that the power of issuing attachments was usually exercised by the Supreme Court, so far from altering the law, this is a direct confirmation of the jurisdiction of the court; for, the greater naturally includes the less; and if the court is vested with *all* its former powers, by what possible construction can we deprive it of this? But it is answered, that a section in the *bill of rights* provides, that, "In all prosecutions for criminal offences the trial shall be by jury, &c." True; but the

whole system must be taken together; or, if we examine a particular part, it must be with a recollection of the immediate subject to which that part relates. For, otherwise, this very section might as properly be brought to prove, that the judges could not be *impeached* (since surely that is not a trial by jury) as that they have not the power of issuing attachments. All cases proper for a trial by jury, the bill of rights clearly meant to refer to that tribunal; but can anything more explicitly demonstrate that the framers of the constitution were aware of some cases, which required another mode of proceeding, than their declaration, that 'Trials shall be by jury as *heretofore?*' Who will assert that contempts were ever so tried? who will hazard an opinion, that it is possible so to try them?

"But does not the constitution of Pennsylvania further distinguish between the *laws of the land* and the *judgment of our peers;* furnishing a striking alternative, by the disjunctive particle *or?* This very sentiment, expressed in the same words, appears in the Magna Charta of England; and yet Blackstone unequivocally informs us, that the process of attachment was *confirmed* by that celebrated instrument. In the fourteenth chapter of Magna Charta it is also said, that 'no amercement shall be assessed but by lawful men of the vicinage;' and who, that is at all acquainted with the law, or with the reason of the law, can think it possible, in that case, to pursue the *generality* of the expression?

"From these analogous principles, therefore, and the construction of ages, we may safely argue on the present occasion. But the wild and hypothetical interpretations which some men have offered, would inevitably involve us in a labyrinth of error, and eventually endanger that liberty which they profess, and every honest citizen must wish to preserve."

CHAPTER X.

JARED INGERSOLL, L.L.D.

BORN, NOV., 1750—DIED, OCT., 1822.

JARED INGERSOLL was born in New Haven, Connecticut, on the seventh of November, 1750, and was admitted to practice on the twenty-sixth of April, 1773, having read law with Joseph Reed, the grandfather of W. B. Reed,* the present able district attor-

* Mr. William B. Reed, and his lamented brother, Professor Henry Reed, united in the preparation and publication of the memoirs of their paternal grandfather; a work which reflects great credit upon their affection, and scarcely less upon their industry and fine literary taste; a taste possessed in an eminent degree by their ancestor, as every one will admit, even if there remained no other evidence of it, than his celebrated letter to General Gage, in reply to his communication addressed to George Washington, Esq., which, we presume, is familiar to all. If every descendant among us manifested the same reverence for ancestry, or the same grateful family regard, the history of this country, which, at last, is but the history of its men, would at once, be a subject of personal gratification and patriotic pride. But, sad to say, prospect, not retrospect, is the prevailing error of the times; and

ney for the county of Philadelphia. Joseph Reed was a celebrated lawyer, and at one period, president of the executive council.

Mr. Ingersoll, the next year after admission, made a voyage to Europe, and remained abroad for nearly five years, and upon his return, was, in April, 1779, admitted to practice in the Supreme Court of Pennsylvania.

Jared Ingersoll, not less eminent than Lewis, was, in every possible way, differently constituted. His great merit was that of persuasion, with nothing boisterous—nothing clamorous—nothing violent or declamatory in his mode of discussion. Calmness, mildness, and moderation, were his distinguishing and characteristic traits.

> "When he spoke, what tender words he used—
> So softly, that like flakes of feathered snow,
> They melted as they fell."

He glided into the affections, and disregarding the passions, he captivated, by the strength and simplicity of his appeals, the reason and the judgment of his hearers. Never excited, never disconcerted, he pursued the even and resistless tenor of his way, and success almost invariably crowned his efforts. His education was far superior to that of his great rival, and in

you would hardly suppose that, at the present day, any man ever *had* an ancestor. Yet, certainly, of all branches of history, biography is the most interesting and instructive, and we are told by high authority, it is the "*proper study of man.*"

addition to this, he had enjoyed the benefit of foreign travel, and the best society of France and England. He was a student of the Inner Temple, and, after terminating his studies there, had returned to his native land, a refined gentleman and an accomplished lawyer.

Improved by the virtues of Europe, and uncontaminated by its vices, yet Mr. Ingersoll never presumed upon his superior advantages. He was a man of great delicacy, and of course great modesty. The most extraordinary feature of his disposition was, that, unlike Mr. Dallas and most of his other compeers, he avoided participation in almost everything that did not, in some way, appertain to his profession. Eminently fitted to shine in every walk of life, his ruling attachment seemed to be entirely centred in the Law. To this, he looked through the medium of everything else, and he contemplated everything else through the lens of the law. His ambition was rendered perfectly subordinate to his love for his own peculiar science. Yet he spoke well upon any topic, and was at home wherever he was found. His stateliness, was simplicity; his reserve, modesty. He was unlike Oliver Ellsworth, Chief Justice of the Supreme Court of the United States, who, though a great lawyer, upon being presented at the British Court, seemed somewhat at a loss as to the conventional rules of society, and was observed stalking through the marble halls of the palace, without entering into conversation

with any one, until Lord Lyndhurst, inquiring who was the tall gentleman in black, and being informed, begged the honor of an introduction; and with admirable adroitness at once inquired how they regulated descents in the United States. Here, of course, the Chief Justice was at home, and entered upon an explanation of the subject, which no doubt interested his lordship, and certainly relieved his colloquist from much embarrassment.

The habits of industry acquired by Mr. Ingersoll abroad, remained to him during the course of his entire life. How often have we seen him, in advanced age, drawing nearer and nearer to his office window, as the sun declined, engaged in the close perusal of his books, as if unwilling to lose a moment that could be profitably employed. His whole mind seemed to be devoted to his profession, but his heart was not the less generous and humane. Just, in all his dealings with his fellow men, he nevertheless was forgiving of their frailties, and gentle towards their faults. His intercourse with the bar displayed remarkable amenity and urbanity, and he not unfrequently, converted those to whom he was opposed, into friends and clients. In all the discussions in which we have ever known him to be engaged, and they were many, he was never known to indulge in any harshness or asperity that could give undue pain to others, or prove a matter of regret to himself. In the famous case of

John Evans, in which some of the most eminent members of the bar were concerned—Condy, Levy, and Ingersoll, for the plaintiff; Lewis, Rawle, and Hallowell, for defendant—although the parties were much excited and very sensitive, it was generally acknowledged by both sides, that the speech of Mr. Ingersoll was the ablest, most appropriate, and most discreet. Indeed, his manner and matter were always unexceptionable. He never lost sight of the interest of his clients. He was equally regardful of the rights of others, and his own self-esteem. His position at the Philadelphia bar resembled that of Romilly at the British bar—he was both feared and beloved. His style was for the greater part colloquial; and in an argument to a jury, he almost made himself one of them, and drew them imperceptibly to his opinions and conclusions. Others may have seen him in a state of excitement, but we never did. Excitement would have been unfavorable to the tone of such a mind. As obstruction, in a smooth and transparent stream reflecting all the beautiful scenery by which it is surrounded, and smiling in the rays of the sun, would render the crystal waters turbid, and disturb their imagery; so would excitement, in thoughts like his, have disturbed their serene and tranquil course.

We have said the failing of Mr. Lewis was to rest too often on the weak points of his case. The peculiarity of Mr. Ingersoll was, that where he discovered

a weak point in his adversary, instead of overlooking or treating it with indifference, he assailed it with all his force, and never left it until it was utterly demolished, and his adversaries' cause with it. He could seize upon a weak position, and avoid the effects of a strong one, better than any man at the bar. He was, of course, remarkable for his success; and during a long session of the Circuit Court of the United States, he gained every cause, but one, in which he was engaged.

This faculty was always manifested by him in an extraordinary degree, but so far as we remember, it was most remarkable upon the trial of John Evans v. Jane Pierce and Others, in 1810; and in the case of the Commonwealth v. Richard Smith, in 1816. In the first of these, the ground of action was not only unpopular, but feeble in itself, and the verdict obtained by the plaintiff merely nominal; but it is not going too far to say, that no other member of the bar than Mr. Ingersoll, could have prevented a verdict for the defendant. His whole speech consisted of the exposure of the fallacy of the remarks of the opposite counsel. It is unnecessary that passages of the speech should be specially referred to. It is published, and although far inferior to the speech delivered, abundantly supports the opinion thus expressed.

The speech that probably gives the best notion of the tone and quality of Mr. Ingersoll's forensic efforts, is that delivered by him in the Senate of the United

States, upon the impeachment of William Blount, a senator of the United States, for high crimes and misdemeanors.

This impeachment was founded upon a message from the President, in 1797, to the Senate and House of Representatives, alleging that the situation of the country was critical, and furnishing documents in support of that allegation. One of these documents was a letter, dated April 21st, 1797, from Mr. Blount, obviously designed to produce a disruption between the United States and the Indian tribes.

Upon investigation of these documents, Mr. Sitgreave, of the House of Representatives, reported the following resolution:

"*Resolved*, That William Blount, a senator of the United States, from Tennessee, be impeached of high crimes and misdemeanors."

Mr. Sitgreave was then appointed to go to the Senate and impeach Blount; and also demand that he be sequestered from his seat in the Senate, which was accordingly done. Blount was then taken into custody, and held to a recognizance of twenty thousand dollars himself, with two sureties, each in fifteen thousand dollars. In addition to this, Blount was expelled from the Senate—his bail surrendered him, but he was afterwards admitted to reduced bail.

On the seventeenth of December, 1798, the Senate formed itself into a Court of Impeachment.

On the twenty-fourth of December, Mr. A. J. Dallas and Mr. Jared Ingersoll appeared for defendant, and by permission entered their pleas.

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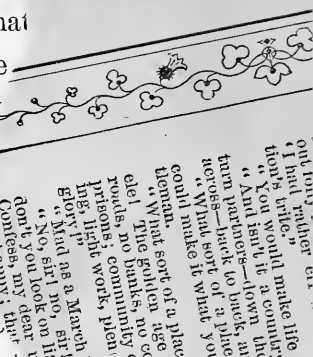

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1. Denying the charge.

2. Denying that if charge were true, the Senate has jurisdiction; and alleging that the jurisdiction belongs to the courts of common law.

It was in support of these grounds of defence that Mr. Ingersoll, in answer to Mr. Bayard, made a most able argument, a few extracts from which, as affording some faint notion of his style, we now take leave to present. It was delivered on the 4th of January, 1799.

"Sir, when I turn, as directed, to the books of the law, to know the nature of the proceeding by impeachment, what do I find of it there? Little good, and much ill. And while the energy of the English language, copious as it is, is exhausted in eulogiums on trials by juries in criminal cases, I read of none on proceedings by impeachment. The best English writers content themselves with stating, coldly, that the most proper and the most usual instances of proceeding by impeachment, are against the ministers and other great officers of state, who, surrounded by the imposing splendor of royal favor, are too great for the grasp of law administered by courts and juries; and from the special nature of the alleged crimes sometimes a knowledge is requisite, not always possessed by juries. Sir, I find in those books, that the trial by jury, in criminal cases, is the palladium which has preserved the liberties of the British nation, during the shocks of conquests from abroad, the convulsions of civil war within, and the more dangerous period of modern luxury.

"My impression or my sentiments upon this subject are not entitled, as such, to the notice of this honorable body; but when I cite, in their support, such names as Hale, Hume, Blackstone, and Wooddeson; when I can add the expressions of the first great charter of American freedom, the Declaration of Independence, in which I find it assigned, as one reason for the dismemberment of the empire, that the king had given his assent to laws for depriving us in many cases of the benefits of trial by jury. I trust what I have observed in this particular will not be stigmatized as declamation.

"I read in Magna Charta, that no man shall be condemned but by the lawful judgment of his peers, or the law of the land. What was this law of the land? What other mode of proceeding in criminal causes was then in practice, except trial by jury. Hale, eminently great and equally good, expresses it to be by the common law of the land. A learned English historian explains the expression as alluding to those methods of trial which originated in the presumptuous abuse of revelation in the ages of dark superstition. The trial by ordeal, or fire or water; the corsned or morsel of execration, and the trial by battle. I add, informations originally reserved in the great plan of the English constitution, and attachments for contempts. Was the proceeding by impeachment within the exception? Magna Charta bears date A. D. 1225. The first instance of impeachment mentioned in the juridical History of England, as far as I can find, was, on the third of February, 1388, or at least 1327, in the reign of Edward the Third, more than one hundred years after Magna Charta; unless, indeed, it be the proceedings against the two Dispensers, in 1321, which were so irregular, that it was made void in Parliament the following year.

"It is sufficient, says the celebrated Montesquieu, as quoted by Justice Blackstone, to render any government arbitrary, that the laws on the subject of treason are indefinite; for this reason, the statute of twenty-fifth Edward III., attempted to render the law on this subject definite and clear. The House of Commons,

in order to destroy an object of their vengeance, attempted to introduce a new species of treason, constructive; and to support the charge by a new species of evidence, called accumulative. Can any man read without the strongest sensibility the defence made on that occasion? Penalties are imposed previous to the promulgation of the laws, and the defendant is tried by maxims, unheard of until the moment of the prosecution. Who can recollect, without horror, the cruel manner in which the defendant was treated on his trial, as described by Wooddeson, vol. ii. pages 608, 609. Personal animosity and violence, and the implacability of determined enemies, marked their proceedings, until it ended in a bill of attainder, which a subsequent parliament repealed, erased, and defaced. Let me add, in the words of the same author, Wooddeson, vol. ii. page 620, from this, or a more particular survey of the proceedings on impeachment, we shall find occasion to observe, that though great is the utility of the public ends, which they are designed to answer, they have been too often misguided by personal and factious animosities, and productive of alarming dissentions between two branches of the legislature. The incompetency of a court and jury sometimes to decide, from the greatness of the offender and the nature of the crime, is urged against me. I do not believe that at present any offender is too great for the grasp of law as administered by our courts and juries; but what may happen in our eventful history I know not; and, therefore, I confess it to be proper that a provision of this kind should find a place in the constitution, as far as respects the executive and its officers; but, further than this, I contend there is not any necessity that it should be carried, and that such extension of this proceeding would be infinitely dangerous to the citizens. Might not the influence, the weight, and the protracted nature of such proceedings by impeachment, endanger even innocence? Have we not seen, in our own days, an impeachment continue seven years? Had the defendant possessed no other means of defence than innocence, the

prosecution would have occasioned his ruin in one-seventh of the time.

"Wherever a proceeding in a criminal matter deviates from the course of the common law by jury, whether such proceeding be introduced by statute or by a constitution, such statute and such constitution ought to be strictly construed. If any one thinks I have dwelt too long on this prefatory matter, let him read the encomium on trial by jury, by Mr. Justice Blackstone; let him read Hume's History of England, vol. i. page 98, and Blackstone's Com., vol. iii. page 349, and Blackstone's Com., vol. iv. pages 349, 414; he will not find trials by jury spoken of in those qualifying terms which Wooddeson applies to the trial by impeachment.

"Thus far I urge the argument, and no farther. The constitutional power of impeachment is to be strictly construed. If the question that now arises be involved in doubts, those doubts ought to be decisive in favor of the accused. The power is to be extended only so far as is expressed, or to be clearly inferred, by a fair and clear, if not necessary, implication from what is expressed.

"I acknowledge that the trial by jury, like every human institution, is liable to abuse; but I contend that it is less so, infinitely less so, than trial by impeachment. The demon of faction most frequently extends his sceptre over numerous bodies of men.

"I conceive that it was this retrospective view of the history of impeachment that was in the mind of the convention who framed the Constitution of the United States. Hence, the salutary restriction, as I understand it, not as contended by our opponents, an introduction upon the indefinite ground on which it is placed in England; but in a restricted manner, in a narrow channel, to supersede the trial by jury only in certain cases. The malignant suggestions of envenomed jealousy have no access to my breast. I do not impute improper motives anywhere. I ask only a reasonable construction, to ascertain its extent. I thought proper to consider its nature as exemplified in the juridical history of that

country from whose system of jurisprudence we have adopted it. Let us obtain an exposition of our great charter, according to its true and genuine meaning. It is surely our duty to examine and to understand, as well as to revere and to defend the Constitution. Previous to the formation of the present Constitution of the United States, this subject had been under consideration in forming state constitutions; and in New York, whose constitution was made in 1777; and in Massachusetts, whose constitution was made in 1780, the practice of proceeding by impeachment was in these, and every instance where the power was allowed, restricted to the executive and its officers, for malconduct in office. A strong indication of the sentiment that was generally entertained upon the subject; and such was the situation of the private citizen, that he could not be condemned of any criminal charge, but by the unanimous consent of a jury of his neighborhood."

The speeches of Mr. Lewis may be resembled to a cataract, foaming and sparkling; those of Mr. Ingersoll, to a serene, quiet, and glassy lake. Neither of them can be described—they must be heard, in order to be comprehended. In Commonwealth v. Smith, which was the last criminal cause argued by Mr. Ingersoll, and but a few years before his death, he manifested the same skill and power that he had shown in his earlier days. Indeed it was to be observed, in regard to all the men of his class, that they came in at the death almost as fresh and vigorous as when they commenced the chase. To show that good springs from evil, it is hardly to be doubted that this result was mainly attributable to the vicissitudes of fortune, expe-

rienced in the latter part of their lives. Ordinary men might have been dismayed, but not so with them—the harder their fall, the higher their rebound; and it is rendered very questionable, whether these reverses did not largely contribute to the expansion and development of their great intellectual powers, and the establishment of an unrivalled and undying fame.

Men, who have laid up for themselves "treasure on earth," have nothing here to labor for, and they become inert and supine, the mind slumbers among its hordes, until it sleeps the sleep of death; whereas, the same tribulation that mostly gives rise to energy, is calculated to renew and preserve it, by compelling those exertions, which we should otherwise refuse to make. Adversity is a better school than prosperity, and teaches more lasting and useful lessons; it humanizes the heart, instead of hardening it, and it imparts to the mind that pathos, sympathy, and moral influence, which form the better part of an orator and a man. Such men as Lewis, Ingersoll, Rawle, Tilghman and Dallas, never valued themselves from their estates, nor were they so valued by others. Their glory consisted in direct mental endowments from their creator, cultivated, improved, and enlarged by a life of persevering industry and unblemished integrity. This remark is equally applicable to them all; in short, it was in the combination of their great qualities, that while they stood a

constellation together, they reflected mutual and reciprocal light.

Although Mr. Ingersoll's sight was defective, he generally took copious notes, but rarely attempted to read them afterwards. They were taken, probably, for the purpose of impressing the facts more deeply on his mind. His favorite mode of preparation for an argument was to walk his room and soliloquise, by which he succeeded in working himself into just so much warmth as was required by the occasion.

For my own part, although far from presenting myself as an example to be followed, I would not give a walk of twenty feet back and forth, in the way of preparation, to reply to the argument of an antagonist, for the most elaborate notes that could be taken. This, no doubt, is to be attributed to a long-continued habit, originating during school-boy days, in conning over and preparing recitations.

This effect of habit on the mind, is referred to by Sir Walter Scott in his life. He says, that during his early instruction, there was a boy in his class who, though not remarkable for brilliancy or study, always contrived to be at the head, in defiance of every effort on the part of others to supplant him. This was hard to understand, says Scott, and I watched him closely, in order to discover the secret, when I found that, while he was reciting, he always played with a particular button upon his coat. So, just before the next lesson came

on, I cut off that "magic button." With the very first question that was asked, he sought and fumbled for it, and not finding it, became confused, unable to answer, and lost his place.

The loss of the case of Clough, for the murder of Mrs. Hamilton, was always ascribed, by the senior counsel for the defence, to his having been so hemmed in, from the first to the last of the trial, by an immense concourse of spectators, as actually to forbid his enjoyment of the power of locomotion.

This peripatetic mode of preparing for a speech was not at that time peculiar to Mr. Ingersoll. It was adopted by Lewis, Hopkinson, Condy, and many other of the prominent members of the bar.

In the year 1811, he was appointed by Governor Snyder the Attorney-General of the State of Pennsylvania, wholly without solicitation, and apparently without desire. The circumstances attendant upon the appointment were somewhat extraordinary, and perhaps never known even to him. Governor Snyder was the head of the democratic party, and was an inflexible democrat himself; but, at the same time, he was a man of great political discretion and prudence. It so happened, that when this appointment became necessary, there was not a lawyer belonging to his party competent or eligible for the post. Mr. Dallas, at that period, being the District Attorney of the United States. This was a dilemma which was not

easily escaped or removed. To appoint an incompetent man was irreconcilable with the Governor's views, and injurious to the party and the State administration; and to appoint a federalist would be, at least, a humiliating concession, and attended by great party excitement and acrimony. What was to be done? The Governor consulted his political friends in this city, and, after much deliberation, it was resolved, as Mr. Ingersoll, though a decided federalist, was not an active, noisy politician, (and had previously, indeed, been appointed Attorney-General by Governor M'Kean, and held that situation from 1791 to 1800,) that the commission should be tendered to *him*. But there was another difficulty. Might he not refuse it? and thereby throw reproach upon the appointing power. Party spirit was at a lofty pitch at the time, and the parties jealously watched each other, and were not over scrupulous in securing every possible advantage that might be respectively afforded. In this condition of things, the Governor authorized his confidential advisers in Philadelphia to ascertain, if practicable, what might be Mr. Ingersoll's disposition upon this subject, and, if favorable, to fill up his commission at once, which they already held in blank for that purpose. Still, political asperity was such, and the dividing line was so broad, that little or no friendly intercourse prevailed between opposite sides; and, in addition to this, the agents of

Governor Snyder scarcely knew Mr. Ingersoll, except by reputation, and, therefore, were at a loss as to the mode of approaching him and ascertaining his sentiments, without compromising their own position, as well as that of the State Executive. This object, however, was finally accomplished through the agency of the late Doctor Hudson, who contrived to bring about a meeting, at his house, between a friend and distant connection of Mr. Ingersoll and the Governor's agents. This meeting resulted in Mr. Ingersoll's intimating unsuspectingly, and in private intercourse, that although he did not desire, and would not seek the office, still, if properly offered, it would not be refused. The appointment was immediately filled up in his name. This situation was held by him from 1811 until the year 1816, when he resigned; and a more honorable, capable, impartial and distinguished Attorney-General never graced the annals of this or any other State.

In the year 1820, he was appointed, by Governor Wolf, President Judge of the District Court for the city and county of Philadelphia, which position he occupied until his death, which occurred shortly afterwards. At the time of his appointment he was seventy years of age—ten years beyond the judicial limit in New York. The District Court, at that period, scarcely afforded an opportunity for the display of his great powers; and perhaps it may be doubted, after having

held a high position as an advocate for half a century, whether he could so change the habits of his thoughts and practice, as to equal on the bench his great eminence at the bar. He was, it is true, an able lawyer, but his extraordinary powers of discussion before a jury, were such as to throw any mere legal attainments or judicial position, into the shade. Still, his mind retained its clearness until the last, and no one could fail to perceive what must have been his meridian glory, from the mild lustre and mellowed beauty of his declining sun.

He died on the thirty-first of October, 1822, at the age of seventy-three years, leaving to the country the rich legacy of an illustrious and untarnished name, and succeeded in the profession by his sons, who not only kept his laurels green, but magnified them, by adding to and interweaving with them, *their own;* like the pious Æneas, at once deriving and imparting fame from filial gratitude and devotion. The name of the Ingersolls, as great lawyers and most accomplished scholars and advocates, will be as enduring as the recollection of the bar itself, of which they were always amongst the brightest and most distinguished models. How attractive was the scene that exhibited the father and sons opposed or united in a case, and blending all the charms of filial and parental affection, with a scrupulous and rigid fulfilment of professional duty.

Mr. Ingersoll was slender in his form, about five

feet ten inches high, and as straight as an arrow, up to the latest period of his life. His face was interesting; his features small, but expressive; his forehead full, but not high, and his eye manifesting at the same time great refinement and intelligence. He was somewhat near-sighted, and slightly bald—the result of hard study, as well as years. His dress was neat, and, as was the fashion of the day, consisted of a drab body coat and small clothes, with silk stockings, and shoes with buckles. Brown, drab, and gray, were the prevailing colors worn by the members of the bar until the year 1815. We do not remember, among the elder lawyers, any eminent men at the bar, of that time, who ever adopted any other color of dress. This matter is unimportant, but it may still aid the fancy in summoning into view the appearance of those great men whom we profess imperfectly to depict. I cannot describe them by a comparison with any men of more modern date. They were themselves alone. In manner, in matter, in dress, in intercourse, in social and professional harmony—in short, if we may use the word, in unity as a body—they were unlike anything that the Philadelphia bar, or any other, so far as we know, ever presented. No jealousies—few antipathies—ever marred their most delightful companionship. During the circuits, which then prevailed, they were thrown much and closely together; and it was refreshing and delightful to hear them speak, as they were all

fond of doing, of the many incidents and anecdotes of their diversified and multifarous experience. For a considerable time, they were in the habit of giving weekly and reciprocal dinner or supper parties, and it may be well conceived that nothing physical or intellectual, in the way of rational enjoyment, was deficient in their repasts. Their fortunes were for the most part abundantly ample, if not princely; their private income alone ranged from ten to twenty thousand dollars a year; and with some of them, their practice equalled, if it did not exceed that amount. But talents, not fortune, was the standard by which they were estimated, and that was indeed the standard which secured them social and professional equality. Such principles, and such continued intimacy, rendered them, as it were, a band of confiding brothers, spurning all circumvention and artifice themselves, and never suspecting or countenancing it in others.

CHAPTER XI.

WILLIAM BRADFORD, L.L.D.

BORN, SEPT. 14, 1755—DIED, AUG. 23, 1795.

Although our attention was directed, mainly, to the Chief Justices of Pennsylvania, yet, it is allowable, when extraordinary ability incidentally presents itself, to bestow upon it, at least, a passing notice. We have, therefore, thought proper to introduce a very brief outline of one of the most remarkable men of the last century. One who, at a period of life when most men are scarcely profitably known, had achieved the highest honors, and secured to himself the admiration and gratitude of all classes of his fellow-citizens. And who, while he was honored by the confidence of Washington, and basked in public favor, and enjoyed public office of the proudest distinction, philanthropically directed his lofty mind to the humane purpose of ameliorating the features of the criminal code, and preserving human life. Thus it is, that great men se-

cured by their morality, what they acquired by their talents. His brilliant genius might have been forgotten, his powers as an advocate have passed away, with the stirring times and occasions which called them forth; but his humanity stands imperishably inscribed upon the records of the State and the country, and, we trust, upon a Higher Record, which, in the language of Milton,

"No time can change, no copier can corrupt."

For the substance of this brief memoir, we are partially indebted to a sketch from the pen of one, who, from his own mental accomplishments, was qualified to appreciate the accomplishments of Mr. Bradford; and who, in the full exercise of the learning and virtue which he has commemorated in another, has prematurely closed his own brilliant career.*

William Bradford was born at Philadelphia on the fourteenth of September, 1755. He died on the twenty-third of August, 1795, not having reached the completion of his fortieth year. Yet, within this comparatively limited span of life, he exhibited more talents and achieved more honors than any other man of his day.

In the spring of 1769, he was entered at Nassau Hall, (Princeton College,) New Jersey, where he pursued his studies with uncommon assiduity. He there

* Horace Binney Wallace.

formed an intimate friendship with James Madison, then a student at the same institution, which led to a correspondence between them which continued for several years.

In the year 1772, he received the degree of Bachelor of Arts, and in 1775 became Master of Arts.

He subsequently became a student of law in the office of the Honorable Edward Shippen, afterwards Chief Justice of Pennsylvania.

Within a year from this time, in the summer of 1776, he entered camp as a volunteer, and was appointed, during the same year, a Captain in the Continental Army, and, on the tenth of April, 1777, he received, by a ballot in Congress, the rank of Colonel in the Army of the United States, being then but twenty-two years of age.

He was with the army at head-quarters, at White Plains, Fredericksborough, and Raritan, during 1778, but left the service the next year, on account of ill health.

He resigned on the first of April, 1779, and returned to his legal studies. In March, of the same year, he was admitted to practice in the Supreme Court of Pennsylvania, on the very day of the admission of Moses Levy, who long survived him, and who also reached great eminence in the legal profession.

In August, 1780, when only twenty-five years of age, and one year at the bar, he received the appoint-

ment of Attorney-General of the State, as the successor of Jonathan Dickinson Sergeant, one of the brightest luminaries of the bar.

We must not here omit the opinion of Mr. Rawle, in relation to this truly amiable and eminent man. What Mr. Rawle touches, admits of no improvement, and insures respect. And thus he speaks of Bradford:

"After this appointment, he advanced," says Mr. Rawle, "with a rapid progress to an eminence of reputation, which never was defaced by petty artifices of practice, or ignoble associations of thought. His course was lofty, as his mind was pure; his eloquence was of the best kind; his language was uniformly classical; his fancy frequently interwove some of those graceful ornaments, which delight when they are not too frequent, and do not interrupt the chain of argument.

"Yet his manner was not free from objection. I have witnessed in him what I have occasionally noticed in the public speeches of Charles James Fox, a momentary hesitation for want of a particular word, and stopping and recalling part of a sentence, for the purpose of amending it; nor was his voice powerful, nor always varied by those modulations of which an experienced orator knows the utility.

"His temper was seldom ruffled, and his speeches were generally marked by moderation and mildness. The only instance in which I remember much animation, was in a branch of the case of Girard v. Basse and Soyer, which is not in print. The principal case is in 1 Dallas, 119. Mr. Bradford was concerned for the unfortunate Soyer."

Mr. Samson Levy, in his agreeable way, introduces

an anecdote in regard to Mr. Bradford, which sheds some light upon our subject, though it would seem to have been drawn more from *fancy* than *fact*.

Mr. Levy, when charged with being admitted very early to the bar; for the purpose of disproving the charge, which was made by Mr. Hallowell and Mr. W. H. Todd, (for Levy was very sensitive on the subject of his age,) stated, in the presence of those gentlemen and many others, that *he* was but a mere boy when *they* were in full practice; and to confirm his assertion, related the following story. "I wandered into the court," said he, "upon one occasion, sitting then at the corner of Second and Market streets, where I found a very handsome young man, charged with counterfeiting the coin of the United States. William Bradford conducted the prosecution, and Mr. Hallowell and Mr. Todd were concerned for the defendant. Mr. Hallowell did the *speaking*, and earnestly maintained the perfect innocence of the defendant. Mr. Todd, by dint of putting the corner of his handkerchief into his eye, contrived to do the *weeping*, and enlist sympathy in behalf of the prisoner. The whole scene was truly affecting. When, after an address of some hours from Brother Hallowell, as I now take leave to call him, though he then seemed old enough to be my father, Mr. Bradford rose to reply, but he simply said, 'In answer to this eloquent appeal, I merely request the crier to raise the redundant locks of the defendant's

hair.' This was done; and, behold, he had been cropped of both ears! Hallowell and Todd ran out of court, and the defendant was convicted, of course. I was but a child at the time, but the scene will for ever remain on my memory."*

On the 22nd of August, 1791, Governor Mifflin appointed Mr. Bradford one of the Justices of the Supreme Court, in the place of William Allen, and as a crowning glory, on the 28th of January, 1794, having resigned the office of Judge, he was commissioned by President Washington, Attorney-General of the United States, in the place of Edmund Randolph, who became Secretary of State.

On the 8th of August, 1794, he was chosen one of the commissioners, to confer with the agitators and citizens engaged in the Western insurrection. The commissioners failed in their purpose, and reported to President Washington on the 24th of September, that the laws could not be enforced by the usual course of civil authority, and that some more competent force was necessary to cause them to be duly executed, and to insure to the officers and well disposed citizens, that protection which it was the duty of government to afford.

The President accordingly at once issued his proclamation, giving notice that a military force, adequate

* This episode is introduced, to show the estimate in which Mr. Bradford was held by the earlier members of the bar, as well as to exhibit an amusing trait in the character of Mr. Levy.

to the emergency, was already approaching the scene of disaffection. The result of this insurrection is known. In the course of the correspondence connected with it, the great intellectual power of Mr. Bradford was conspicuous, and properly appreciated.

But then there was another, and a moral triumph, that he enjoyed, which has entailed blessings upon his name, that shall endure while the memory of his virtue shall last.

In the year 1792, while Justice of the Supreme Court, when the revision of the criminal laws, in regard to capital punishments, was before the Assembly of Pennsylvania, at the request of Governor Mifflin, he drew up a report for the use of the Legislature, the conclusion of which was, after very able argument, that in all cases except high treason and murder, the punishment of death might safely be abolished, and milder penalties advantageously introduced.

On the 22nd of February, 1793, the Senate, in pursuance of this report, passed a resolution, that for all offences, except murder in the first degree, the punishment should be changed to imprisonment at hard labor, and on the 22nd of April, 1794, an Act was passed to the effect, that no crime whatsoever, except murder of the first degree, shall be punished with death in the State of Pennsylvania.* This humane result was

* The preamble to this Act sets forth, that whereas, "The design of punishment is to prevent the commission of crime, and to repair the in-

principally attributable to the learning, talents, and unwearied industry of William Bradford, and imparted to him a glory, which no time can efface.

In the midst, however, of his career of usefulness and unsullied virtue, in the perfection of his hopes and his genius, his life, interesting and invaluable as it was, was suddenly terminated.

During the summer of 1795, his residence was at Rose Hill, in Burlington, New Jersey. The cabinet of General Washington was at that time closely occupied; the official duties of Mr. Bradford, engrossing all the day in the city, obliged him to return to his residence at night; this exposure produced a fever of which he died, on the seventeenth day of August, 1795, before

jury done thereby to society, or the individual; and it hath been found by experience, that these objects are better attained by moderate and certain penalties, than by severe and excessive punishments. And whereas, it is the duty of every government to endeavor to reform, rather than exterminate offenders; and the punishment of DEATH ought never to be inflicted, where it is not absolutely necessary to the public safety. Therefore, no crime but murder in the first degree shall be punished with death." The next section of the Act defines briefly and distinctly, the difference between murder in the first and second degree, thus: "All murder, which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree. The punishment of murder in the second degree, is imprisonment in the State penitentiary, for a period not less than four, nor more than twelve years."

he was forty years old. He was buried at St. Mary's church, Burlington, and his monument bears the following inscription, composed by Dr. Charles Wharton, a learned divine and rector of the Episcopal church referred to:—

Here lie the remains
of
WILLIAM BRADFORD,
Attorney-General of the United States,
under the Presidency of Washington,
and
previously Attorney-General of Pennsylvania, and a Judge of the
Supreme Court of that State.
In private life
he had acquired the esteem of all his fellow-citizens;
in Professional attainments
he was learned as a Lawyer, and eloquent as an Advocate.
In the execution of his public offices,
he was vigilant, dignified, and impartial;
yet, in the
bloom of life; in the maturity of every faculty, that could invigorate
or embellish the human mind;
in the prosecution of the most important services that a citizen
could render to his country;
in the perfect enjoyment of the highest honors
that public confidence could bestow on an individual;
Blessed
in all the pleasures which a virtuous reflection could furnish from the past,
and
animated by all the incitements which an honorable ambition could
depict in the future, he ceased to be mortal.
A fever, produced by a fatal assiduity in performing his official trust,
at a crisis interesting to the nation,
suddenly terminated his public career—extinguished the splendor of his private prospects,
and
on the twenty-third day of August, 1795, in the fortieth year of his age,
consigned him to the grave,
Lamented, Honored, and Beloved.

CHAPTER XII.

WILLIAM RAWLE, L.L.D.

BORN, APRIL, 1759—DIED, 1832.

WILLIAM RAWLE was born on the twenty-eighth day of April, 1759, of honorable and distinguished parentage, of the Society of Friends; yet their proudest distinction (we say it with no disparagement,) was in giving birth to such a son. The earlier years of his life were passed in the acquisition of the rudiments of education, and those sublime principles of elevated religion and morality, which were in after times matured into the most devout and exemplary piety. At the age of nineteen, having passed through the various stages of preliminary instruction in his native land, and having for some years been engaged in prosecuting his legal studies under Counsellor Kemp, a learned jurist of our sister city of New York, just before the commencement of the American Revolution, he visited the

mother country, for the purpose of perfecting himself in the arduous duties of the profession for which he was designed. In London, he was regularly installed as a Templar, and there pursued his studies with that untiring zeal and assiduity which ever signally marked his career through a subsequent brilliant practice of more than half a century. Had he remained in Europe, what scope is there for speculation as to the heights he would have realized? In such a realm, is it venturing too far to say, that a coronet was not above his grasp? What was there in the pretensions of a Copley, beyond the compass of his mind? What was there in their birth or early hopes, that lent stronger claims to advancement? What was there in their morals or their manners, more exemplary or resistless?

In the year 1783, he returned to this country, full of zeal and hope, a most thorough and accomplished gentleman; a ripe and elegant scholar, an artist, a poet, a philosoper; and, without which all other accomplishments are but dross—a CHRISTIAN. What a beautiful, moral, and intellectual picture does such a man, at such an age, present?

> "How must his worth be seeded in his age,
> When thus his virtues bud before their spring?"

In person, he was rather above the middle height, yet so symmetrical in his proportions as by no means

to produce that conclusion in a casual beholder. In his early life, he must have been eminently handsome, for even at the age of seventy-seven years, when he died, his features, and the whole contour and expression of his face, were such as to inspire every one with the strongest veneration and regard.* The formation of the upper part of his head, which rose like a tower, was such as might delight and fascinate the phrenologist; but it is to the internal structure of the man that our attention is to be directed, and that all must rejoice to turn.

On the fourth day of September, 1783, he was admitted to practice in the Supreme Court.

He launched at once into the busy and tumultuous tide of a diversified professional life. He took his post where nature and education both placed him, in the very front rank of the profession. He maintained his ground with such men as Lewis, and Wilson, and Tilghman, and Ingersoll, and Dallas, and gathered in his forensic career, "golden opinions from all sorts of people." There never was a more enlightened and unblemished advocate, or a more conscientious and valuable citizen, than the subject of this memoir.

With a spirit that would have done credit to the best ages of chivalry, tempered by the most bland and

* There is an admirable portrait of him, at the age of seventy, in the Law Library, painted by Inman, by order of the members of the Philadelphia bar.

courteous manners; with a princely income, derived from his private fortune and professional emoluments, and with a soul alive to all the sympathies and charities of life; surrounded, in the progress of time, by a large, devoted, and lovely family, he stood the very centre of the social circle, and his influence radiated to the extremest verge of benevolence and hospitality. In his social intercourse, no stranger would have supposed him to be a lawyer. So nicely blended were all the accomplishments of this great man, with each other, that while the combination was perfect, each integral part of his character was so beautiful in itself, as to impart loveliness to all around it, and thereby lose anything like distinctive or individual claims to our attention. Like the grouping of the statuary of Phidias or Praxitiles, each particular figure would seem to lose its individuality, in its contribution to the general beauty and harmony of the design. Or, still more clearly to express the idea, in the language of one that never fails—

> "His life was gentle, and the elements
> So mixed in him, that nature might stand up
> And say to all the world,—'This was a *man*.'"

The life of a professional man is like the waves of the ocean—a scene of constant agitation—ever changing and still ever the same. To-day, the tempest may rage and the sea run mountain high: to-morrow, it may

be as smooth and placid as ere winds began to blow: but the eternal depth of waters ever remains the same. So with professional life. In ordinary pursuits, the cares of men may be considered as limited to their own immediate concern; and although in a state of society no one can be perfectly free from, or independent of, a participation in the common liabilities of the community, yet the very vocation of a lawyer in extensive practice, and properly alive to his duties, renders him peculiarly the depository of the cares and anxieties—the fame and the fortune—the liberty and lives of thousands, who may have confided in his integrity and talents. The bosom of an affectionate family may afford relief for private care; for private suffering, and sympathy by sharing in our afflictions, alleviates the load; but the griefs and penalties of a lawyer are to be borne by himself alone. He has not even the melancholy privilege of imparting them to others, even the client who consults with him, discharges his own sorrows upon the bosom of his professional adviser, and, strange as it may appear, really enjoys a comparatively happy and enviable position. The doctor, perhaps, more nearly approaches to the feelings and condition of the lawyer than the professor of any other science. But even he is far, far removed from the anxieties of the legal profession. Under the effect of bodily pain, and the grievous loss of relatives and friends, most men groan alike, but

how various and diversified are the manifestations of the afflictions of the mind. There are mental sufferings that far exceed the most poignant pains of the body, and which would willingly be exchanged for even the horrors of death itself. These, for the most part, form the business, nay, the very life of a lawyer, and especially the advocate. The sanctity of his office is more than equal to that of the confessional itself. Necessity here rends the mask from hypocrisy; and grief and penitence, remorse and shame assume their true features.

How much reputation, how many fortunes, how many lives depend, upon the fidelity of counsel? Bearing with him through life the consciousness of the weight of this responsibility—occupied and distracted by a thousand cares—subject to daily competition and liable to daily defeats, is it not truly wonderful that RAWLE should, nevertheless, have possessed the power, which he did in an eminent degree, of abstracting the mind from these annoyances of life, and adapting himself to all the phases and varieties of social and familiar intercourse. This may be considered an almost infallible test of true greatness of soul. Proficiency in any art or science is more than counterpoised, if it result in divesting the heart of those social and affectionate properties which endear mankind to each other, and constitute the chief charm of human life. By an exclusive devotion to law, medicine, or even theology,

almost any one may become a great divine, an eminent physician, or a distinguished jurist, but still be far, very far removed from a great man. True greatness cannot exist without sympathy between head and heart, and their reciprocal contribution to the employments of each other. It was by such sympathy, that the beautiful and harmonious combination was formed, which was presented in the life of the deceased.

In 1791, he was appointed District Attorney of the United States by the Father of his country, from which, shortly after the election of Mr. Adams, he resigned, having continued in office about eight years. The situation of Attorney-General, was more than once tendered to him by Washington, but as often declined, as being calculated to interfere with those domestic enjoyments for which no public preferment or profit could furnish an equivalent: and the President was himself too much alive to the influence of retirement and domestic virtue, to demand a sacrifice from another which he himself so reluctantly made.

An appointment to so high a trust, and from so pure a source, and at the age of thirty years, when most men are unknown, is an abundant indication of extraordinary merit; and the fidelity and ability displayed by him during the continuance of office, more than confirmed the exalted expectations which gave rise to the appointment; and in all modesty it may be said, that never before nor since that time, have the interest and

dignity of the United States been more signally represented or more scrupulously maintained. He, as has been said, was not *simply* a *lawyer*. A mere lawyer is, at most, but the moiety of a man—heartless and soulless; his exclusive devotion to a stern and unfeeling science, blunts all the finer emotions of his nature, and at length he becomes, like Coke, the scourge of his own family, and the relentless and ferocious adversary of genius and generosity.

With Rawle, the law was but *one* of the elements in the proud structure of his eminence. The whole circle of the arts and sciences was tributary to his formation. In painting and sculpture, his taste had been modelled by the best standards; and in the former of those arts, there were but few amateurs that could excel him. Of poetry, he was a devoted admirer; and he himself wooed the muses with all the grace and success of a legitimate suitor. In philosophy, he was a zealous disciple; and his beautiful translation from the Greek of the Phædon of Plato, with his own practical commentary, would in themselves, and alone, suffice to protect his name against oblivion. Among the most cherished and the most valuable of his works, however, and which, I trust, will not be withheld from the world, are those pertaining to the subject of religion. His "Essay upon Angelic Influences" is replete with the most fascinating speculation and the soundest reflection. Nor is his discussion of the subject of "Ori-

ginal Sin and the virtue of Baptism," although less elaborate, undeserving of the highest regard and encomium. Added to these, there is to be found among his manuscripts an argument of the most polished and cogent character, the object of which is to show that there is sufficient proof of the truth of Christianity, to be derived from the parables of our Saviour alone.

Neither time nor space will allow us to enter into a critical dissertation upon the merits of these works. A few extracts, calculated to impart a knowledge of the character of the author's mind, will suffice for the present purpose. In the treatise upon original sin, after having carefully considered the various doctrines of Ashmead, Townsend, the Bishop of Rochester, Doddridge, Wilberforce, and others, he thus concludes :—

"I have sometimes asked myself, of what use are these speculative inquiries? Is it of any consequence to a practical Christian, whether punishable sin proceeds from Adam, or ourselves? Whether future punishment is to be temporary or eternal? Is not the duty of every individual the same? Is it not his duty to act justly, to abstain from all crime, to repent of former offences, to believe in Christ, to observe and fulfil his precepts, to worship, love, and fear God? In all these, every sect concurs."

The translation of Phædon, which has been referred to as incomplete, seems to have been commenced

purely with reference to the doctrine of Plato, upon the "Immortality of the Soul;" but, to use his own language, the translator, upon a careful examination, found so much of it directed to points below what he expected from the high interest of the subject, that after a time he relinquished the undertaking. Even in its present imperfect condition, however, it is a treasure that ought not to be withheld from the public.

His notions on the subject of religion were in some respects singular; but, at the same time, so simple and so pure, as to bear conclusive evidence of the simplicity and beauty of his mental structure. He was an unqualified admirer of the service of the Church of England, but at the same time expressed his doubts as to the efficacy of its formal, regular, daily repetition. To use his own language:

"The congregation comes forward mechanically, to repeat the same thoughts in the same words. The sweet influence of Jesus, as applicable to our individual conditions, our afflictions, or our causes for thanksgiving, is absorbed in one general mass. If we join in it, we may lose sight of ourselves; if our hearts do not join in it, we are deceivers. We are hurried on too rapidly for reflection; without time for internal communion with the Divine Being, who is invisibly present, we accept and use the work of man, instead of that spiritual co-operation, which we are instructed by his own words to expect from him."

Nor, although he preferred, did he entirely approve

the mode adopted in the worship of the Friends, of which religious persuasion he was born, and long continued a member, and always a strict adherent. He inclined to the opinion that some appropriate passage from those inexhaustible sources of light and love, the Old and New Testament, should be introduced into their service, upon the assemblage of the congregation, in order that they might be solemnly and sacredly impressed with the importance of the subject, in reference to which they had been convened; in other words, that they might be brought into tone and keeping with the occasion. To remedy this defect in the form of worship, for many years of his life, as appears from his journals, it was his habit, before attending the house of God, to read some portion of Holy Writ, and to engage deeply in "felt, but voiceless prayer," before the throne of the Most High.

The favorite theory of this extraordinary man, was that which related to angelic influences, and the immediate agency of the Deity in all the concerns of his fallen creatures. After infinite reading, as his notes and commentaries show, upon these subjects, his mind settled down upon the conviction that, in all our walks through life, we were accompanied by good and bad angels, and that the Almighty and the Saviour of the world were everywhere present; all-pervading, not only in the churches where two or three persons had assembled together in their holy name, but in the

seclusion of the study, and the more active pursuits of public life. He thus concludes his elaborate examination into the truth of this doctrine :—

"Awful, but most consolatory thought! Wherever I am, God is! wherever I am, Jesus also is! Here, then, in my chamber, where I sit, is God! here also, is Christ! Let me ever retain this impression. Let me ever consider them as present at all my actions, and as reading and knowing all my thoughts. May I not, under this daily inspection, gradually purify my polluted heart, and amend my erring life? Blessed Saviour, assist me so to do!"

And again, in considering the same subject, a short time before his death, he exclaims :—

"Gracious God, Jesus Christ, Saviour of man! let me, a miserable sinner, hope for that mercy which will ope for me the chamber of blessedness. God is ever present. Jesus Christ is ever with us. They know my most secret thoughts. How often, notwithstanding all my efforts, are those thoughts unworthy of such a presence? Oh, may I be able to purify the mind! Let me figure to myself, that my thoughts are words uttered in the hearing of my Saviour and my God—will it not restrain them? Shall I not at once perceive how flagrant it would be, in such language to address my Lord, my Saviour, my blessed Jesus? Oh, thou benevolent and powerful Being, who hast perhaps infused into me these awful impressions, aid and strengthen me to execute them as they ought to be, in the full sense of thy goodness, and in the humble veneration of thy name! Let me in future always consider thy divine figure as present, although invisible. Let me endeavor to enter into sweet communion with thee. How rapturous the thought!

And how can I fail, if I steadily pursue it? How can I fail to amend my heart?"

For full twenty years before his decease, we think we are able to say, from a close perusal of his journal, his mind voluntarily took no direction that might not readily be traced to devotion to its God; and the prayers alone to be found in his works, would form an admirable model for domestic piety. With a single other instance, furnished during the deepest mental suffering, I will temporarily take leave of this deeply interesting portion of his history:—

"Lord God! who hath been pleased to create me; who, among the uncounted millions of thy works, hath vouchsafed to include me, a weak, imperfect, miserable being; have pity on this thy work. Enable me, oh, holy parent! in some degree to appreciate thy greatness and thy goodness; and while I know thy power, and fear to incur thy wrath, enable me, oh, Lord! to lift up to thee my humble reverence and gratitude. Oh, may my afflictions purify my heart! may my sorrows, when in thy wisdom I shall be sufficiently punished, be alleviated or removed! and whenever it shall please thee to grant these prayers, may my thankfulness be equal to,—may it unboundedly surpass the depth of my afflictions."

On the twenty-seventh of First month, (January,) 1792, he was elected an honorary member of "The Maryland Society for promoting the Abolition of Slavery;" and on the sixth of Tenth month (October,)

of the same year, became a member of the Pennsylvania Society, devoted to similar objects.

From that time, until the hour of his death, he was one of their most active and invaluable counsellors. His great professional success was frequently the subject of votes of thanks from the institutions to which he was attached, and became matters of peculiar notice, when, in the spring of 1805, he, together with Mr. Jared Ingersoll and Mr. William Lewis, argued before the High Court of Errors and Appeals of Pennsylvania the great question, as to the constitutionality of the existence of slavery in this State.

In the month of March, 1818, upon the decease of Dr. Caspar Wistar, another of the Theban band, Mr. Rawle was unanimously elected President of the Society, and so continued until the hour of his death. How deeply he commiserated in the condition of the unhappy bondsmen, a life of generous devotion to the melioration of that condition abundantly shows.

His struggles in behalf of those who were incapable of struggling for themselves were constant and unwearied. In such a contest, which he nobly sustained for upwards of forty years, what could support him? Nothing, but the buoyant consciousness of undeviating rectitude. For such unceasing efforts what could reward him? Nothing, but the cheering smiles of approving heaven here, and its measureless glories hereafter. The objects of his bounty were those from

whom he could expect no return: they were of the proscribed and outlawed race; and even while vindicating their violated rights, he, himself, in the eye of their oppressors, was often condemned to share in their odium, and almost partake of their penalties. It required no ordinary mind, no common-place influences thus, at the same time, to encounter the shafts of prejudice and pride, in behalf of a class of men, who, fettered themselves, could impart no aid to the conflict, no consolations to the vanquished, no trophies to the victor. What laurels shall spring from the barren and arid soil of Africa? What reward shall her benighted and enslaved children bestow, to requite past exertion or stimulate to renewed efforts, while every where confronted by danger—every where disheartened by dismay? For such devotion there can be but one motive, and that is humanity: there can be but one recompense, and that is the blessing of the bleeding and broken heart, upon which the soul shall be wafted to the bosom of its God. His doctrines upon this subject, which were the doctrines of Franklin, of La Fayette, of Rush, of Wilberforce, may be scoffed at by some, and condemned by others. They may not have been safe doctrines to live by, but they were safe to die by.

In the latter part of the year 1813, I became a student in the office of this great, good man. He was then about fifty-five years old, and at the very pin-

nacle of professional distinction. I shall never forget our first interview, and, I trust, shall ever feel the influence which it tended to exercise over my future destiny. His examination was directed not, as is usual, to mere intellectual or literary attainments, but to moral philosophy and religion, "considering these," as he at that time impressively said, "not only the basis of all human elevation, but the rock upon which our eternal hopes must rest."

What a lovely picture is here presented in this simple lesson, to the grave and reflecting mind. A man in the very harvest of life, surrounded by all that could dazzle or bewilder—wealth—honors—pomp—pageantry, and pride; without having incurred a single check in his worldly career; without a spot upon the disk of his fair fame; still looking upon all wordly aggrandizement and glory as the affairs of a day, and as utterly vain and worthless, except as subjects of gratitude and love towards that eternal source from which alone can all true blessings flow. Addison, it is said, in his dying moments, called to him a youth, to whom he was warmly attached, and with his latest breath exclaimed, "Behold me, my child, and learn from my example how a Christian can die!" It was a noble spectacle, truly, but much less glorious than the example which teaches us how a Christian should live. There are few, perhaps, who in the extremity of life, when brought to see their Maker face to face—there are very few we trust—who would

not feel and speak like Addison; but the great tests and touchstones of devotion and piety, are the wordly enticements and fascinations of a vigorous and successful life.

The world spent its quiver, and pleasure exhausted her bowl, upon the subject of this brief memoir. He still remained invulnerable and unseduced, and in the benevolence and philanthrophy of his nature, sedulously endeavored to impart those virtues to others which his own heart eminently possessed, and without which men are at best but "gilded loam or painted clay."

Let it not be understood that he was an ascetic. A more colloquial, sprightly, or familiar companion to the young or the old, the scholar or the illiterate, the distinguished or the humble, would be sought for in vain. Readily adapting himself to the condition of all, like his great wordly model, Washington, whom, in many respects, indeed, he closely resembled, he could erect himself to any height without straining his natural proportions, or reduce himself to any level without compromising his innate dignity and worth. We have been present at his interviews with hereditary lordlings and immediate representatives of foreign monarchs; men who had been taught to believe that aristocracy was confined to themselves, and who strutted and glittered in the stars of their several orders. His star, was the Star of Bethlehem. His order was the order of the king of Kings, and he looked upon all

tinselled wordlings as mere actors in the drama of life —necessary to various parts of our transitory existence—entitled to respect from the social or political position they might occupy, but still to be graduated and adjusted in their several pretensions by the mind —the only true standard of the man. Tested by that standard, what competition could he fear?

But it is the bright day that brings forth the adder. Affliction at some period of life is the lot of all men. Perhaps it is even necessary to men, in order that they may feel the power, as well as enjoy the blessings, of a bountiful Creator. "What, shall we receive good at the hands of God, and shall we not receive evil?" Rightly understood and applied, the chastening influence of heaven is much more salutary to the soul than a harmonious and uninterrupted current of happiness. But the first shock—the first revulsion that the bark of life sustains, while gaily and majestically gliding before the wind, and with all sail set, over hope's mountain wave, is awfully terrible; it is the contact of man with the Omnipotent, and human nature reels and trembles to its very centre.

In the year 1815, fate dashed the cup of happiness from the lips of our lamented friend. One of his daughters, an ornament to society, and the "immediate jewel" of her family, in the bloom and redolence of health and beauty, and with intellectual charms even beyond her personal attractions, was suddenly

snatched away by death, and left an aching void in the heart of the domestic circle, her friends and the community, which the alleviating hand of time partially concealed, but could never repair :—

> "Sweet rose—fair flower, untimely plucked, soon faded;
> Plucked in the bud, and faded in the spring."

The painter who exhibited the death of Iphigenia, while he disclosed on his glowing canvass the manly sympathy of Achilles, and the stubborn grief of Ulysses, threw a veil over the face of Agamemnon, the agonized father, and thereby acknowledged the inadequacy of art to portray the feelings of a parent, upon the sacrifice of his child. Let us, then, borrowing instruction from this classic example, draw the curtain over those griefs which the heart alone can feel, but which an angel's tongue could not express.

From this loss he never wholly recovered; but like Job, he exclaimed: "The arrows of the Almighty are within me, the poison whereof drinketh up my spirit. The terrors of God do set themselves in array against me."

Then followed the death of another dear daughter, in the prime of youth and beauty; next, his son Henry, who had just finished his classical education and entered upon the study of the legal profession, of which he was every way qualified to become a distinguished

ornament; and last and greatest, in the year 1825, his wife, the beloved partner of his bosom, with whom he had been joined in affection for upwards of forty years, was summoned to her last and blessed abode, leaving a doating and bereaved family, to mourn her irreparable loss.

How awful, then, to the survivor, must have been the blow that severed them from each other, and which left him, like a blighted oak, stripped of his leaves, deprived of his branches, and lastly, robbed of that ivy which, for nearly half a century, had clung around him, attempering the storm, and rendering even desolation, lovely. This last blow bowed his spirit to the earth, but he saw in it the impress of an Almighty hand, and in Christian resignation and submission, he directed his thoughts from that moment towards those blissful regions, where sin and sorrow shall be no more. Through all these awful visitations, and up to the period of his death, he was to be traced, day by day, and hour by hour, in the punctilious discharge of his worldly duties, but it must have been plain to the attentive observer, that all his serious thoughts were fixed on heaven.

To sufferings like these, it might be supposed no aggravation could be added; but in order that you may appreciate the entire scope of his fortitude, truth commands me to relate—and why should we shrink from the most splendid moral passage in his history—that, in the vicissitudes of life, his large and princely for-

tune had been utterly swallowed up. He looked upon this, also, not merely with the eyes of a philosopher, but of a Christian. Thus, the ties of this world were severed, one by one, and at the age of seventy years, he threw his eyes back upon the ocean of life, to rest only upon the wreck and ruin of all that could render life most dear; but how glorious must have been the relief, when, withdrawing his view from the vanity of all terrestrial things, he placed it upon the inexhaustible treasures of the world to come.

To sum up this hasty and imperfect outline of the virtues and afflictions of the departed, we cannot do better, than refer to the following beautiful and pathetic stanzas, contained in the last of his series of journals, and which are expressly introduced by him, as applicable to himself. From having been adopted to convey his own impressions of his career in life, they possess all the interest of original views, and are therefore strongly recommended to our attention and regard:

"I know not, and I care not how
The hours may pass me by,
Tho' each may leave upon my brow,
A furrow as they fly.

"What matters it—each still shall take
One link from off the chain,
Which binds me to this grievous stake
Of sorrow and of pain.

"Time, like a rower, plies his oar,
And all his strokes are hours,
Impelling to a better shore
Of sunshine and of flowers.

"I've tasted all that life can give
Of pleasure and of pain,
And is it living, thus to live
When joys no more remain?

"All nature has had charms for me,
The sunshine and the shade,
The soaring lark, the roving bee,
The mountain and the glade.

"I've played with being, as a toy,
'Till things have lost their form;
'Till danger has become a joy,
And joy become a storm.

"I've loved as man has seldom loved,
So deeply, purely, well;
I've proved what man has seldom proved,
Since first from bliss he fell.

"Mine eye again can never see,
What once mine eye has seen;
This world to me, can never be
What once this world has been.

"Speed then, Oh speed—my bark speed on,
Quick o'er life's troubled waves,
The one that comes—the one that's gone,
What is beneath them?—GRAVES."

Ever bland, courteous and conciliating, his placid brow gave no denotement to the idle and curious

world, of those deep furrows which misfortune had ploughed in his heart. Alike, unostentatious of joy and of grief, he never stimulated envy by the exhibition of the one, nor invited commiseration by manifesting the other. Like the diamond, he grew brighter the harder he was rubbed—like the sun, he shone with sublimer lustre, while surrounded by the horrors of an elemental war. What sight more noble, than to behold a man thus struggling boldly with adversity, contesting the ground inch by inch, and when at last compelled to submit to his relentless adversary—if compelled to submit—bearing with him the consciousness that he had employed all the powers he possessed against the ills of life, or at all events, never turned traitor to himself, or deserted his post.

There is but one situation in life superior to that of a rich man generously appropriating his wealth to the melioration of the afflictions of the poor and the wretched—and that is the condition of the unfortunate man, who tramples upon the toils and contemns the vicissitudes of this life, except so far as they may be considered preparatory to the enjoyments of life to come.

Would you see a really great man in his true glory, look not for him on the pinnacle of fortune, with the world at his feet, and the very heavens apparently almost within his grasp! but behold him standing alone, in sad and solitary grandeur, amidst the wreck

and ruin of all his earthly hopes, with his breast opened to the pelting of the pitiless storm, his foot planted upon the grave, as the only refuge from his suffering, and his eye firmly fixed upon eternity, as his final and assured reward. Upon the struggle of such a man, even angels may be said to look down with wonder, and rejoice in the anticipations of the "just made perfect."

"Sweet are the uses of adversity."

No man can fully appreciate his own nature, without having known the vicissitudes of life. The lesson of sympathy, when taught through our own selfishness, is thoroughly taught, and rarely forgotten. The commiseration which the prosperous profess, and sometimes really appear to feel, for the unhappy, is lovely in the sight of men and angels; but it differs as much from the true principles of benevolence, as morality differs from religion. The whole system of morals is embraced by religion, but the converse of this proposition is not true. Religion is not necessarily embraced even by the most perfect morality; so, that charity which we extend towards the wretched, becoming, as it always is, is often compounded of influences, all working out qualified good to our fellow men, but none seated or rooted in the heart. To resort to a simple illustration—a regular and formal attendance at Divine

worship is highly moral, and exhibits the most salutary and commendable example, and imparts no inconsiderable advantages to the community in which we live; but to ourselves the benefit of this external homage is less than nothing, unless it be accompanied by spiritual devotion. That man who himself has suffered, and suffered deeply, feels the full sense of human obligation; he does not merely shake his superflux to the victim of indigence, but he warms him into renewed life and hope, by the genial influence of a sympathetic heart. He does unto others as he would be done by—and he does it, too, not for this world only, but with reference to his duty towards heaven. Such was *his* charity.

In September, 1827, he received the degree of Doctor of Laws from Princeton College, and in the following year, a similar degree was conferred upon him by Dartmouth University, and a short time before his death he was applied to by the last named institution, for a third edition of his valuable work upon Constitutional Law, which had been adopted as a text book, in many of the institutions of learning in the United States. At the time of this application, however, his mind was no longer with this world, but in close communion with its Maker: the proposal, therefore, was declined.

For many, many years of his life, as has been said, he had drunk deeply from the springs of gene-

ral literature and science; but as he approached the fount of eternal light and love, all other enjoyments became comparatively insipid, and within the last year of his life, while sitting by his bedside—knowing his fondness for books—I inquired, whether there was any thing I could supply him with, from the limited stores of my library? "Yes," replied he, "any books you may have upon the subject of religion will be most welcome to me, as preparatory to the great change that rapidly approaches. General reading is adapted only to general objects—my attention is now directed solely to one, and that is, 'to make my calling and election sure.'" This was not uttered in the way of repining at the idea of approaching dissolution, or remorse for former misappropriation of time, but in the meekness and firmness of a Christian approaching the judgment-seat of his God. He seemed neither to seek nor shun his fate, considering both equally reprehensible; but awaited, with apparent and most admirable composure, that awful mandate which should summon him from time to eternity—from corruption to glory—from among mortals to his kindred saints.

In the last of his journals, in a treatise upon life, he introduces the only passage which we have been able to find, indicating a desire of a change of condition:

"Is it lawful," says he, "to wish for death—merely to wish—

without doing anything to accelerate it? Such wishes may proceed rather from the pressure of affliction, from a sense of the vanities of the world, or from an earnest desire to partake, as soon as possible, of the joys of immortality. The two latter form my case. There is very little indeed to bind me to this world—nothing except my beloved children. To them my departure, whenever it may happen, will no doubt be cause of grief; but time assuages sorrow, and in a little while the memory of me will perhaps be a pleasing melancholy, succeeding to the first violent emotions. For my transition, I hope I am not wholly unprepared. I endeavor every day to increase my readiness to go. Thou, O God! knowest how often I think of thee, how often I pray thee to increase my love for thee, and to enable me to steer clear of giving thee offence. Adieu, then, my earthly friends! adieu, my beloved children! Weep not for me!"

Throw the mind back upon the brightest pages of the history of man—to Themistocles, to Hannibal, or to those who "played the Roman fool, and died on their own swords." Looking at those illustrious models, through the dense and misty medium of centuries, and the flattering glass of eulogy, they strike the view as the ruins of the noblest men that ever lived in the tide of time. But strip them of their adventitious glory; contemplate them as they really were, and tell us, if you can, wherein they excel—in prosperity, or adversity—in morals, or in intellect—in virtue, or in philosophy—in private, or in public life—this lamented citizen of the American Republic.

It is ever the disposition of men—and perhaps it is

mainly attributable to the course of early education—to look for their examples to those remote periods, which exhibit the virtues of their heroes, their statesmen, and their scholars, without depicting their faults. Nor is it objectionable that it should be so. Impressions conveyed to the youthful mind, through this somewhat illusory medium, are calculated to create an exalted standard of human nature, and to inspire the soul with that spirit of emulation, which would seldom be produced by living or modern examples. Yet, nevertheless, let us not strip the well earned laurel from the new made grave, to bedeck the ancient monuments of the mighty dead. Single out from the most resplendent pages of classic story, the proudest models of human excellence; trace them through the fluctuations of time; mark them in the hour of prosperity; test them by the touchstone of adversity; contemplate them in a struggle with the grave—where then is their philosophy—where then their glory?

> "To live with Fame
> The gods allow to many; but to die
> With equal lustre, is a blessing Heaven
> Selects from all the choicest boons of Fate,
> And with a sparing hand on few bestows."

In the all-trying hour of death, how many heroes have dropped their masks, and shrunk to less than men? Lycurgus, the renowned Spartan law-giver, fell a time-

less victim to his own measureless vanity. The inflexible Cato, in the hour of disaster and distress, meanly deserted his post, and rushed, uncalled for, to the judgment seat of his God. Brutus—the patriot Brutus—the magnanimous deliverer of Rome—instead of enduring misfortune—instead of buffeting the billows of adversity, and riding out the storm, ingloriously plunged into the gulf of eternity, and converted his own passions into the evil genius of Philippi. Such is worldly philosophy. Contrast for a moment its practical results with those of the religion inculcated by the meek and lowly Saviour, and practised by his disciples and his followers. The difference is *this*—the one is the offspring of this world alone, and dies in the death of the objects that inspired it. The *other* is heaven-descended and heaven-protected. Its source, and duration, and reward, are eternal. The Christian lives *in* this world, but not *for* this world; and he dies as he lives, for a world to come—patiently submitting to his doom, neither hastening or shunning it; but like a faithful sentinel, unmurmuringly awaiting the order of his great commander, "Who wills to do, or to undo, in his own good pleasure."

For upwards of a year before his translation to more kindred and congenial climes, while chiefly confined to that bed, which proved to be the bed of death, it was my privilege to have frequent opportunities of seeing and conversing with him. What a solemn and sublime

sight! His whole soul had become concentrated and fixed on things above, "and, growing purer as it looked towards Heaven, was fashioned to its journey." He passed from works to reward, on the twelfth day of April, 1836.

"Night dews fall not more gently on the ground,
Nor weary, worn-out winds expire so soft."

CHAPTER XIII.

ALEXANDER JAMES DALLAS, L.L.D.

BORN, JUNE 21, 1759—DIED, JANUARY 16, 1817.

Alexander James Dallas was a native of Jamaica, (Barbadoes.) Born on the 21st of June, 1759. He received the rudiments of his education at Edinburg, and afterwards entered Westminster school, and became a pupil of Elphenstone, well known from his translation of the Mottos to Johnson's "Rambler," and other periodical essays.

Mr. Dallas's father, Robert Dallas, was from Scotland, and rapidly became a very eminent and wealthy physician.

In 1780, the son married a lady of Devonshire, England, and in 1781, shortly after the death of his father, accompanied by his wife, he left England for Jamaica. Upon his arrival, it was found that the father's large property had been left to the disposition of his widow, who had married again, thereby depriving the subject of this memoir of all hopes of an inheritance. What, no doubt, was then considered by him a misfortune,

in its results, probably proved to be a blessing—for it threw him upon his own energies and resources, and contributed to make him, what he finally became, one of the ablest lawyers and most accomplished gentlemen of the Philadelphia bar.

In disappointment, though not in despair, he left Jamaica in the month of April, 1783, and arrived in Philadelphia on the 15th of June in the same year. This voyage was made principally for the benefit of his wife's health, and with a view merely to a temporary residence in the United States. He, in a short time, however, became enamoured of our republican institutions, and with all his heart, adopted the land of liberty as his permanent abode. Three days after his arrival, on the 17th of June, he took the oath of allegiance to the State of Pennsylvania, and ever afterwards resided in Philadelphia, except while acting at Washington as Secretary of the Treasury.

From the time of his arrival, he was assiduously engaged in preparing himself for admission to the bar, and, the third day of August, 1785, was admitted to practice in the Supreme Court of Pennsylvania, and, in a short time, gradually became a practitioner in all the Courts of the United States.

His practice at this early period, of course, not being extensive, he prepared his Reports* for the press, and,

* Reports of Decisions of the United States Circuit Court, and Supreme Court of Pennsylvania.

possessing the highest literary taste, also contributed largely to the literary magazines of the day.

On the 18th of January, 1791, he was appointed Secretary of the Commonwealth of Pennsylvania, by Governor Mifflin, a man for whom he always entertained the highest regard, and out of respect and friendship for whom, he gave to his son, the present Minister to England, the name of George Mifflin.

Thus brought into early and favourable notice, other honorable testimonials were conferred upon him. He became a member of the Philadelphia Society, the St. George's Society, and, in 1794, a trustee of the University of Pennsylvania, of which, at that time, the Reverend Dr. Rogers was the provost; and, it was generally known, that the discourse delivered by the reverend provost upon his installation, and which was considered a masterpiece of its kind, was the production of Alexander James Dallas.

In September, 1793, his commission as secretary was renewed; and, not long after, he became paymaster-general of the forces engaged against the insurrectionists, and accompanied the expedition to Pittsburg. Upon this service he was eminently useful, and received the highest approval of Washington.

In December, 1796, the trust of secretary was again confided to him. This intimate connection with the executive for so long a period, imparted to him a knowledge of men and public officers of the state, which few

ever enjoyed. While holding this office, he published a valuable edition of the laws of the commonwealth, accompanied with copious notes—an evidence at once of great industry and ability.

In Blount's case, before the Senate of the United States, referred to in the sketch of Mr. Ingersoll, Mr. Dallas, in 1799, then but fourteen years at the bar, made an able and eloquent defence, of which the following extracts furnish an imperfect specimen.

Mr. Dallas proposed to establish two points :—

"1. That only civil officers of the United States are impeachable, and that the offences, for which an impeachment lies, must be committed in the execution of a public office.

"2. That a Senator is not a public officer, impeachable within the meaning of the constitution; and that, in the present instance, no crime or misdemeanor, is charged to have been committed by William Blount, in the character of a Senator.

"The necessity of discussing the first branch of this proposition could hardly have been anticipated: but, as the Honorable Manager had contended, that the constitutional grant of a power to institute and to try impeachment, extends, *ex vi termini*, and to every description of offender, and to every degree of offence, a just respect for the high authority which he represents, as well as for the talents which he has displayed, compelled the defendant's counsel to follow him into the wide field of controversy, that he has unexpectedly chosen. A claim of jurisdiction so unlimited, embracing every object of the penal code, annihilating all discrimination between civil and military cases, and overthrowing the boundaries of Federal and State authority, ought, surely, to have been supported by an express and unequivocal delegation: but, behold, it rests en-

tirely on an arbitrary implication, from the use of a single word; and while the stream is thus copious, thus inundating, the source is enveloped (like the sources of the Nile) in mystery and doubt.

"The Constitution declares, that 'the House of Representatives shall have the sole power of impeachment;' and that 'the Senate shall have the sole power to try all impeachments:' Hence, it has been urged, that as there is no description of the offenders or the offences, in the Constitution itself, where the power is vested, every offender and every offence, impeachable according to the common law of England, must be deemed impeachable here; and it is alleged that the common law power of impeachment extends to every crime or misdemeanor that can be committed by any subject in, or out of office. But Mr. Dallas insisted, that this doctrine is contrary to the principles of our Federal compact; that it is contrary to the general policy of the law of impeachments, and that it is also contrary to a fair construction of the very terms of the Constitution.

"That the doctrine is contrary to our Federal compact, he deduced from the design with which the government of the United States was established: For, although it is in some of its features federal, in others it is consolidated; in some of its operations it affects the people, as individuals; in others it applies to them in the aggregate, as States; yet, in every view, all the powers and attributes of the national government, are matter of express and positive grant and transfer; whatever is not expressly granted and transferred, must be deemed to remain with the people, or with the respective States; and as the motive for establishing the Federal Constitution arose from the want of a competent national authority, in cases in which it was essential for the people inhabiting the different States to act as a nation, so far the people gave power to the Federal Government: but the delegation of that power is evidently limited by the reason which produced it. Thus, in the creation of a national judiciary, we find that in criminal, as well as civil cases, no authority is vested in the courts, but upon the ap-

propriate subjects of national jurisprudence. Constitution, Art. 1, § 1, Art. 3. Crimes and misdemeanors, which have no connection with national objects, are left to be prosecuted and punished under the laws of the State in which they are committed; and yet it is asserted, that for any crime or misdemeanor, which could only be thus the object of State jurisdiction, which could not be tried upon an indictment in any federal court, a State officer, or a private citizen, may be impeached before the Senate of the United States! The mere investment of a power to impeach, and to try impeachment, is considered as an instrument destined to carry the government beyond its natural sphere, and to give to the censorship of the Senate, a scope and efficacy, of which the general judicial authority of the Union does not partake.

"But the Honorable Manager having referred to the English common law, for an exposition of the import and operation of the power of impeachment, Mr. Dallas contended, that the United States, as a federal government, had no common law, in relation to crimes and punishments, and cited the opinion of a judge of the United States on the subject.

"The crimes punishable under the authority of the United States, can only be such as the Constitution defines, or acts of Congress shall create, in order to effectuate the general powers of the government. How, he asked, did the government of the United States acquire a common law jurisdiction in the case of crimes, and by what standard is the jurisdiction to be regulated? When the colonies of America were first settled, each colony brought with it as much of the common law as was applicable to its circumstances and it chose to adopt; but no colony adopted all the common law of England, and there was a great diversity, owing to local and other circumstances, in the objects and extent of the common law, which the different colonies adopted. The common law is, therefore, the law of each State, so far as each State has chosen to adopt it; but the United States did not bring the common law with

them; there are no express words of adoption in the Constitution; and if a common law is to be assumed by implication, is it to be the common law of the individual States, and of which State? Or is it to be the common law of England—and at what period? Are we to take it from the dark and barbarous ages of the common law, with all the feudal rigor and appendages, or is it to be taken as it has been ameliorated by the refinement of modern legislation? Would it not be absurd to refer us to the ancient common law of England? And if we are referred to it, in its improved state, do we not rather adopt the statutes, than the common law of that country? And is the common law to fluctuate forever here, as it may fluctuate there?"

On the election of Governor M'Kean, in 1799, Mr. Dallas received the commission of Secretary, for the fourth time. He continued in this post until the 9th of March, 1801, when he was appointed by Mr. Jefferson, Attorney of the United States, for the Eastern District of Pennsylvania, and of course resigned his Secretaryship.

On the 26th of July, he was, by Governor M'Kean, made Recorder of the City of Philadelphia, but resigned shortly after; the two posts, under the laws of Pennsylvania, being deemed incompatible.

Mr. Dallas was one of the democratic party, and an active and zealous politician, and so continued to the hour of his death, but he still devoted himself to his profession with untiring industry, and received numerous grateful testimonials, in honor of his professional

exertions in behalf of his party and his clients, at the bar and in the legislature.

In October, 1814, he became Secretary of the Treasury of the United States, and it has rarely happened, that the responsibilities of all those different situations, have been more faithfully, more fearlessly, more satisfactorily, or more honorably fulfilled.

On the 13th of March, 1815, he assumed the additional trust of acting Secretary of War, in which he successfully performed the delicate and somewhat invidious task, of reducing the army of the United States.

"In the month of November, 1816," says Judge Sergeant, one of his warmest friends and closest adherents, and himself a distinguished lawyer and politician:

"Peace being restored,—the finances arranged,—the embarrassments of the country's medium daily diminishing, and soon to disappear, under the influence of the bank which it had long been laboring to establish; his property insufficient to defray the expenses of his situation, with a large family still depending on him, he resigned his honorable station, and returned to the practice of the law in this city. Here he entered upon professional business, with the zeal and ardor of youth. His success was immense, and his talents as an advocate, were held in requisition, not only at home, but in almost every quarter of the Union."

But in the midst of life we are in death; in this

world, our only certain prospect is the grave. And while indulging in the fond hope of securing a competency for his family, too great exposure to cold, during a great professional exertion, and one, too, in which he was subjected to most painful annoyance, in the case of Sinickson's Will, brought on, at Trenton, an attack of gout in the stomach, of which he died on the 16th of January, 1817, a few hours after reaching home.

Mr. Dallas was a man of the most fascinating and courtly manners, and of the most impressive and dignified personal appearance. He dressed with great taste, ordinarily in a suit of olive brown, with small clothes, and top boots. He had an abundance of hair, which he always wore powdered, and gathered into a bag cue. In everything he did, he was the embodiment of gracefulness. He never lost sight of what was due to himself or others. He would have been distinguished among thousands for his stately bearing and placidity. His stature was considerably above the middle height; well formed; rather inclined to corpulency, but not to an extent to impair the lightness, grace, and activity of his motions. His voice was highly cultivated, but rather remarkable for its sweetness and refinement than its scope or power. It was not well adapted to excited declamation, but was admirably fitted for persuasion. He was a man of great literary and political acquirements, and an author and a poet of no mean

pretensions. This probably led to the erroneous impression that he was less of a lawyer than some of his eminent cotemporaries. History informs us that a similar absurd cry was raised against Lord Mansfield, "which gained countenance," says Lord Campbell, "only from the envy of the vulgar, who are always eager to pull down those who soar above them, to their own low level; and in the legal profession, will assert that, if a man is celebrated for elegant accomplishments, he can have no law; and if he is distinguished as a deep lawyer, that he can have no elegant accomplishments." This doctrine, however, be it borne in mind, is adopted chiefly by those who have neither the one, nor the other.

In his diversified and more attractive pursuits, it could not be expected that he should devote his attention at any time exclusively to the bar. Nevertheless, he enjoyed a large practice, and always maintained his post in the first rank of the profession. His multifarious avocations did not afford him time to condense his arguments, and his style, therefore, was often diffuse, and somewhat redundant.

He was undoubtedly less of a jurist than some of his cotemporaries, but perhaps of more general accomplishment than any of them. If he had not been a lawyer, he would have been a great statesman; and if he had not been a statesman, he would have been one of the greatest lawyers of the age. Although he be-

longed to the democracy, and was by common consent their leader in Pennsylvania, he never descended from his lofty standard of self-respect, to promote his own political views, or to secure the favor or adulation of his party; and it may also be truly said, that he never allowed party antipathy or acrimony to disturb the harmony of social or professional intercourse. As nearly all the leading members of the bar were federalists, his position was at times rendered uncomfortable, if not disagreeable, and the very refinement of his sensibilities, increased the penalties to which he was subjected. But even his could not deprive him of his self-reliance, or interfere with the conscientious and inflexible discharge of his duty. He was always a fast friend, and an honorable and liberal adversary; and to his lasting credit, be it remembered that no impediment thrown in his way, ever became an obstacle to his advancement; he either brushed it from his path, or surmounted it by the elevating power of his irrepressible genius.

In the brightest days of Westminster Hall, Mr. Dallas would have been an object of respect and admiration. In the proudest periods of parliamentary glory, he would have suffered nothing in comparison with those lofty spirits by whom he would have been surrounded. He was, in short, a thorough scholar, a sound lawyer, a sagacious statesman, an accomplished orator, and an exemplary gentleman.

Mr. Dallas died on the sixteenth day of January, 1817, at the age of fifty-seven, having overcome more difficulties, and achieved more honors, than are often attendant upon the usual vicissitudes and career of life.

Mr. Dallas left a widow, a most estimable lady, and six children, three sons and three daughters. One of his sons, bearing his father's name, who became a captain in the navy; George M. Dallas, the present minister to England, and former Vice President of the United States, who has even surpassed his father's fame; and Trevanion B. Dallas, a lawyer of eminence, established at Pittsburg. The first and the last of these died some years after their father, and the only surviving son is George Mifflin Dallas.

All the daughters of Mr. Dallas are, we believe, still living. The eldest married Richard Bache, a grandson of Dr. Franklin. The second, William W. Wilkins, a distinguished lawyer of Pittsburg, and more recently Senator, Secretary of State for the United States, and Minister to Russia. And the third, Maria, is the wife of Alexander Campbell, from Virginia, a finished gentleman, of fine literary taste, and for many years a resident of this city. Mr. St. George Tucker Campbell, of the Philadelphia bar, is the son of Mr. Campbell, and the grandson, by the mother's side, of Alexander James Dallas. He has been admitted to practice since the sixth of February,

1835, and although not yet forty years old, has established a reputation as a lawyer and an advocate, equal to that of any man of his age in the United States. He is a true scion from the parent stock, and while he reflects credit upon the profession to which he belongs, he contributes to perpetuate the honors of the family from which he sprung.

Looking to the fortunes of Mr. Dallas and his family, it can hardly be said that republics are ungrateful, for there is scarcely an honorable and profitable office in the country, within the gift of the people, that has not been enjoyed by, or tendered to some of its various members. And it may be further truly said, that those offices have been well bestowed, and their duties ably and honorably fulfilled.*

* From the difficulty which all must encounter, who may attempt biographical sketches, in obtaining dates of events necessary to be introduced, I have drawn in this memoir, from materials furnished by the Hon. Thomas Sergeant, in an obituary notice of Mr. Dallas, published in March, 1817.

CHAPTER XIV.

SAMPSON LEVY.

BORN, 1761—DIED, DECEMBER 15th, 1831.

Professionally connected with the illustrious men to whom we have briefly and imperfectly alluded, there was one who, with comparatively but little knowledge of the principles of the law, a very imperfect literary education, and a mind of limited native powers, nevertheless held a highly respectable position among his brethren, and by his good nature, sprightliness, and wit, and sometimes even by his blunders, contributed much to the agreeable character of the Bar, and succeeded in establishing himself in a lucrative though subordinate practice. Like the light of a picture, he relieved its sombre shades, and imparted life and hilarity to all around. Always in a good humor himself, he was the cause of good humor in others—and the profession would at any time have better spared a greater man. We refer to the late Sampson Levy. Having read law with his brother, Moses Levy, he was admitted to prac-

tice in the year 1785, and soon grew into great popular favor, and for many years must have been in the receipt of from six to eight thousand dollars per annum.

His deportment was always kind and courteous, and his manner of speaking was so energetic, and his voice so agreeable, that the uninitiated considered him, to borrow a figure from his name, the very Sampson of the Bar.

His off-hand speeches were perfect gems; there never was any thing like them; they flashed, sparkled, and corruscated in every direction but in that of the cause; and sometimes, even, from his diffusive and erratic course, he would, when, of course, he couldn't help it, touch for a moment, though but for a moment, the essential points in controversy. This led Judge Washington once to remark, that Mr. Levy was the most troublesome speaker at the bar, as in beating every bush, in sporting phrase, he sometimes started game which he almost immediately left for the Judge to hunt down.

He had abundance of language, but no discrimination —no choice—no adaptation. He was governed by impulse and not by reason; and hence it often happened, that the greater his preparation, the worse his argument. To him, all cases were alike hopeful; and no case was ever desperate until the execution had issued. The great secret of the success of his wit, consisted in this—that he apparently could not avoid it, and never seemed to be conscious of it until he observed its effects upon others. He was not sufficiently critical

in his knowledge of language to be a punster, but I would not give one of his blunders for fifty ordinary puns—they were irresistible. His readiness was intuitive; his periods beautifully rounded, but containing most heterogeneous and incomprehensible matter. For instance, in speaking of the testimony of a witness whose evidence was contradicted by an entry in the Bible, he exclaimed in a voice of thunder, "Behold here, gentlemen, upon the record of this holy volume, the enormity of this man's offence stares you in the face with gigantic strides."

Again, in conducting a case in which he was deeply interested, he pronounced it to be a "hydrant, sucking into its destructive vortex, all the consequences that belonged to it." These are instances taken from thousands, equally racy and extravagant. His practical professional wit and acuteness were scarcely less remarkable. A client having been arrested and held to bail in the sum of ten thousand dollars, during the yellow fever of 1805, the bail could not be procured, and the defendant was committed. Mr. Levy resorted to every possible means to relieve him, but in vain. At length, he issued a writ against the plaintiff for the same amount; he could not get bail, and was also committed. Upon being asked by the adverse counsel why this was done? he replied, it was the only way of securing sympathy with the original defendant, and bringing them together, in order that they might adjust

their dispute—and it so turned out; for the creditor, in order to get out himself, consented to allow his debtor to be liberated without bail. At another time, he was opposed to Mr. Alexander James Dallas, in a marine case of some account, but in which Mr. Levy, in common phrase, "hadn't a foot to stand upon." After a very able and conclusive argument from Mr. Dallas, the Court inquired of Mr. Levy what answer he could give to it, to which the shrewd and wily lawyer at once replied,—

"Mr. Dallas is not familiar with maritime law, your Honor, and he has made some egregious mistakes in his views of the case, which I should not like publicly to expose in a crowded court house, but if my learned friend will allow me a moment's private interview, I will convince him of his error."

They accordingly withdrew into the consultation room, where Mr. Levy immediately abandoned the defence, and a decree passed against his client.

In another case in the same court, he and the late William Delany were concerned in an angry, and warmly contested case, for a seaman's wages, in which they succeeded in obtaining a decree for the claimant, of three hundred dollars. After the case was finished, Mr. Levy requested his colleague and client to walk round to his office, in order that the money might be distributed. When he arrived, placing his colleague

on one side of the table and himself on the other, (while the client was looking on, with anxious expectation,) Mr. Levy taking from his pocket six fifty dollar notes, said—addressing Mr. Delany, and suiting the action to the word—"There, sir, are fifty dollars for you—and here are fifty dollars for me—there are another fifty dollars for you—and here another fifty dollars for me." "My G—d!" cried the astonished client, "Mr. Levy what am I to have?" "Why," said Levy, "you have the honor of the victory, which is beyond all price."

In social or convivial intercourse, Mr. Levy was equally amusing. Upon some festive occasion he dined with the late Judge Tilghman, who had given a dinner in honor of a distinguished literary personage, just arrived from England. Mr. Levy with many others, was invited; he was ambitious of literary association, but he was sensible that his early opportunities of instruction had hardly qualified him to participate in it. During the dinner, science, literature and the arts were extensively discussed, and Mr. Levy, contrary to his wont, remained perfectly silent. At length, unable to endure it any longer, he exclaimed abruptly to the guest: "Pray, Mr. ——, in your extensive reading—which, indeed, seems to have been almost unlimited—have you ever met with a little book, called 'M'Nally on Evidence?'"

Upon another and similar occasion, in a large com-

pany, while the late C. W. Hare, who was very eloquent, was attracting the attention of the entire company, with a learned dissertation upon political economy, Levy, who wished to put an end to it, in order that he might have some chance to shine, abruptly said: "Pray, Brother Hare, have you ever read Quintillian?" "Certainly," replied Mr. Hare. "Well," said Levy, "you must have forgotten that he tells us, I think, that nothing so becomes an orator, as occasionally a *solemn pause*." This, of course, terminated the speech, and restored the general conversation.

We have said that Mr. Levy's education was imperfect; but he was nevertheless always ambitious of the society of literary men, where, from his excellent manners, good temper, and merriment, he was ever welcome. At the time to which I now refer, say 1810, Joseph Dennie, Esq., well known for his literary attainments, and holding a high social position, was the editor of the Portfolio, and an author of great merit and celebrity. He was upon the most intimate terms with John Quincy Adams, Hopkinson, the elder Meredith, and most of the master spirits of the time. Levy was of course desirous of being received into this delightful circle. Upon returning from court, his servant handed him a letter, which appeared to be an invitation to dinner from Mr. Dennie. Mr. Levy's golden dream was out, and on the appointed day, and to the very hour, he called at Mr. Dennie's lodgings, the abode of the muses,

and inquired for his host. What was his surprise, however, to be informed that Mr. Dennie was absent from town, and would not return for some days. He examined his invitation; there could be no mistake as to day or hour, and he left the house, not only very much chagrined, but seriously offended.

He at once betook himself to the office of Mr. Meredith, and there made his complaint, of what he conceived to amount to an intended personal insult. He was a man of undoubted spirit, and he declared he would submit to no such indignity. Mr. Meredith, who had a high regard for both parties, observed that there must certainly be some mistake. Mr. Dennie was not a man to indulge in merriment at the expense of others, and he was certain Mr. Levy would be the last man in the world with whom he would take such a liberty. "Mistake!" said Levy, much excited. "How can there be a mistake? There's the letter, (handing him the letter,) and it speaks for itself." Mr. Meredith read it, and laughing heartily, said, "It is very true, the letter does speak for itself, but it does not speak for Mr. Dennie,—it is not written in his hand, nor is it signed by him. It is a letter of invitation from J. Dennis, the coroner. My dear Levy, you have been altogether in an error." By this time the festive hour had long passed. Mr. Levy lost his dinner, but he recovered his good humor, and joined in the merriment, which his own blunder had produced.

This anecdote, although characteristic of Mr. Levy, and although it has gained currency, seems somewhat questionable; but there is another, relating to the same personages, that may be relied upon as veritable, and that is not less indicative of the peculiarity of Mr. Levy, to which we have referred.

He was invited upon one occasion to dine with a distinguished member of the bar, where it was expected Mr. Dennie would be present. As was not unusual with that gentleman, he did not make his appearance; he was a man subject to all the skiey influences, and was regulated more by the weather than his engagements. The dinner was served, and in the presence of the whole company, Mr. Levy expressed his mortification at not meeting the expected guest—the literary leviathan, as he called him—observing at the same time, "that as he hoped to enjoy a literary conversation, he had consumed all the morning in reading and cramming himself with Plutarch's Lives, in order that he might contribute his share to the anticipated intellectual treat; and now," said he, "all this labor and learning go for nothing."

It has been truly said by Chesterfield, "that no man appears so ridiculous by any qualities he has, as by those he affects to have." Mr. Levy's affectation of literary eminence was most remarkable. When he gave a party, or partook of a party, he was certain to prepare himself by conning over any review or recent publication, the subject of which he was certain to

broach upon the earliest opportunity, and without much regard for its fitness. This practice of his was so well understood, that it contributed more to the hilarity of convivial intercourse, than if he had displayed all the wisdom of Bacon or of Locke; and it was aptly observed of him, that it mattered very little how he tumbled, as he was sure to alight upon his feet. He was a great favorite with the bar; and since his death, the gap he left in its ranks remains unfilled.

There are other incidents, more professional than these. A stately-looking gentleman called upon him, with a copy of a very complicated will, containing a vast variety of trusts, and exhibiting on its face inconsistencies, which it was difficult, if not impossible to reconcile. The gentleman asked him to examine it carefully, and furnish him with a distinct written opinion upon its true, legal interpretation, stating at the same time that he would call in a week, receive the result, and pay him liberally for his professional service. The moment the client left the office, Mr. Levy turned to his students —handed the copy of the will to them—told them it would furnish them a fine opportunity for improvement, and requested them to examine carefully the authorities bearing upon the points in question; and upon the strength of a large expected fee, and their attention, invited them all to a handsome supper. The task was performed—the supper was enjoyed—in a few days an elaborate opinion was prepared—and at the ap-

pointed time, the client called. Mr. Levy, with no little parade, read the opinion, consisting of many pages. The gentleman was delighted, and upon receiving it, laid upon the table a note, delicately rolled up, exhibiting at the corner, the figure ONE, and left the office. As soon as he had gone, Mr. Levy unrolled the note, and instead of its being *one hundred* dollars, as he expected, it proved to be but *one* dollar. "There is," said he, "gentlemen," addressing his students, "a great mistake; the gentleman has rolled up the *wrong* note; he no doubt intended to pay one hundred dollars, but he has left but one dollar. Do see if you can find him, and let it be corrected." The students set off in every direction in pursuit, but it proved unavailing—and hence the supper—the research—and the opinion—all passed for a *single dollar*.

It afterwards was found out, that the whole affair had been contrived as a hoax by the students themselves; that the pretended will was a fiction of their's, and that the supposed client was an impostor.

About this time Mr. Levy, who, I have said, had extensive practice, was called upon to argue a case in the adjoining State of New Jersey. It was a matter of considerable importance. He presented himself in the County Court, at Woodbury, and was about to open the case, when the Court, with more presumption than learning or civility, addressing him, said, "Mr. Levy, we know you personally and by reputation, but

our rules forbid any gentleman to practice in this State, unless he shall have been formally admitted." "I beg your pardon," said Mr. Levy, "I was not aware of it; but by way of mending the matter, I will ask some of my learned brethren here to move for my admission at once." "But before any one can move your admission," said the Judge, "it is necessary that you should be examined by the Court, that they may satisfy themselves as to your competency." "Certainly," said Mr. Levy, "by all means; I am perfectly ready to submit to your rule, with one proviso, that seems to me to be perfectly reasonable, which is this, that I shall first be allowed to *examine the Court*, in order that I may ascertain, whether they are *competent to examine me*."

He was at one time engaged for the notorious A——, and during a speech of great force he disclaimed having received any fee, and challenged greater attention, and a more favorable consideration from the jury, on the ground of his candor and disinterestedness. His client, however, who, being often justly *suspected*, was himself, of course, *suspicious*, imagining, from the tone of Mr. Levy's argument, that he was about abandoning the case, adroitly and secretly stepped behind the counsel, and put a ten dollar note in his hand; upon which the advocate, whose itching palm immediately recognized the fee, exclaimed at once, with scarcely a break in the speech, "And suppose, gentlemen of the jury, I have received a fee, is the fact of a fair and

honorable compensation for my services, to deprive my client of his rights, or of the benefit of my argument?"

In another case of considerable interest, against the African Methodist Church, the defendants, who were generally black, happened to call a white man to testify on their behalf. This furnished Mr. Levy an opportunity for remarking in the course of his speech, "that the defendants had craftily introduced a *white* witness into the case, for no other living purpose than to give a *color* to the defence."

Upon another occasion, a gentleman called upon him, in a complicated matter, and having occupied the time of the counsel for some half an hour, said to him, "I wish to know what you would advise in such circumstances." "Why, in such circumstances," said Mr. Levy, with great gravity, "I would advise you, when you go home, "to put twenty dollars in your pocket, and then call upon some legal friend of yours, and *give him* a fee, and no doubt he will *give you* an opinion." The client took the hint, and the affair was thus satisfactorily finished.

Mr. Baize Newcomb, whose loss at the age of seventy-seven, we have been recently called upon to deplore, was a sound lawyer, but remarkably slow and sure, in everything he said and did, which led Mr. Levy pleasantly to say of him, "that he resembled a land terrapin, that wouldn't move unless you put a coal of fire on his back."

Upon an argument before the Supreme Court, Mr. Levy was citing a case from the reports. While reading it, Chief Justice Tilghman turned to him, in his usual mild way, and said, "Mr. Levy, you are not reading the opinion of the court, but the argument of counsel." "I know that," said Levy, "I read the argument of counsel, may it please your honor, because it is generally the best part of a case."

"You need not read the book you have cited," said Judge Barnes to Mr. Levy. "I know all about it." "If," said Levy, closing the book, "you know all about it, now tell me, if you please, what it is, and what use I am about to make of it."

In his speeches, Mr. Levy never considered anything but simply getting through his sentences, utterly regardless of everything but making his speech. He had apparently no distinct ideas, no verbal preparation, but threw his words and thoughts together, like fragments of glass in a kaleidoscope, trusting to chance for their combination and brilliancy. A few specimens will exemplify the truth of this remark:

"I read this to *amplify* my remarks on the court, to a *point*."

"I stand upon strong ground, when I say these two counts leave the case in the same condition as below."

"The bond was the personal security and ability of the individual who gave it."

"I maintain, may it please this honorable Court, that in every well regulated society, justice is to be dispensed *with* throughout the land."

"The idea of a purchase, in its fair and simple meaning, is the right to an article, of which it forms the subject of a contract."

"Theories are the shackling, abstruse matters, which are as different as possible from the matter in hand."

"If I were standing here upon the act of assembly, as a text-book, I think I could satisfy the court of the circumstances of the case."

"The arbitrary decision of the jury is always *supravised* by the controlling judgment of the court."

"These principles fix the foundation, upon which my premises may fairly be drawn, to an intelligent court."

Mr. Levy was of Jewish extraction, but became a convert to the Christian faith, and a member of the Episcopal church, early in life.

In this faith he died, on the 15th of December, 1831.

He was, it is unnecessary to repeat, a man of great affability and pleasantry, and of infinite jest and humor. He was of short stature, but stout and well made in his person, and of good features, and highly intelligent face. He always dressed with the greatest neatness, and in strict conformity with the fashion of those times. At the period of his death, he was seventy years old, but few persons would have taken him to be more than sixty. He married a most amiable and sensible woman, in early life, who survived him many years. Their marriage was not blessed with children, but apparently attended with great harmony, affection, and happiness.

Towards the close of his life, Mr. Levy's business was much diminished, but he lost none of his alacrity

or cheerfulness, and retained all his fondness for his profession to the last of his life. It was a favorite expression of his, at all times, "that the lawyers were the salt of the earth;" and, certainly, in regard to him, it may be truly said, "the salt never lost its savor."

"Mori est felicis antequam mortem invocet."

CHAPTER XV.

RETROSPECT AND PROSPECT.

In taking leave of THE LIGHTS OF THE LAW, we may be allowed to observe, that the influence of a body of men, such as those we have glanced at, may be readily conceived. The eyes of the Union were bent upon them; indeed, during their earlier days, Philadelphia was considered in all respects the centre and cynosure of the Union. They were not only illustrious in themselves, but they cast their rays over the entire State and country. Their example sustained the weak and strengthened the powerful, encouraged the diffident and repressed the presumptuous; nothing mean, crafty, or degraded, could live in their pure atmosphere; and although, at all times, there are to be found men connected with the practice of the law, as well as all the other sciences, and, indeed, all worldly pursuits, re-

flecting but little credit upon their professions or vocations; yet none such ever ventured, or at least ever continued, within the sacred circle by which these Fathers of the Law were self-surrounded. Yet never were there men more approachable, or more familiar with those who, however young, inexperienced, or humble, gave promise of an industrious, zealous, and honorable career in the profession of their choice. They were, in every sense of the word, the Fathers of the Bar, and promoted the advancement, sympathized with the difficulties, and deplored the failure of their children.

They were not only great men in great things, but they observed all the minutest proprieties of a distinguished profession. We had not then reached the Fast Age: or the awkward, or careless, or indifferent age. No man then sat with his heels higher than his head, or planted his foot upon a chair, or occupied two chairs at once, or threw his leg across its back, or supported himself by clinging to the railing, or held long talks with the Court while some important motion or argument was pending, or got up before he was ready, or sat down before he had finished, or interrupted his adversary, or manifested any restlessness or discomposure. If they had been translated from the court-room to the most refined drawing-room, their manners and deportment would have required no improvement. They all spoke to each other, and of each other, as accomplished

gentlemen, and acted in accordance with the title, and in conformity with its obligations. They wore no wigs or gowns at this time, after the fashion of Westminster Hall, but they carried "that within which passed all show."

They were orators as well as lawyers. They did not, it is true, try a case as hastily as we do now, but they tried it better for themselves, their clients, and the law. They never introduced any case to the Court or jury, without a clear and formal opening; not that this was always indispensable, but that it became the gravity and dignity of a court of justice. There are many ceremonies not necessary that are highly becoming.

No man ever knew them to present, even a case upon a promissory note, as is the fashion now, thus :—"This, gentleman of the jury, is an action upon a note for five thousand dollars, brought by payee against the maker. There's the note; I'll call the witnesses." The witnesses are called—the note thrust into the jury-box—the Court hardly knows what is going on—and in this jumble of commingled opening and evidence, the verdict is pronounced. We have sometimes almost been at a loss to know, from the bustle, and confusion, and hurry of the occasion, whether it was a *riot* or a *trial*, that was going on.

This, as we have said, is a melancholy departure from the example of our predecessors; *they* were sometimes

in haste, but never in a hurry—never in confusion; and I may add, rarely in a passion. A quarrelsome man was always avoided by them, if not actually "put into Coventry;" and a crafty adversary, once detected, was never afterwards trusted. Cases were not so numerous in these times, it is true, as in ours, but they were generally much more important, and involved greater intricacies and difficulties. There were then no American Reports, containing authority bearing upon the points in question.* They, themselves, may be said to have been at once the founders and expounders of American law, and it is fortunate that we had such precursors. If crude and reckless speeches, and immature embryo opinions had been delivered then, the consequences, to the bar and the country, in after times, would have been, indeed, most pernicious. They laid the foundation of the law, broad, and deep, and strong, and all that has been since erected upon it, if it has not weakened, has certainly not improved it. They were not, of course, case lawyers; they built their knowledge upon principles, and instead of drinking from

* Kirby's Connecticut Reports were published in 1789, and embraced cases between 1785 and 1788, and were the first Reports published in America. Dallas's Reports followed in 1790, under the *imprimatur* of Chief Justice M'Kean and his Associates, Allen, Rush, Bryan, and Shippen. There are some decisions in the first volume extending back as far as the year 1759, but they are mere fragments, and chiefly valuable for their antiquity.

the turbid and muddy waters running through every irregular and corrupt channel, they slaked their thirst at the pure fountain head. They seemed to look with a prescient and anxious eye to those who should follow them, and to whom they were to transmit either lasting benefits, or cureless injuries.

These great men were always civil and respectful to the courts, but never servile; never unmindful of their duties to themselves and their clients. And when Mr. Lewis, (with whom was associated Mr. A. J. Dallas, in the case of John Fries, who was tried for treason,) publicly declared, that "his hand should never be contaminated by a pre-judged opinion in a capital case," he did no more than any other distinguished member of the bar at that time would have done, even in the presence of as arbitrary a judge as ever sat upon the American bench.

The true dignity and harmony of courts of justice, depend upon a just observance of the relative position of court and counsel; mutual respect for each other, or—if I may say so—"taking and giving odor." I have seen the Judges of the Supreme Court, in its most palmy state, before the hour of taking their seats, engaged in a friendly and sprightly conversation with a knot of the members of the bar, upon the most agreeable, familiar, and equal terms; but the moment they assumed their places, conversation ended, and business commenced. There was no longer any famili-

arity, though always great courtesy, great kindness, and great attention.

Their demeanor resembled that of the Supreme Court at Washington, during the Chief Justiceship of John Marshall. The eyes of all the judges of that great tribunal were centered upon the speaker, and mind seemed to meet mind, through the visual organs, and thereby to produce reciprocal enlightenment. How dignified is such a judicial deportment—how gratifying and encouraging to the advocate—how impressive upon all the beholders. It mattered not by whom the court was addressed—Mr. Pinckney, Mr. Wirt, Mr. Sergeant, Mr. Binney, Mr. Webster, or Mr. Ingersoll, received the same, and no greater apparent attention, than any second or third-rate lawyer, arguing his first cause. If any difference was manifested, it was rather in favor of the young and inexperienced, or those whose condition appealed to the sympathy of the judges, quite as much as to their judgment. We well remember several instances of this kind; in one of which it was plain that the counsel had been worshipping rather at the shrine of Bacchus, than Themis. Twirling about, as he did, during the argument, (if it might be called so,) it was no easy matter either to fix *his* eye, or the basilisk eye of the *Chief Justice*, nevertheless it was accomplished, and actually resulted in making the speaker stand straight, and in restoring him to a state of seeming sobriety. The world may talk of the dignity and

majesty of the Court of King's Bench, but we hazard nothing in saying, that no judicial tribunal at home or abroad, ancient or modern, has ever surpassed, in these respects, the Supreme Court of the United States.

But returning to the Judges of our State Courts—they neither flared up, nor blew out, nor interfered in any way with the legitimate privileges of counsel. They never jumped to a conclusion before the premises had been stated, or took the witness out of the hands of counsel, or told him how many, or how few, he was to call, or professed to understand his case better than himself, or thumped upon the bench, or wielded their mallet or gavel like an auctioneer, knocking down justice, or confounded themselves with the crier; and bawled out order, or read a newspaper or a pamphlet during the argument, or talked to their subordinates or dependants, or fidgeted and wriggled in their seats, as if dissatisfied with their salaries, or labors, or with both.

In a word, at the period referred to, the deportment of the Bench and the Bar, were what they always should be, in order to inspire the community with profound respect and veneration. But while they were courteous and kind to all around, and made no distinctions between their fellow citizens, they neither encouraged nor permitted improper freedom or familiarity, from any quarter.

The etiquette of the courts is quite as necessary to be observed, as that of society. It ought never to be

permitted, that the whole community should obtrude themselves, at pleasure, upon the precincts of the bar. Strangers, and *others* than suitors, have no more right to usurp the appropriate places of others, than they have to enter, uninvited, into the parlor of a stranger, or to occupy the counting-house of a merchant, or the pulpit of a clergyman, to the embarrassment or interruption of the proper occupant or incumbent. In the language of Bacon, "The place of Justice is an hallowed place, and therefore, not only the Bench, but the foot-place and precincts, and purprise thereof, ought to be preserved without scandal and corruption."*

In former and better times, these violations of decorum were not allowed, but now, if you will look within the bar, among us, you can scarcely tell the clients from the counsel; and that is not the worst of it, you will find that more than one-half of its occupants are mere loiterers, or perhaps loungers, who are influenced more by curiosity or indolence, than any profitable or laudable purpose. In England, the usage is entirely different. The enclosure for the bar, is not free to the entire community; it is devoted to legal business. The very apparel of the barristers—their wigs and gowns—are significant of certain privileges; and allowing the members of the bar, with us, do not bear with

* Works of Lord Bacon, Vol. I., p. 182. Vide also, p. 82.

them the outward and visible sign, they are, certainly, either known, or ought to be, to the attendants upon the court; and if the judges would make and enforce an order for the exclusion of interlopers—not from the court-rooms, (for that cannot be done, and if it could, would not be desirable,) but from the strictly business limits of the profession—it would contribute largely to the convenience and comfort of those who are actually interested or concerned in the cases upon trial. If these suggestions were adopted, much confusion would be avoided, and legal operations would be not only facilitated, but consequently accelerated.

The annoyance complained of, it is true, is in some instances attributable to the wretched arrangement, or rather derangement, of our court rooms. When courts sit in pig-styes, whatever may be the inherent dignity of the tribunal, they will be still subject to the occasional encroachments of unpleasant visitors. But even with the present meagre accommodations, greater order might be observed; in the District and Circuit Courts of the United States, it *is* observed. In the other courts, from the latitude that is allowed to every one to occupy a seat within the railing, (having neither right nor business, to excuse the encroachment,) we need hardly be astonished, if at last, some of these intruders should actually aspire to the judgment-seat, itself. Nay, we not unfrequently, as it *is*, see men rushing boldly upon the Bench, and interrupting the

judge during his session—many, it is true, who know no better; but what is required, is a rule forbidding this privilege to ALL, and then *none* will have a right to complain. No man—certainly, lawyer or layman—was ever known in France or England, so to invade judicial sanctity, unless by express judicial invitation or permission. But it may be said, there is a vast difference between a monarchy and a republic—so there is, but JUSTICE IS ALWAYS A MONARCH, and her ministers should partake of her royal properties, privileges, and attributes. It is essential to the protection of the community that it should be so, and no one has the right to object to that exercise of power, which restrains all for the benefit of all. "Degree, priority, and place," must be observed, or nations and communities could never exist:

> "How *could* communities, degrees in schools, and brotherhoods
> In cities; peaceful commerce, from dividable shores,
> The primogenitive and due of birth,
> Prerogative of age, crowns, sceptres, laurels,
> But by DEGREE, stand in authentic place?"

In the counties throughout the State, (contrary to what might be supposed from our example,) the division line between the bar and audience is clearly understood and regarded, and so it is in most of the cities of the Union. Philadelphia, (the Athens of America,) is a melancholy exception. It must not be supposed

that these remarks have for their object any imposition of unreasonable restraints upon suitors, witnesses, or even strangers. On the contrary, the desire is to afford much greater convenience to all. On the score of utility, the benefit of the improvement suggested, must be obvious. The confusion and bustle that now exist would be superseded by quiet and harmony, and our courts of law would become what they were designed to be—sacred temples, dedicated to Justice—and enjoying the respect and reverence of the people.

In thus noticing those who have departed from among us, passing from works to rewards, and approving their practice, we must not be thought to disparage the existing judiciary, much less to undervalue the learning and talents of our brethren of the bar. When it is in place to speak of them they shall receive their full deserts, to the best of our humble ability. For the present, it may be enough to say, that all their faults or defects consist in manner, more than in matter, and would seem to spring from the erroneous modern notion, that he who dispatches the most cases, is entitled to be considered the greatest judge, or the most accomplished lawyer. Whereas, we are told, by the wisest and brightest of mankind,* that "affected dispatch, is one of the most dangerous things to business that can be—

* Montague's Works of Lord Bacon, Vol. I., p. 83.

it is like that which the physician calls pre-digestion, or hasty digestion, which is sure to fill the body full of crudities, and secret seeds of disease; therefore, measure not dispatch by the time of sitting, but by the advancement of the business; and, as in races, it is not the long stride or high leap that makes the speed, so in business, in keeping close to the matter, and not taking of it too much at once, procureth dispatch. It is the case of some only, to come off speedily for the time, or to contrive some false periods of business, because they may seem men of dispatch; but it is one thing to abbreviate, by contracting, another, by cutting off. I knew a wise man, who had it for a by-word, when he saw men hasten to a conclusion, 'Stay a little, that we make an end the sooner.'"

On the score of legal competency, great depth of learning, untiring industry, and unquestionable fidelity and integrity, our judges and lawyers need not shrink from a comparison with the ablest men of this or any other State, or of this or any other time. But we may be allowed to observe, in all kindness, that it is much easier for great men to incur small defects, than for small men to reach lofty virtues. That greatness is fully and freely accorded to them; and those defects which have been rather hinted at than spoken of, are equally theirs. THE END IS NOT YET;—and, without pretending to be a prophet, but judging simply from the signs of the times, a common observer may fairly predict, that if the pre-

sent course be pursued, the past glory of Pennsylvania Jurisprudence, shall never return.

In these reflections and predictions, we are aware that there is a point in the life of man, in which, generally, his prejudices seem to be enlisted *for* the past, and *against* the present. We trust we have not yet reached that period, though we may be self-deceived. As hope magnifies the *future*, so retrospect magnifies the *earlier* scenes of life, in comparing them with the *present*. We are aware that advanced age, unconsciously influenced by the changes in its own condition, imputes the supposed changes in the state of surrounding objects, to everything but the true cause. "*Say not thou, what is the cause, that the former days were better than these? for thou dost not inquire wisely concerning these things.*"

You scarcely ever meet with a retired septuagenarian, who will not tell you, that matters are not now as they were formerly,—in other words, that they are altered for the worse; whereas the change that he *thinks* he perceives results, mainly, from the change in himself, which he *does not* perceive. His views and thoughts at seventy, are widely different from his views and thoughts at twenty. This is because the zeal, enthusiasm, companionship, and hopes of youth, have given way to the gravity, suspicion, solitude, and realities of age.

Very few men are aware of the effects of time upon

their mental faculties. The judgment, suffers in the deterioration of the other functions. The mind takes melancholy rather than lively views of passing events, and recurs to earlier scenes, actually similar, and bedecks them with youthful and agreeable fancies, and thence often draws the erroneous conclusion, that nothing present is comparable to the past. This is wisely ordered by Providence—there being no *immediate* enjoyment, and but little in *expectancy—retrospect* is substituted for *hope*. The difference which exists is that, between contemplating the beauties of nature, under the bright influence of the morning sun, and the same scene under the sombre shadow of a gray twilight; or perhaps it may be still more aptly resembled to the difference between *spring*, which may be likened to the morning of life, and the *winter*, wherein everything is benumbed, withered, and cheerless.

In addition to this—after the gospel limit, of "three score years and ten," the physical faculties almost always fail. And each contributing to the imperfection of the others, they all decay together, and gradually impair the action of the mind upon external objects or passing events, as well as the action or effects of external objects *upon the mind*. The *sight* becomes dim; the hand tremulous; the writing necessarily becomes imperfect, and the reading difficult. This, and the defect of sight, are, mutually, cause and effect, acting and reacting upon each other. The

hearing fails; the voice, no longer regulated by the ear, loses its natural sweetness and intonation; and the ear, in its turn, becomes of course less sensible to its cadence and impression. The sense of *smell* and *taste* are so inseparably connected, that to impair either impairs the other. The touch also loses its sensibility, and thus all the *physical* purveyors of the mind are deadened, and the *mind* itself is obstructed in its knowledge and external intercourse. This is the reason that, in advanced life, the mind, so far from improving, apparently falls off and recedes from its original power and activity. As long as the physical functions are perfect, the mind is always perfect.

Man may be truly said to be "a miracle to man." In middle age, as respects human experience, he knows but half of his own nature, for what he knows *beyond* that, he necessarily relies upon others. Advanced age is the best, for fulness of knowledge, provided it be not attended with the usual infirmities of old age, defective memory, or any other intellectual infirmity which might unfit it, for imparting or deriving instruction upon the various and devious affairs of life. A man whose experience renders him morose or misanthropic, or whose recollection is obscured, sees everything that he does see, through himself—a perverted medium; and therefore never presents to others a reliable account of the pleasures or perils—the happiness or sufferings—of existence.

We should not, however, mourn over the frailties and imperfections of our temporal nature. It is wisely ordained that "whatever is, is right." If we were perfect *here*, there would be little to look for *hereafter*. We can't be always young, and, thank Heaven, we can't be always old; but we can always endeavor to perform our duties faithfully, through the shifting scenes and changes of life. "Man," says one of the wisest philosophers, "may be compared to the Indian fig-tree, which, being ripened to her full height, declines her branches down to the earth, whereof she conceives again, and they become roots in their own stock."*

* Montague's Works of Lord Bacon, Vol. I.

End of First Volume.

APPENDIX A.

ANCIENT INDICTMENTS, ETC., REFERRED TO ON PAGE 226.

No. I.

"Philadelphia, the 26th day of the 7th month, 1702.

"We, the Grand Inquest for this Corporation, do present George Robinson, butcher, for being a parson of evill fame as a common swarer, and a common drunker, & particularly upon the twenty-third day of this instant, for swaring three oths in the market-place, & also for utering two very bad curses the twenty-sixth day of this instant. Signed in behalf of self & fellows, by

"JNO. PONS,* ferman."

"Submits, and puts himself in mercy of the Court."

"George Robinson, fined xxx s. for the oaths and curses."†

* An abbreviation for Parsons.

† The care which, in early times, seems, from this and other presentments further on, to have been taken in the Province to have the Third Commandment well observed, was not continued by some of the magistrates of a later date. We have a presentment, drawn January 3d, 1744, by Dr. Franklin, in which the Grand Inquest "do present Samuel Hassell,

No. II.

"Philada., the 26th 7 mo., 1702.

"We, of the Grand Jury for the body of this citty, do present Grimston Bond, & Margaret Richardson, & David Jones, & Enock hubbard, & Thomas Wills, & Grace Townsend, & John hole, & Ann Jones, Living in William hewns, for selling strong drink without Lycence. Signed in behalf of the rest of the Jurors.

"Jno. Psons, forman."

"We, the sd Grand Jury, Doe also present Denis Moore & Edward Berry, his man, & Philip Elbeck, for Assaulting & fighting with one another in the front street, on the twenty-third day of this Instant mo., about 10 at night, to the Desturbance of the neighbourhood, & the breach of the peace. Signed in behalf of the rest of the jurors, pr.

"Jno. Psonss, forman."

No. III.

"Philadelphia, *ss.*

"We, the Jurors for this city, doe present phillip Eilbeck, of Chester County, for that on the twenty-third Day of this Instant, at night, at the house of Margaret Garret, in the front street, in

Esq. as a Magistrate who not only refused to take notice of a complaint made to him against a person guilty of profane swearing, but (at another time) set an Evil Example by swearing himself." The passage was, apparently, thought too strong, and was struck out.

Philadelphia, aforesd, Did then & theire mennace & threaten herman Debeck, by drawing his bagenet and making a pass at him, the said herman: & at the same time & place abovesaid, did utter three curses, to the terrifiding of the said herman & other the Qeen's Leige people, contrary to the laws in that case made & provided. Signed in behalf of the Rest of the Jurors, this 28th day of the 7th mo., 1702, pr.

"JNO. PSONS, forman."

"Appears and submits, and puts himself in mercy of the Court."

"Eilbeck for breach of the peace and curses, xxx s."

No. IV.

"Philadelphia, the 3d day of the 9th mon., 1702.

"Wee, the Grand Inquest for the body of this city, do present Thomas Mattocks, of Philadelphia, Butcher, for drunkennes, & particularly upon the twenty-fourth day of the eighth moneth he, the said Thomas Mattocks, was drunk in the market-place of this citty. Sined in behalfe of the said inquest by

"JNO. PSONS, ferman."

"Wee also present George Robinson, of Philadelphia, butcher, for uttering a grevious oth on the thirtieth day of the seventh moneth last, & another oth the tenth day of the eighth moneth last past, in Philadelphia aforesaid. Sined in behalf of the said inquest by

"JNO PSONS, forman."

"Submitts. Whereupon the Court fines him xii s. for the sd. oaths, it being the 2nd offence, & orders him to be discharged, the Court paying his fees."

No. V.

"The 3d of the 12th mon: 1702.

"We of the Grand Jury for the Citty of Philadelphia, do psent John Satell for passing of bad counterfeit Coine to Anne Simes, on the 2nd of January Last past in her husbands house, now Living in Philadelphia, & Also finding the mettal in his pocket, which we think the Money was made withall.

"Signed in behalf of the Rest,

"ABRA: HOOPER, foreman."

It is interesting to observe, that the prisoner being found guilty, the record states that "Mr. Clark moves the court that the Judgment may be arrested and the Presentment quashed for Incertainty and Insufficiency, *which was granted.*" A *bal masqué*, which took place somewhere about the Christmas season, seems, from the next indictments, to have been severely visited on both guests and host.

No. VI.

"Philadelphia, the 4th of the 12th mo., 1702.

"We of the Grand Jury, do present Dorothy, the wife of Richard Cantwill, of Philadelphia, aforesaid, for being maskt or disguised in mens cloathes walking & dancing in the house of the said John Simes, in Philadelphia, contrary to the law of this province, at 9 or 10 o'clock at night, on the 26th or 28th day of the 10th month last past.

"Signed, in behalf of the rest,

"ABRA. HOOPER, foreman."

No. VII.

"The 4 of ye 12 month, 1702.

"We, ye Grand Jury of ye City of Philadelphia, present Sarah Stivee, wife of John Stivee, of this city, for being dressed in man's cloathes, contrary to the nature of her sects, and in such disguises walked through the streets of this city, & from house to house, on or about the 26th of 10th month, to the grate disturbance of well minded persons, & incoridging of vice in this place; for this & other like enormities, we pray this honorable Bench to supress.

"Signed in the behalf of the rest,

"Abraham Hooper, foreman."

No. VIII.

"Philadelphia, the 4th of the 12th month, 1702.

"We, ye the Grand Jury for ye Citty of Philadelphia, present John Smith, of this citty, living in Strawberry Alley, for being maskt or disgised in womans apparrell, walking openly through the streets of this city, & from house to house, on or about the 26th of ye 10th month last past, it being against the Law of God, ye Law of this province, & the Law of nature, to the staining of holy profession & incoridging of wickedness in this place.

"Signed in behalf of the rest,

"Abra. Hooper, foreman."

No. IX.

"Philadelphia, the 4th of ye 12th month, 1702.

"We, the Grand Jury for the City of Philadelphia, present

John Simes, ordonary keeper of this city, for keeping a Desorderly house, a nursery to Debotch y^e^ inhabitants & youth of this citty, & suffering masqueraded persons in the house to dance & revel, on or upon the 26th or 28th of the 10th month last past, to the Greef of and Desturbance of peaceable minds, & propigating y^e^ throne of wickedness amongst us.

"Signed in behalf of the rest,

"ABRA. HOOPER, foreman."

No. X.

"Philadelphia, y^e^ 4th of the 12th mon., 1702.

"We, of y^e^ Grand Jury for the Citty of philadelphia, Do psent John Joyse, for having of to wifes at once, which is boath against the law of God and man.*

"Signed in behalf of the rest,

"ABRA. HOOPER, foreman."

The political party, since called Native American, or Know Nothing, though charged with being one of recent origin, seems to have had a very early beginning in Pennsylvania. We find the following indictment:

No. XI.

"Philadelphia, y^e^ 6th of the 3rd month, 1703.

"We, of the Grand Jury for this city, Doe present Alexander Paxton & his wife, for letting a house to John Lovet, he being

* "And still more," the presentment might have naturally added, "against that of woman."

a Stranger, & have not Given security for The In Demnifying of this Corporation.

"Signed in behalf of the rest,

"Abra. Hooper, foreman."

We have next a curious petition, which shows what a mixed jurisdiction the courts of that day were called on to exercise. It is in the Mayor's Court, which had succeeded, apparently, to the office of *Parens Patriæ*, of the Lord Chancellor of England. The petition resembles, extremely, some of those found in the recently published "Chancery Calendars."

No. XII.

"To the Hon^{ble} the Mayor, Recorder, and Aldermen, for the City of Philad^{a}, now sitting in Court, the 6th day of May, 1703.

"The petition of Priscilla Vaughan, widow, most humbly sheweth, That your Petitioner's mother, Margaret Cook, (for reasons best known to herself,) hath turn'd her out of doors some weeks since, and expos'd her to great hardships and difficulties, being a desolate widow, and hath, and still doth detain all her Household Goods and Utinsils, except her wearing apparrel, tho' your poor Petitioner has not only sent, but gone in Person, to request and intreat y^{e} delivery thereof, which she still refuses, without giving any just reason for.

"Yo^{r} Petitioner therefore humbly Prays this hon^{ble} Court to consider the premises, and to interceed in her behalf with her s^{d} mother, that so she may not be constrained to bring unnatural action ags^{t} her aged and honrd mother.

"And yo^{r} Petition^{r} as in duty shall ever pray, &c.

"Price Vaughan."

No. XIII.

"Philadelphia, this third day of November, 1703.

"We doe also present Jon Furnis & Thomas McCarty & Thomas Anderson & henery Flower, barbers, for triming people on first days of the weeks, commonly called sunday, contrary to the law in that case made & provided.

"Signed in behalf of the rest of the Jurors,

"JOHN REDMAN, foreman."

No. XIV.

"We doe also present John Jones, Alderman, for making Incroachment on mulbery Street, in this city, by setting a great reed or hay stack in the said street, these two years past, & making a close fence about the same. this 3 day of September, 1703.

"Signed in behalf of the rest of the Jurors,

pr JOHN REDMAN, foreman."

No. XV.

"We doe also present henery Brooks, the Queen's collector, at the horekills, for committing several outrages & disturbances in this citty, on or about the 11 & 12 day of October, 1703, about the dead time of the night, to the terrifying & affrighting the queen's peaceable subjects, & against the laws in that case made & provided.

"Signed in behalf of the rest of the Jurors, pr me,

"JOHN REDMAN."

We here observe, as in No. V., that when the attention of the Court was called to the matter, some of these very loose indictments are quashed. "henery Brooks, the Queen's collector at the horekills," who seems to have been coming home late from an evening party, where he had "taken a little too much," no doubt had counsel to defend him, and the record notes, that "this Presentment was quashed for Insufficiency."

Next comes an excellent indictment, the spirit, if not the form, of which, all housekeepers, as we have said before, will commend to the District-attorney, as an excellent model. The hotel-keepers in those days, as on these, raised the price of beef in the market.

No. XVI.

"Philadelphia, y^e^ 4: 12: 1703-4.

"We, the Grand Inquest for this corporation, do present Anne Symes, y^e^ wife of John Symes, Inn-keeper,* for forestalling the market, contrary to law, on the 29th 11 mo. last past.

"pr Wm. Bevon, Foreman."

APPENDIX B.

RECORD IN WILLIAM v. TILL, REFERRED TO ON PAGE 237.

"June Term, 1749.

"PHILADELPHIA COUNTY, ss.

'William Till, late of Philad^a County, merchant, was attach'd to answer Lawrence Williams, of a plea of trespass upon the case, &c.

"And whereupon, the s^d Lawrence, by John Ross, his att^y, complains that, whereas the s^d William, the seventh day of May, in the year of our Lord one thousand seven hundred and forty-six, at Philad^a, in the County af^a, was indebted to the said Lawrence, in the sum of three thousand seven hundred and ninety-four pounds nineteen shillings and ten pence, sterling money of Great Britain, as well for divers goods, wares and merchandises by the s^d Lawrence to the s^d William, at the special instance and request of the s^d William, before that time sold and delivered, as for divers sums of money by the s^d Lawrence to and for the s^d William, at the like instance and request of the s^d William before that time lent, laid out, paid and expended, and also for Work, Labour, and

* This is the same person indicted in No. IX., for a masquerade in his house.

Service by the said Lawrence for the s^{d} William, at the like Instance and Request of the s^{d} William before that time done and performed. And being so thereof indebted, the af^{d} William afterwards, to wit, the same day and year af^{d} at Philad^{a} in the County af^{d} in consideration thereof upon himself did assume, and to the s^{d} Lawrence then and there faithfully did Promise that he the s^{d} William the af^{d} sum of money, to the s^{d} Lawrence when he should Afterwards be thereunto required would well and truly Pay and Content. Nevertheless the s^{d} William his Promise and Assumption af^{d} not Regarding but Contriving and fraudulently Intending him the s^{d} Lawrence in that behalf Craftily and Subtlely to deceive and defraud the af^{d} sum of Three thousand Seven hundred and Ninety-four pounds nineteen shillings and ten pence sterling money af^{d} or any part or penny thereof to the s^{d} Lawrence hath not paid or him for the same in any manner contented (altho' to do the same the af^{d} William afterwards to wit the Tenth day of May, in the year of our Lord seventeen hundred and forty-six af^{d} often afterwards at Philad^{a} af^{d} by the s^{d} Lawrence was required,) but the same to him to Pay or Content altogether hitherto hath refused and still doth refuse, Whereupon the s^{d} Lawrence saith he is worse and hath Damage to the value of Five thousand Pounds, and thereupon he Brings this suit, &c.

"Ross."

Pledges, &c.

"John Doe,
&
"Richd. Roe."

PLEA.

"And the aforesaid William Till cometh and saith that heretofore and since the Impetration of the Writ of Summons in this

plea, to wit, the eighth day of November, in the year of our Lord one thousand seven hundred and fifty, at a Court of Common Pleas held for the County of Sussex, one of the three lower Counties upon Delaware at Lewes, in the same County, to wit, at Philadelphia County aforesaid, a certain Jacob Phillips did impetrate and obtain from and out of the same Court a certain writ of our Lord the King that now is, to the Sheriff of Sussex County aforesaid directed, whereby our said Lord the King did command the same Sheriff, that if the said Jacob Phillips made him secure in prosecuting his Clamour, that he should attach all and singular, the Goods and Chattels, Lands and Tenements, Rights and Credits, of and belonging to Lawrence Williams, late of Sussex aforesaid, Merchant, (if they might be found in his Bailiwick,) so that the said Lawrence should be and appear before the Justices of the same Court, there to be held on the first Tuesday of February then next, to answer the aforesaid Jacob Phillips of a plea of Trespass on the Case, &c. By virtue of which writ, afterward and before the Return thereof, to wit, the fourth day of May, in the year of our Lord one thousand seven hundred and fifty-one, the Sheriff of the said county of Sussex, at Sussex aforesaid, to wit, at Philadelphia County aforesaid, did, in due form of Law, attach, in the hands of the said William Till, all the Goods and Chattels, rights, debts, and Credits, to the said Lawrence Williams belonging, due, or owing, and which then were in the hands of the same William Till, according to the exigence of the same writ, of which same writ the said Sheriff afterward, to wit, the said first Tuesday in May, at Lewes aforesaid, to wit, at Philadelphia County aforesaid, to the Justices of the same Court did make return in these words: By virtue of the within writ to me directed, I humbly certify that I have attached all the effects of Lawrence Williams, Merchant, in the hands of William Till, Esq., as within I was commanded; and I have summoned him the said William as Garnishee to the said Lawrence, this fourth day of February, in the year of our Lord one thousand seven hun-

dred and fifty; which said plea between the said Jacob Phillips and the said William Till, in the same Court, before the same Justices, at Lewes aforesaid, to wit, at Philadelphia County aforesaid, as yet remaineth pending and undetermined, as by the Records and proceedings of the same Court, here into Court brought, may more fully appear. Wherefore, he prayeth judgment if the said Lawrence Williams his action aforesaid against the said William Till further to maintain ought pending the said action between the said Jacob Phillips and the said William Till undetermined.

"FRANCIS."

DEMURRER.

"And the aforesaid Lawrence Williams saith, that he, notwithstanding any matter by the said William Till, in his plea last above pleaded, alleged, ought not to be precluded from having his action aforesaid thereupon against him the said William Till, because he saith that the plea afd last mentioned by the said William Till, in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in the law to preclude the said Lawrence Williams from having his action aforesaid thereupon against the said William Till; to which plea last aforesaid, he the said Lawrence Williams hath no necessity, neither by the Law of the Land is bound in any manner to answer, and this he is ready to verify: Whereupon, for want of a sufficient answer in this Behalf, the said Lawrence Williams prays judgment, and his damages by occasion of the premises aforesaid to be to him adjudged, &c.

"ROSS, P. Quar."

The demurrer seems to have been overruled, as the next entry shows the case "At Issue."

BILLS OF EXCEPTION.

"And thereupon ———— of Council with the plaintiff, doth offer in evidence to the jury aforesaid, several writings on paper, containing therein the following words, and figures. [Accounts and Depositions.]

Thos. Lawrence,
Josh. Maddox,
Edwd. Shippen,
B. Franklin.

"Whereupon, Tench Francis, of Council, with William Till, the Defendant in this cause, to the Court here, for the same William Till, doth say and alledge.

"First, That although all the matters and things, by the said John Gent, in the said writing named, Deposed, Sworn, and Declared to be true, are true in manner and form as the said John Gent, on his Oath, in his Deposition aforesaid, hath Deposed, Sworn, and Declared. Nevertheless, by the Law of the Land, the Accounts aforesaid to the said Deposition annexed, or any of them, in the said Writings contained ought not to be read or given in Evidence to the Jury aforesaid.

"Secondly, That the same accounts ought not to be read or given in Evidence to the Jury aforesaid, by virtue of, or under the Prooff, Oath, or Deposition afores[d] of the said Lawrence Williams, the Plaintiff, because, by the Law of the Land, no person can be a witness in his own Cause, nor ought the Testimony of the Plaintiff or Defendant, either vivâ voce, on Oath, or by Deposition, exparte, be admitted or given in Evidence to any Inquest or Jury in any Cause, Suit or Action, to verify or prove any matter or thing

for the benefit or advantage of the person or persons respectively making such Oath or Deposing as aforesaid.

"And doth pray of the Justices of the Court here that the same accounts in the said Writings mentioned, or any of them, may not be read or given in Evidence to the said Jury, for the Causes and Reasons aforesaid, and for other good Reasons and Causes; and that the said Deposition of the said Lawrence Williams may not be given in Evidence, or read to the Jury aforesaid, for the Reasons and Causes aforesaid, and for other good Reasons and Causes.

THOS. LAWRENCE,
JOSH. MADDOX,
EDWD. SHIPPEN,
B. FRANKLIN.

"Nevertheless the Justices afores[d] do Declare their Opinion and adjudge that upon the several matters and things Deposed, Sworn, and on Oath Declared by the said John Gent, in manner and form aforesaid, the said Accounts ought, by the Law of the Land, to be read and given in Evidence to the said Jury.

"And that the Deposition aforesaid of the said Lawrence Williams, although made and taken ex parte in form aforesaid, is good and legal Evidence to the Jury aforesaid, and by the Law of the Land ought to be read and given in Evidence to the same Jury.

"And that the said Accounts, verified and proved by the Deposition aforesaid of the said Lawrence Williams, in manner and form afores[d], ought to be read and given in Evidence to the said Jury.

THOS. LAWRENCE,
JOSH. MADDOX,
EDWD. SHIPPEN,
B. FRANKLIN."

"And thereupon the said Tench Francis, for the said William

Till, prayeth the said Justices, because the said matters and things cannot appear on the Record of this action and Tryal, to Sign and Seal this Bill, containing the matters and things afores[d], according to the form of the Statute in such case made and provided.

"To which the same Justices have accordingly set their hands and Seals, this twelfth day of March, in the twenty-sixth year of the Reign of our Sovereign, Lord George the Second, King of Great Britain, France, and Ireland, Defender of the Faith, according to the Form of the Statute afores[d].

To be drawn at large in Form.

THOS. LAWRENCE,
JOSH. MADDOX,
EDWD. SHIPPEN,
B. FRANKLIN."

Autographs
OF
PHILADELPHIA
JUDGES AND LAWYERS

To refute the common slander of the handwriting of Lawyers.

Edwd D. Ingraham.
" 4th July 1857.

CHIEF JUSTICES OF THE SUPREME COURT OF PENNA

James Logan

Annoq Dom 1722

John Kinsley

Wm. Allen ..... April 15th 1763.

Benjamin Chew

Tho M:Kean

Edw Shippen

Taken & subscribed by me
this 4th June 1808
Before Wm. Tilghman

Very truly, Dear Sir,
Your friend and Servant
John Bannister Gibson
Harrisburg 25 June 1843

ASSOCIATE JUSTICES OF THE SUPREME COURT OF PENNA

Jas Coleman
Alex Redman
Law Growdon
John Morton
Thos Willing

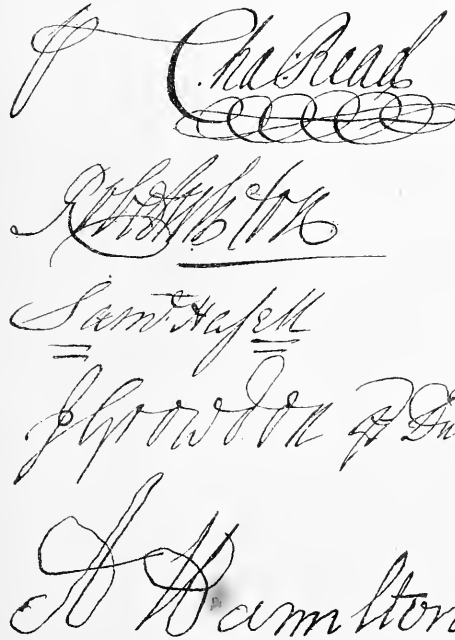
prior to July 4th 1776.

JUDGES OF THE COMMON PLEAS.

Ob. 1735.

Justices in 1759.

BAR.



also Judge of V. Admiralty.

Tench Francis Att. Gen.

Jos. Galloway
Att.y Dep.t

Jos: Reed

And.w Allen Att.y Gen.l

Alex.r Wilcocks

James Tilghman

John Ross att.y Def.s

Geo. Ross

Jona.th Sergeant
Att.y Gen.

with great esteem
Yours very truly

W. Bradford Jun.

Dec.r 25. 1781.

J. M. Wallace Esq.r

James Wilson

8th Aug.t 1797

My Friend

Wm Dunbar Esq

Wilmington June 10–1790

Edwd Tilghman Esquire

Edw d Tilghman

Phil.a Jan.y 29th 1796

Wrawle

Sep. 15. 1797.

Montgomery

Sept.r 1793

Jared Ingersoll Attys Genl

A. J. Dallas Esqr

Philada Aug. 1809

Hargreaves

Eatton, Penn.a 14 Sep. 1798

Edward Tilghman Esq.

6.

1809.

J W Condy for Plffs

C. W. Peale

I send you my check for $61 50/100 to your order,
Truly yrs
Hor: Binney

Apr. 14. 1821

Yr. very truly
John Sergeant.

Philada. Sept. 23. 1847.
affectionately & truly
Yr friend.
Ch. Chauncey

Very truly yrs
J R Ingersoll
Washington December 16. 1843.

Very truly Dear Sir
your friend & servt
John B. Wallace
July 29th 1807-

C J. Ingersoll for defs

W M Meredith

Washington 22 Dec 1849

Very Truly
Yours
Phila. Nov 10. 1841

Leading Cases
H. B Wallace January 1850.

JUDGES OF FEDERAL COURTS.

Wm Griffith ..... C.C. of 1801

For Bushrod Washington, see next page.

Henry Baldwin ..... C.C.

Pittsburgh 26 July 1816.

Alex ..... C.C.

Jno. Hopkinson ..... D.C.

Richard Peters ..... D.C.

Bellemont May 19th. 1819

J Hopkinson ..... D.C.

R. Peters ..... D.C.

8.

Nov. 5. 1800.

Dear Sir

I have just read over the case of Sperry & U.S. Co. & find it as all my notes & cases must be from the hurry in which they are made, extremely inaccurate in style & in every thing but the facts. I do not perceive that you will consider my report of this as of all other cases nothing more than rough notes, to be corrected & reformed in your own way If I did not calculate upon these corrections, I should not suffer copies to be taken until I could find time to transcribe them -

I am very respectfully & sincerely yrs

Bush. Washington

To J. B. Wallace Esq. who contemplated reporting Judge Washington's decisions - E.D.F.