
AP ETHEL

THE LIFE

OF

LORD CHANCELLOR WESTBURY

Yours very sincerely

Richd. Bethell

ENGRAVED BY G J STODART FROM A MINIATURE PAINTED ABOUT 1825

London Richard Bentley & Son 1887

THE LIFE

OF

RICHARD LORD WESTBURY

Formerly Lord High Chancellor

WITH SELECTIONS FROM HIS CORRESPONDENCE

BY

THOMAS ARTHUR NASH, B.A.
BARRISTER-AT-LAW

WITH TWO PORTRAITS

IN TWO VOLUMES—VOL. I

LONDON
RICHARD BENTLEY AND SON
Publishers in Ordinary to Her Majesty the Queen
1888

Printed by R. & R. Clark, *Edinburgh*

PREFACE

In the autumn of 1883 there appeared an announcement that a Life of the late Lord Chancellor Westbury, by Mr. R. N. Kennard, was about to be published. The work was, however, delayed by various causes, and its completion was finally interrupted by the illness and death of the writer. That Memoir consisted principally of materials taken from public documents; and the only part to which this observation does not apply was that which professed to give the personal recollections of the writer. These recollections formed the subject of a biographical sketch which appeared in *Macmillan's Magazine* for April 1883. It was evident to those who were intimately acquainted with Lord Westbury that the writer had an imperfect knowledge of his subject, and this made his sketch incomplete. After Mr. Kennard's death the Memoir upon which he had been engaged was placed in my hands by Mr.

Bentley, and subsequently, with the concurrence of Lord Westbury's family, I began an entirely new biography. I am, however, indebted to Mr. Kennard's Memoir for the insertion of a few anecdotes and for the occasional use of a reference to professional matters on which he may have had good opportunities for information.

The lapse of fifteen years since Lord Westbury's death has made the task of preparing his biography in some respects difficult. Except for a few weeks late in life, he kept no diary or record of personal events, and a valuable portion of his correspondence was soon after his death accidentally destroyed. Much also of the material which might have been collected from the personal recollections of contemporaries and other sources is no longer available. Under these circumstances the work would have presented still more formidable difficulties, had not Lord Westbury's family afforded me the advantage of the most unreserved communication, and placed at my disposal the whole of the correspondence and other documents in their possession which were material to my purpose, without imposing any restraint whatever as to the treatment of the life.

To the Hon. Mrs. Adamson Parker, whose

knowledge of her father's life was from their long companionship the most complete, I am under great obligations. Mrs. Parker has allowed me to make use of a monograph from her own pen, which is incorporated in the chapters in which the earlier years of Lord Westbury's life are described, and she has supplied numerous and valuable notes of personal recollections. I have also to thank the Hon. Slingsby Bethell, C.B., for the loan of several letters and papers, and the Hon. Walter Bethell for many interesting details of his father's country pursuits.

To Eleanor, Lady Westbury, I am indebted for much important information and for access to some private letters.

My warm thanks are due to Mr. Augustus B. Abraham, brother-in-law of Lord Westbury, whose recollections have furnished much of the material for the early life, and who has rendered most valuable information, advice, and assistance with respect to other portions of the work. To other members of the family and to many of their friends who have given me much kind aid, I tender my grateful acknowledgment.

For the privilege of being permitted to publish some of the correspondence, I am indebted to the

Right Hon. W. E. Gladstone, Earl Granville, Lord Moncreiff, the Hon. Evelyn Ashley, Mr. Henry Reeve, C.B., Mr. Jeune, Q.C., and to several others. To Lord Moncreiff, Mr. Frederic Harrison, Professor Jowett, and the Rev. C. J. Hume, I must express my grateful thanks for the interesting sketches of various portions of Lord Westbury's life which they have contributed. I have also to acknowledge the kindness of Mrs. Harvey, of Ickwell Bury, Lord Thring, and Mr. A. W. Kinglake, in communicating their recollections. Much useful information with regard to Lord Westbury's professional career has been received from Mr. Napier Higgins, Q.C., Mr. Cookson-Crackanthorpe, Q.C., Mr. Vaughan Johnson, Mr. B. B. Rogers, Mr. Percy Gye, Mr. Charles Skirrow, Mr. Charles Harrison, Mr. W. W. Aldridge, and others. Finally, I must heartily thank my friend, Mr. Patrick F. Evans, of the Inner Temple, for his valuable aid in revision, and for many excellent suggestions.

The biography has been mainly treated as that of a public man whose career is inseparably connected with the legal history of his time. In dealing with Lord Westbury's resignation, an effort has been made to spare the susceptibilities of persons

still living, as far as was possible, without any sacrifice of the truth. The public events which led to the resignation are matters of record, and I have therefore confined the narrative to the bare facts upon which the motions of censure were based, purposely avoiding subjects which might provoke needless controversy.

It only remains to say that I had not the privilege of a personal acquaintance with Lord Westbury—a circumstance which should perhaps supply some presumption of impartiality, though it may preclude any claim on my own part to the interest attaching to a portrait drawn from the life.

T. A. N.

INNER TEMPLE, *August* 1888.

CONTENTS OF THE FIRST VOLUME

CHAPTER IV

1847-1852

CHAPTER V

1852-1855

CHAPTER VI

1855-1856

CHAPTER VII

1856-1857

CHAPTER VIII

1857

CHAPTER IX

1857-1859

CHAPTER X

1859-1860

LIFE OF LORD WESTBURY

CHAPTER I

1800–1822

Descent and parentage—Bethells of Bradford-on-Avon—Childhood and early influences—Circumstances of his parents—Schooldays—Goes to Oxford—Gains a scholarship—University life—His remarkable diligence—Recollections of a college friend—Graduates in honours—Reads with pupils—Early responsibilities—Elected to a fellowship—Views on university training.

Richard Bethell, afterwards first Baron Westbury, came of a family whose name and pedigree were derived, it is said, from the ancient race of Ap-Ithel. Of Welsh origin and position, the Bethell family crossed the border at the beginning of the sixteenth century. Some of the Bethells established themselves at Hereford, while others removed to the south of England. A Richard Bethell—a name which recurs very frequently in the family records—became Vicar of Shorwell in the Isle of Wight, and died there in 1518. To another Richard Bethell, who seems to have been a nephew of the last-named, Henry VIII. granted the site of Hyde Abbey in 1545,

shortly after the suppression of the Religious Houses and the confiscation of their lands.

The principal branches of the family remained in the neighbourhood of Hereford until, in the reign of Elizabeth, Hugh, afterwards Sir Hugh Bethell, became entitled by the devise of his kinswoman, Blanche Parrye, one of the gentlewomen of the Queen's privy chamber, to the manor of Rise, near Beverley in Yorkshire. This manor was held of the Crown under a grant for lives, and the reversion was afterwards purchased from Charles II. by a collateral descendant of Sir Hugh Bethell. The Rise estate remains in the possession of that branch of the family.[1] Sir Walter Bethell, a nephew of Sir Hugh, married a sister of the Royalist, Sir Henry Slingsby, who was beheaded on Tower Hill in 1658 for adherence to Charles Stuart, and by whose surname several of the Bethells were subsequently designated.

The first Slingsby Bethell was a man of very different stamp. Notorious for his republican tendencies before the Restoration, he was elected a Sheriff of London in 1680 in the teeth of the opposition of the Court. His contemporary, Burnet, thus

[1] Mr. Richard Bethell of the Rise, brother of Dr. Christopher Bethell, successively Bishop of Gloucester, Exeter, and Bangor, was in 1832 returned as the Conservative member for the East Riding. The identity of name occasioned a singular blunder by which, many years after, this Richard Bethell was confounded with the late Lord Chancellor, who did not enter the House of Commons till 1851.

describes him: 'Bethell was a man of knowledge, and had writ a very judicious book of the interests of princes; but as he was a known republican in principle, so he was a sullen and wilful man; and turned from the ordinary way of a sheriff's living into the extreme of sordidness, which was very unacceptable to the body of the citizens, and proved a great prejudice to the party.' He is satirised by Dryden in his *Absalom and Achitophel* under the character of Shimei. A sheriff who vigorously maintained the threatened rights of the Corporation, and refused to pack juries for the Crown purposes was naturally obnoxious to the Court, and the frugality of his kitchen and cellar made his shrievalty unwelcome to the citizens who had elected him.

The remaining branches of the Bethell family spread gradually over the west of England, and may be traced during the seventeenth and eighteenth centuries, some at Hereford, others at Wimborne. Lord Westbury's nearer ancestors established themselves in the north of Wilts. His great-grandfather, Thomas Bethell, had, at the beginning of the eighteenth century, settled at Barton Farm, near Bradford-on-Avon, where he purchased some land from the Duke of Kingston. On his death in 1755 this passed to his son Samuel. Samuel Bethell retired from business when he had acquired a moderate competence, and became the owner of a small estate called Ladydown, with other property in the parish of Bradford. In this quiet retreat the

Bethells dwelt respected by their neighbours for upwards of a century.

The quaint and picturesque town of Bradford lies, encompassed by hills, at the eastern extremity of the peaceful valley of the Avon. To the antiquary and the geologist the locality is full of interest for its Roman and Saxon remains, and the curious fossils which are found embedded in the blue clay. A pleasing character is given to the town by its narrow winding streets and the peculiar elevation of the ancient buildings, which are ranged in irregular tiers on the slope of the hill across the river, while the height above is fringed with trees, affording an agreeable shelter from the north wind. For some centuries Bradford has flourished by the manufacture of cloth. 'Al the toune of Bradeford stondith by clooth-making,' says Leland in his *Itinerary*, and this industry, though it has somewhat declined, still employs a large number of the inhabitants.

Of Samuel Bethell's four sons the third, Richard, chose the study of medicine. After serving an apprenticeship to an apothecary in the town, he proceeded to Guy's Hospital, where he obtained the usual qualifications. For a time Dr. Bethell held minor appointments at Guy's; but presently returning to Bradford, he settled down there and acquired a fair practice and a good reputation among his professional brethren. He does not appear to have had much pride in his Welsh pedigree; and, for some unknown reason, he held very much aloof

from the other members of his family, and would often affirm the wisdom of having the fewest possible dealings with kinsmen. Dr. Bethell was one of those men who are regarded by their friends as disappointed, because their success in life is not commensurate with the powers for which, rightly or wrongly, they have had credit. He was a man of parts, and anticipated the treatment of a later generation of doctors in discarding the practice of blood-letting for more remedial methods. But he was of a retiring disposition, and the locality afforded little scope for the display of more than ordinary professional ability. It was at Bradford, in the year 1797, that he met and fell in love with Miss Jane Baverstock, who shortly after became his wife; and there on the 30th of June 1800, in the old gray stone house which abuts on the Saxon bridge over the river, was born their elder son, the future Lord Chancellor.

The early days of the boy's life gave some anxiety to his parents. At the age of six he was seized with such a violent attack of convulsions that the doctors in attendance despaired of his recovery. The attack lasted two days; but when the child seemed almost at the last gasp, Mrs. Bethell insisted on administering some drastic, but homely remedy, and his life was saved. The dreaded delicacy of constitution henceforth disappeared. Though Lord Westbury had more than the common share of accidents in the course of a long life, his

bodily strength and capabilities of endurance were uniformly greater than those of the majority of men. He was himself disposed to consider the lawyers of his day somewhat degenerate in physique compared with their predecessors. Thus in writing to Lord Palmerston in 1863, he complained of the difficulty of finding men at the bar physically strong enough to undertake judicial appointments. 'There used to be lawyers who could stand anything,' he said, 'but the race seems wearing out.'

Mrs. Bethell was a beautiful and most amiable woman, but unhappily there was a standing feud between her father and old Samuel Bethell. It was the old story of the Montagues and the Capulets repeated in a humbler social sphere. The marriage was violently opposed by the parents on both sides; and though, after it had taken place, Samuel Bethell professed to be reconciled, it was found on his death that Dr. Bethell's name was scarcely mentioned in his will. This was the heavier disappointment to the son, as he had invested all that he was able to save in the shares of a clothing company which failed just before his father's death. Then followed hard times and constant anxieties for Dr. Bethell and his family. Happily there were only two children to provide for—Richard, the subject of this biography, and John, who was four years his junior. Richard was about six years old when his grandfather died. In spite of his tender age it was thought proper that he should attend the

funeral, and the gloomy circumstances of the day were indelibly impressed on the child's mind. In after years Lord Westbury described to his own children the miserable drive home in a gig after the reading of the will; how his father sat absorbed in overwhelming anxiety for the future, only now and then muttering, 'We are ruined! We are penniless!' In his childish way the boy tried to divert his father's thoughts by calling his attention to various objects on the road; but his efforts were unavailing, and at length he was awed into silence by the force of an affliction he was unable to understand or soften.

Dr. Bethell was considerably in debt, and had the greatest difficulty in raising money with which to meet his liabilities. At this trying juncture one of his nearest relations turned against him, and might probably have thrown him into a debtor's prison but for the timely intervention of a friend. Henceforth the struggle to escape from pecuniary embarrassment was a hard one, but it was faced with fortitude. Dr. Bethell's own efforts were stimulated by professional help, and by the devotion of Mrs. Bethell, who roused herself, though in delicate health, to support her husband by her courage and energy. Many were the privations of the parents, and among their unceasing trials it was, perhaps, the keenest that very little money could be spared for the education of their elder son. For four years, £12 annually was all that could be devoted to this purpose. But

it appears that home-teaching in some measure supplied the deficiency.

While Richard was still very young, Dr. Bethell foresaw that a high career lay before him, provided his rare powers could be properly developed by education and training. Even 'poverty's unconquerable bar' did not daunt the father's determination and spirit. The child was only five years old when his future profession was decided on, and his eminence foretold. Such predictions are commonly uttered about every conspicuously clever boy: in Richard Bethell's case they were again and again repeated by those around him, until they marked in his mind the duty and purpose of his life. Distinguished from other children by the peculiar earnestness of his manner, it seemed as if, even in those earliest years, he shared the anxieties which beset the home, and realised the responsibility for others with which his life and prospects were burdened.

The discipline exacted from him was austere, but it was suited to a constitution which had become unusually vigorous. Every morning, at a very early hour, he trudged off to school with his bag of books, and, though the distance was considerable, he was never allowed to absent himself, even under stress of bad weather. The habit of early rising never deserted him; even in winter, and in the latter years of his life, Lord Westbury would rise at five o'clock, light his fire, and, after making a little tea

or cocoa, read or write till seven, standing the while at a high desk, and now and then breaking off to pace up and down the room in reflection.

There was from the first no lack of will or energy on the part of the boy. The stirrings of ambition, an innate love of learning, and a large share of that somewhat old-fashioned virtue, filial obedience, gave him spirit and determination to overcome every difficulty rather than disappoint the high expectations of his parents. We hear of 'Dick' Bethell at school, a blue-eyed, fair-haired lad, devoting himself to his studies with an earnestness and gravity beyond his years. The school-time over, he would betake himself to the perusal of a volume of Burke, or some other book selected by his father; and thus he acquired an appetite for wide general knowledge which never left him. Neither ridicule nor entreaty could induce him to abandon his occupation. If the interference took the form of bullying, his hot Welsh blood showed itself, and the offence was quickly resented. His few holidays were spent in taking long rows on the river, or in wandering, accompanied by his little brother, for hours, fishing-rod in hand, by the waterside.

To the last year of his life the memory of those early struggling days, uneffaced by the brilliant career which followed, was sacred to Lord Westbury's heart. The self-denying efforts of his parents to bestow the education and training needed

to develop his great powers were most gratefully remembered. In a letter written to one of his former colleagues,[1] only two months before his death, he said: 'When I was made Lord Chancellor, I may truly say the chief feeling that arose in my mind was not that of pride or gratified vanity, but of sincere gratitude that I had lived to fulfil the predictions and the fond hopes of my father, to whom I owed all my education and all the means that had enabled me to fulfil what, when they were first formed, were but wild anticipations.'

Sprung from the middle class, which has produced the greater number of his predecessors on the woolsack, Richard Bethell had none of the advantages of position or influence to aid him in the struggle to win for himself independence and fame. But he enjoyed a higher advantage. He was trained under the watchful care of a father who instilled his own lofty purpose and enforced it with an inflexible resolve. No thought or effort was spared to fit the boy for the distinction for which his genius plainly destined him. These external influences were in harmony with his own disposition. Industry, energy, and self-reliance were the marked characteristics of his childhood. The strict habits of frugality enjoined by the straitened circumstances of the home strengthened such qualities. It is not too much to assert that his early environment left deep marks on his mind and character. Such a

[1] The Earl of Selborne.

training, while it naturally braces and confirms a self-contained and studious disposition, tends in some degree to restrict the wider sympathies, and narrow the interest in social and public life.

Soon after his father's death, Dr. Bethell left Bradford and removed to Bristol, in the hope of obtaining a more lucrative consulting practice, and Richard was sent to a school at Corsham, near Bath, of which the Rev. Mr. Weaver was the Principal. Subsequently the boy attended a private school at the Fort in Bristol, then kept by Mr. Sayer. Little is known of either of these schools, and it does not appear that any of the other pupils made their mark in life. Mr. Sayer was, however, always spoken of with respect by his distinguished pupil as a man of great learning. From him Richard Bethell received his first classical education, and must have been carefully grounded. Mr. Weaver was succeeded by the Rev. R. Bedford, but the school was abandoned just before Richard reached the age of thirteen, and for the next year he remained at home under the instruction of his father. The simple home afforded some share of that liberal cultivation which the children of professional men usually enjoy. 'Whatever success I have had in life,' he wrote many years after, 'is due to the care and skill with which my father formed and disciplined my mind.' The theory of maternal influence in heredity derives little support from Richard Bethell's career. Though the mother was a sensible, capable woman, it is clear

that from the father came the superior qualities which so distinguished the son.

Richard's energies gained an additional stimulus from the desire he had formed for an university education. Dr. Bethell wisely encouraged the aspiration, but always on the condition that it could only be realised by obtaining a scholarship. Of this the boy was perfectly aware, and he worked with such determination, both at school and at home, that when he was no more than fourteen his father considered him sufficiently advanced to matriculate at Wadham College. Founded by a descendant of the ancient Somersetshire family which gave its name to the college, Wadham had close historical, as well as territorial connection with the west of England, and drew a large proportion of its men from that part. Dr. Bethell seems to have had some acquaintance with the Warden, Dr. Tourney, and naturally selected Wadham as the college for his son.

In October 1814 the father and son set out for Oxford. It was a notable journey for both. No anxiety seems to have exercised Dr. Bethell's mind, so thoroughly did he trust in the exceptional abilities of his son. Richard was less tranquil; the bare idea of a visit to Oxford excited him beyond measure. He never forgot his first impressions of the University. It was night when the coach drew up at the door of the Angel Inn, but the enthusiastic boy would not rest until he had seen some of the

venerable colleges, half revealed in the soft moonlight, and had stood in silent admiration before the porch and 'antic pillars' of St. Mary's. The next morning Dr. Bethell took his son to Wadham, and presented him to the Warden. On seeing the small eager-faced lad, in his round jacket and frilled collar, Dr. Tourney turned to the father and remarked that children were not admitted to the college. 'You will not find my son a child, sir, when he is examined; moreover, he has determined to win a scholarship for himself,' was the reply. 'What!' exclaimed the astonished Warden, 'you will allow him to try for a scholarship at his age? Do you know that he will have to compete with young men of seventeen and eighteen? You must indeed think your son a prodigy.'—'Sir, I do think him a prodigy,' was the proud rejoinder.

Events quickly proved that the father's confidence was not misplaced. Dr. Tourney, however, not unreasonably, insisted that the extreme youthfulness of the boy was a fatal objection to his immediate matriculation, and suggested that he should be brought up again after another year. At the same time he soothed Dr. Bethell's evident disappointment by inviting him, with his son, to dine at the Warden's lodge that evening. After dinner he questioned the boy, and was so struck by his precocious talent and knowledge, that he withdrew all objections to his matriculating forthwith. Being above twelve but under sixteen years of age, Richard Bethell

subscribed the Articles, but was excused from taking the oath of obedience, in accordance with the University Statutes of that period.[1] He matriculated on the 18th of October 1814—at least two years before the usual time—and immediately went into residence as a commoner of Wadham.

In a letter written to one of Lord Westbury's daughters in 1875, the late Dr. Symons, formerly Warden of Wadham,[2] thus alludes to the occasion: 'Not long since your father reminded me of our first meeting. After I had given the usual examination previous to matriculation, Dr. Bethell inquired as to the result, and Lord Westbury assured me that it was the most nervous crisis of his life, because he knew well, had it been other than favourable, every hope of an university education was at an end. "My father's circumstances," he said, "rendered a scholar-

[1] Lord Westbury made an interesting reference to this circumstance in a debate in the House of Lords, in 1863, on the proposal to abolish subscription to formularies of faith as a qualification for degrees at Oxford. 'My attention,' he said, 'was singularly fixed upon this matter many years ago, when I matriculated at the University at the early age of fourteen. I was told by the Vice-Chancellor, "You are too young to take the common oath of obedience to the Statutes of the University, but you are quite old enough to subscribe the Articles of Religion." (Laughter.) Accordingly, as a boy of fourteen, I duly and faithfully subscribed the Articles of Religion; but not until the age of sixteen was I permitted to make a promise of obedience to the Statutes of the University.'

[2] Dr. Symons was at the time of Bethell's matriculation a tutor of the college. He became Warden in 1831, and resigned in 1871.

ship necessary." In spite of his youth and his want of a public school education, I expressed my belief that, if not wanting to himself, he might gain a scholarship, and in fact he could hardly fail of success. It is some proof that I was not mistaken that his name appeared in the first class in the classical schools before he was nineteen years of age[1]—a fact, I believe, unprecedented, and never since repeated. I need not say that throughout his university residence he was a hard student.'

Notwithstanding the competition of several much older candidates, Richard Bethell entered for an open scholarship at the end of his first year of residence. He returned home before the name of the successful candidate was announced, and his anxiety during the period of suspense may be imagined. On the night when he was to hear the result, his brother John was sent to wait for the coach and bring home the news. It had been arranged between the two that in case of success John was to hoist a white flag directly he came within sight of the house. Too excited to remain indoors, Richard wandered aimlessly about, impatiently awaiting the return of the messenger. Presently he appeared in sight, scampering along as fast as his legs would carry him, and flourishing in the air a pocket handkerchief tied to the end of a stick. The scholarship had been gained.

It was a memorable hour in Richard Bethell's

[1] The age should have been stated as *eighteen* years.

life. Often in after years he used to recall his father's and mother's proud delight, and his own thankfulness, that henceforth he would be to a great extent independent of their pecuniary assistance. The college had added to the scholarship an exhibition for proficiency in Greek, which was a material addition to the emolument.[1] These successes were won on his fifteenth birthday—an instance of precocious ability which is probably without a parallel except in the case of Dr. Philpotts, the late Bishop of Exeter, who is said to have been elected to a scholarship at Corpus before he attained his fourteenth year.

For three years after donning the scholar's gown Richard Bethell gave himself unsparingly to the most arduous study. Occasionally he brightened with his presence the quiet home at Bradford, where Dr. Bethell had again taken up his residence in one of a row of houses called 'The Folly' on the Trowbridge

[1] Mr. G. E. Thorley, the present Warden of Wadham, informs me that the nominal value of the scholarship was £10 a year. But the scholar was exempt from room rent, which then seems to have been £10 a year, and from certain other payments, the precise amount of which it is not easy to trace, but which may probably have been equivalent to £10 more. The Hody exhibition for the study of Greek was of the annual value of £20, increased in 1818 to £24. In addition to these stipends, Bethell held a small exhibition on the Goodridge foundation, and in 1816 he was elected to the Wills' Law exhibition of £18 a year, tenable for five years. And it appears from the college books that on three occasions he received a slight addition to his Hody exhibition 'for merit.' The total value of his receipts from the college would therefore probably amount to more than £70 a year.

Road. But more often he spent the entire vacation at Oxford, that his reading might suffer less interruption. During one of these so-called vacations he fell ill from scarlatina, and passed some weeks of lonely wretchedness, without a friend near him. The comparative rigour of his home and school training had been relieved by few pleasures, and those which he allowed himself in his college life were of a simple, unpretentious kind. Riding, the usual diversion of the well-to-do undergraduate, was in general too expensive for the careful scholar, but he regularly indulged in boating, in which he was fairly proficient before he went to the University. Fond of strong exercise, he was in the habit of running round the Christ Church Meadows every morning, returning to college in time to read for an hour before chapel. He continued to take life very much in earnest: plain living and high thinking were his ideal. In this way were formed those careful habits which characterised him through life. He was always prudent in money matters, and detested useless extravagance.

In his second year of residence Richard Bethell must have commenced to read law, with the view of competing for the Wills' exhibition, to which he was presently elected. And it seems that during his last year as an undergraduate he added to his slender resources by reading with pupils; so that his work altogether must have been extraordinarily severe. The late Sir Lawrence Peel bore testimony

to the striking fact which Lord Westbury once told him, with a just pride, that from the age of seventeen he had solely supported himself. The Duke of Rutland (better known as Lord John Manners) has confirmed the statement, and given Lord Westbury's own explanation. 'It was owing,' said he, 'to those ancient endowments which the piety and charity of bygone generations founded for the purposes of education.'—'I shall never forget,' Lord John wrote, 'the impressiveness with which he spoke, and which was heightened by all the attendant circumstances.'[1]

His sole surviving contemporary at Wadham, the Rev. Charles Hume, the venerable Rector of Meonstoke, Hants, writing to Lord Westbury's youngest daughter in 1886, recalls some interesting reminiscences of his old college friend, which may be given in his own words :—

'In compliance with your request for any reminiscences of the Oxford life of your late father, Lord Chancellor Westbury, which, after the lapse of some threescore years, my memory retains, I have only to regret that at my great age, now in my 87th year, events and incidents have lost so much of their distinctness, that they can at best be recognised as dim shadows in the past, or like the pale luminous forms of the heroes seen by Æneas and the Sibyl in the Elysian fields.

'Sixty-eight years have passed away since I was sent from Rugby to try for a scholarship at Wadham College; and it was on coming into residence after my election that I first met your father in the lecture room, and sat beside him at the scholar's table in the college hall. I can well remember my earliest impres-

[1] Letters to the *Times* of 22d and 26th July 1873. It was on the occasion of the dinner given to the Prince of Wales in 1865 to celebrate the opening of the Middle Temple Library.

sion of him. Considerably my senior,[1] my introduction to the scholars of Wadham at our common table was simply a matter of courteous welcome. All were kind and encouraging to the young freshman. But your father's gentlemanly bearing and intelligence struck me as remarkable. It was some time, however, before the friendship sprung up between us which was strengthened through our college life; till our diverging professions of Law and Divinity made our meetings very rare, yet without diminution of our mutual esteem. I remember how perfectly fresh and cordial our feelings were many years afterwards when, being in town, I went to the Court of Chancery, with the hope of catching a glimpse of him there. A cause was being heard, in which your father was engaged for the defence. Counsel on the other side was speaking, and such was his heartiness on seeing me that he came where I was standing, and giving expression to the cordiality of unexpected pleasure, our conversation became so energetic that we were called to order. Presently your father, in a masterly way, demolished the argument for the plaintiff; and his perfect felicity of speaking, and the lucid force of what he said, struck me as the vigorous matured utterance of the intelligence that at once impressed me on my first seeing him in our college hall.

'In another instance, still further on in life, in fact memorable to me as the last time I ever saw him, your father, then Lord Chancellor, was sitting on the woolsack. If I remember aright, an appeal was being heard before him urging the summary ejectment of a tenant from a farm, the term of which was on the point of expiring. A good deal had been urged against any extension of time, when, to my amusement and satisfaction, for I thought the tenant was being unfairly pressed, his Lordship, with his well-remembered voice and characteristic decision of manner, ruled for some indulgence on the ground of equity. "The man has planted a hundred acres of turnips: he must be allowed some reasonable time to feed them off;" and immediately on pronouncing these very words the Lord Chancellor rose and departed.

[1] Bethell was the senior in standing by two years; but Mr. Hume appears to have been a few months older.

'As to the personal appearance of your father in those early days, I may say he was the beau-ideal of a gentleman; his look and manner somewhat stately and reserved. Seldom was he visible in the earlier hours of the day; no lounger in "quad," he had nothing in common with the easy-going life of idle men; he was evidently a man with his mind made up, and with a purpose of his own, so preoccupied that he had neither relish nor leisure for the intrusion of frivolous indolence. My rooms were on the same staircase with his, and I constantly observed in passing his door the evidence of a studious man: his "oak sported," as the phrase was, and himself inaccessible.

'Late in the afternoon, when he came out for exercise, he would frequently challenge me for a walk through High Street, round Christ Church Meadow, or stretching away over higher ground, past "Joe Pullen's Tree," to Headington, probably amusing ourselves with the sight of Buckland, the newly-appointed Professor of Geology, with his equestrian class scouring the hills and quarries of Headington in the fresh enthusiasm which distinguished the creation of the new professorship, so admirably described in verse by Dr. Shuttleworth, at that time Warden of New College, and afterward Bishop of Chichester.

'On these our perambulations your father was extremely punctilious in his costume. Again and again he would not start till I had satisfied him his costume was in perfect etiquette, and specially his tie and collar in the most approved style. I think this was the only weakness I observed in him. Still, however, there was always an expression of countenance and *tout ensemble* which I can describe by no other word than dignified. His features were fine and well pronounced. . . .

'As to your father's amusements. He rarely allowed himself time for more than a row on the Isis between Oxford and Iffley; certainly he never "went into training," or pulled in the then famous Wadham boat. His reading was the first claim, to which everything else had to give way. He was the most determined student I ever knew. I may say of his severe work what a few years ago Mr. Gladstone said to me of his own, when an undergraduate of Christ Church, "We read unmercifully."'

It seems, however, that there were times when Richard Bethell, like Apollo, unstrung his bow, and abandoned himself to an indulgent relaxation. Mr. Hume gives an instance or two of such interludes :—

'I was generally his companion; for being myself "a whip," which was not one of your father's accomplishments, the arrangement of any excursion into the country devolved itself on me; and with a good fast horse and gig from Moore's in Holywell, we set forth now and then across the breezy Berkshire Downs to spend a day or two with a cordial old college friend, who had settled down on a curacy in that direction, and with a charming sister keeping house for him, received us as brothers with great affection, and, had we stayed long enough, might have killed us with kindness.

'On one such pleasant occasion we made a descent on the quiet village of Yattenden, near West Ilsley, where our friend, the Rev. "Tom" Griffiths, was curate to Rector Howards. The weather was splendid, the air delicious; and it did me good to see how thoroughly your father enjoyed himself during a visit prolonged beyond our original plan by the genial cordiality of the neighbourhood, which would not let us go. Our return gave us, however, an instance how closely side by side our enjoyments and our calamities often are found to be. The day for our parting came. But before we started for Oxford, our friend, who had just purchased a horse warranted perfectly quiet in harness, proposed that, as his carriage had not arrived, we should allow him the opportunity of proving his horse by putting him into our harness, and giving him a turn on the road. We proceeded to do so. All seemed well; but the moment he found himself fast to something behind him, the horse dashed off at full speed. Happily your father took no part whatever in the experiment. I had strong hold of the horse's bridle when he bolted, and hung on to him; but seeing at once the peril of my position I dropped myself from the bridle clear into the roadside ditch, close to which the horse was tearing along, and then watched the gig, till,

striking the milestone, it was shattered and turned upside down, the horse sprawling on the road, helpless of moving till we unfastened the harness and released him. Happily no one hurt.

'I mention this disaster because it was an incident in your father's life which, but for his characteristic caution in waiting the result of the experiment at a safe distance, as we had only the assertion of the horse-dealer as to quietness in harness, might have had a fatal termination; for I have no doubt if he had gaily ventured into the gig with me, leaving the groom at the horse's head to let go when we gave the word, we should both have been killed.

'By the help of the clever blacksmith and carpenter of the village, we at length got our gig sufficiently repaired to start for an eighteen mile drive home to Oxford. It was near midnight before we arrived. But I must not finish the story of our disaster, or the thought how terribly it might have ended, without telling you the beautiful contrast on our way home, which even to this very hour is fresh in my remembrance. The whole drive home was indescribably beautiful. It was a night of calmest loveliness. The full moon, flecked only with light clouds, floating so gently in the upper air that "in their very motion there was rest," made a scene already perfect more perfect still. Could anything be added? By the time we had reached Bagley Wood our ears were charmed by such a concert of nightingales as never since in my life nor elsewhere have I heard. We stopped and listened with delight. The choir were pouring forth the richest melody deep down that lovely dell, where Bagley Wood slopes toward the Isis and the towers of Oxford. And what seemed to us remarkable, we observed that, apart from the rest, and a little distance farther within the dell, a lone bird—might have been the one Shakspeare heard "leaning her breast up-till a thorn," so plaintive was her tone—kept putting in a single expressive note, at measured intervals with wonderful effect, reminding me of the tolling of the "campanero" Waterton tells us he heard in some solemn forest where he was "wandering."

'Your father and I stayed as long as we could, loth to leave to the midnight silence of the listening glen the delicious music which had been "creeping in our ears."

'It was on a similar occasion when, wiser by our Yattenden experience, we set forth on horseback to spend a few days at Woodhay, a pleasant village in the neighbourhood of Newbury, and within an easy ride of Lord Carnarvon's beautiful place, Highclere. We had good horses, and it was a fine country for riding. Your father's, which seemed the quieter of the two, was named "The Vicar," probably as being used to carry some grave Oxford don on Sundays to his duty a few miles distant. We enjoyed ourselves immensely. Our friend, the Rev. William Deverill, and his sister, residing with him at the rectory, made us welcome and happy; and it was with mutual regret when we remounted our horses for returning to Oxford. The depression on parting had not, however, extinguished our vivacity; and warming as we went, the reaction, naturally enough, was all the stronger for the parting check.

'We were proceeding at an easy trot over a common in the direction of Newbury, when I discovered, browsing among the gorse, a herd of some thirty or forty swine feeding. At once the merry thought struck me of a pig-hunt—poor indeed if compared with hunting the wild boar with Hercules in the jungles of Erymanthus—but just what we wanted to fetch us up to pitch after our spirits had been unstrung by breaking up our delightsome party at Woodhay. So your father nothing loth, we shook up our horses for a spurt, and with a view holloa which might have done credit to the Master of "The Pytchley," we made for the pigs. They seemed to catch our intention by the instinct of self-preservation, our horses evidently enjoying the sport, and off went the herd full stretch, tails up and heads down, for about a mile and half. The pigs more than once showing signs of *quantum sufficit*, I whipped them up with, I fear you will think it, a relentless "forward," till, finding ourselves nearing the town, we drew off and left the pigs to experience, if they had never before done so, how the luxury of rest is only appreciated when it has been earned by severe exertion. Your father never rode better. "The Vicar" behaved admirably over or through the gorse bushes, though now and then we had much ado to keep the saddle for laughing. The mirth, however, by the time we drew rein, had shaken all the dulness out of us;

and we rode on through Ilsley, Abingdon, and Bagley Wood as jocund as if we had not parted from our friends at Woodhay. So, you see, your father, in those early days about which you inquire, would sometimes encourage a frolic turn, and, recognising the rule of Horace, "Dulce est desipere in loco," improve his health by the chase.'

With regard to Richard Bethell's intercourse with other men in college, Mr. Hume observes:—

'His friendships were select. Intimacy was with him a result, rather than an impulse. Not unfrequently he would gather his friends about him; and genial himself, he enjoyed the conviviality of the wine party in his rooms, without its boisterous excess, its hilarity and conversation, without its punch-bowl, supper, and song. Once only do I remember your father overstepping his rule of exemplary moderation. It was on the occasion of his assuming his bachelor's gown, when every one had to give a wine and dessert party. The party your father gave was unique in its plan. We assembled in the college garden, beneath the cool shade of the lime trees, on a branch of which he fastened his gown, an appropriate decoration, near the president's chair. Your father rose to return thanks for the cordial expression of feeling with which the toast of the banquet had just been received, when, in a sudden burst of festivity, catching sight of his gown close by him, he seized it in his left hand, plucked it off its peg, and with a flagon of claret in his right, poured the whole contents down the reeking toga—a libation to *Alma Mater*.

'At occasional parties in his rooms your father was liveliness itself, and remarkable for conversational power, though, with true politeness, never taking an undue proportion of the lead. No one, however, was more ready to listen to others. I well remember indeed the whole party of us were, when Dornford of Oriel, who had been invited expressly for the purpose of knowing our opinion before sending for publication in *Campbell's Magazine* his description of the terrible catastrophe on Mont Blanc, by which very recently Balmât and his sons, the cele-

brated Chamouni guides, while conducting a party of tourists on the ascent—of whom Dornford himself was one—were swept all together into some fathomless crevasse, and perished.[1] Under such a thrilling and touching narrative no one could be more feelingly "grave and quiet" than your father.

'While, however, I am on the subject of his friendships, it may amuse you if I relate one which, though I never let him know it, I made for him through an almost irresistible readiness I once had for a practical joke.

'Rickards of Oriel, a first-class man, had recently distinguished himself by gaining the prize for "English Verse," I think it was, and happening to have a friend in Wadham, had been calling upon him, his rooms being over those of your father; but not finding him at home, he of course left his card, not observing, however, that he had dropped a card at the same time on the stairs. There it lay, till returning from lecture to my own rooms I found it; and observing the name upon it, the merry thought flashed into my mind of dropping it into Bethell's door. Not long after doing so, on meeting your father he accosted me with a look of excitement, which I had some difficulty to look innocent in meeting. "Charles," said he, for so he was wont to call me, "a most extraordinary thing! Rickards of Oriel has called upon me! I was never introduced to him! What do you think I ought to do?"—"Do?" I replied; "why, of course return his call. A distinguished man too. His attention is an honour to any one. Don't set the surprise of his calling upon you against the fact that you have his card. Just take the good the gods provide thee." I did not smile when I saw your father off for Oriel, to return upon Rickards the astonishment he himself had felt. I am no advocate for practical jokes. But this once I did, by indulging my strong tendency for fun, bring about the meeting of two eminent scholars—a result which I have never regretted.[2]

[1] The party was overwhelmed by an avalanche, and three guides were killed. More than forty years passed before the glacier gave up the bodies of the victims.

[2] Rickards wrote the prize poem on the "Temple of Theseus"

'There could be no second opinion as to the high powers of intellect which were conspicuous in your father. We all anticipated for him a brilliant success in the schools; and never, I believe, did Wadham stand so pre-eminent on the roll of honours as when there were only five names in the first class for the whole university; and three of them, Bethell, Buchanan, and Girdlestone, were Wadham men. I had perhaps as good opportunity as any one in college for forming an estimate of your father's powers. For, when reading for my final examination, I was in the practice of taking passages of special difficulty from Aristotle, Thucydides, Æschylus, or Pindar; and, after having honestly bestowed all my own scholarship in working them out myself, your father, with the greatest kindness, would give me the advantage of a clear and masterly rendering of them, which, whether for the purity of his English or the lucid scholarship of his Greek, was an enjoyment which I have never forgotten. In clearing these intricate passages for me your father showed the facility which is the characteristic of power. . . .

'On my last visit to the dear old college two years ago, where now not one survives who knows me, I could only realise with a yearning tenderness, beyond words, that imperishable *dulcedo*, which Cicero so truly says lives on in the places themselves where we still fondly trace the footsteps of those, so beautifully expressed by the poet,

'"Whom we have loved long since, and lost awhile."

With such emotions it was that in 1884 I walked alone among the memories of the past in Wadham; looked on the bust of your father in the fine old college hall, and on his coat of arms in one of the windows; read the inscription on the memorial tablet in the ante-chapel, and in the chapel itself saw the steps by the "Eagle" where from time to time, as senior scholar present, he

---

in 1815, and a prize essay in 1819. Interesting sketches of the careers of Rickards and Dornford, both of whom became fellows and tutors of Oriel, are given in the Rev. T. Mozley's *Reminiscences*.

took his turn, and read the lessons of the service, which I well remember he did with a due reverence. . . .

> '"Multis ille bonis flebilis occidit.
> Nulli flebilior quam *mihi!*'"

In April 1818, when within three months of completing his eighteenth year, Richard Bethell was examined in the final schools, and obtained double honours, being placed in the first class in classics and in the second class in mathematics.[1] So proud were the Wadham men of this unexampled success, that they hoisted young Dick Bethell, as he was called, on their shoulders and bore him in triumph round the college. The names of only six others appear in the first class with Bethell's. Among them were those of the late Canon Charles Girdlestone and Mr. Charles G. Round, sometime M.P. for North Essex.

Richard Bethell took his B.A. degree on the 22d of May 1818—a graduate of seventeen. For four years afterwards he remained at Oxford reading with men for honours. He soon became a favourite 'coach,' but it does not appear that he filled any office in his college while thus engaged, or that an academic life had any great attraction for him. During this period he obtained one of the Vinerian (University) Law Scholarships, for which he received an annual

[1] Previously to 1825 the second class was divided by a line, so that though nominally only two, there were really three classes of honours. Bethell's name was in the lower half of the second class.

stipend of £30. His Wadham friends, Dr. Symons in particular, were doubtful whether he did wisely to remain so long in residence, and often reminded him that it was high time for him to remove to London, where he was entered as a student at the Middle Temple. To this he would reply that he must first secure at Oxford the means to enable him to live in Town; meanwhile he could not afford to throw up his pupils. There can be little doubt that he decided prudently, and that his professional prospects were aided rather than injured by the delay, though the habitual precision of manner which was subsequently his most marked characteristic may be attributed in great measure to his tutorial experience.

We have little material for biography during this period of his life. The only letter which has been preserved is one written to his father, which is worth printing for its evidence of the strength of his filial affection, and the peculiar independence of his character. Though not wanting in respectful devotion to his parents, his words show that he was prepared henceforward to accept responsibilities for them as well as for himself: their relative positions might indeed have been inverted. The letter is undated — a habit the writer retained through life[1]—but the postmark fixes the period as November 1821 :—

[1] Often his letters, like those of Lord Brougham, bore neither address nor date. Replying to a letter written by Lord Westbury while on a cruise in the long vacation, Lord Palmerston

'I know you will be highly delighted with the favourable prospects that begin to open upon me, and I trust they will release you from all anxiety on my account. The scholar on our foundation, who is of kin to the founder, has declined being examined during the present term, and consequently is not eligible to a fellowship in June next, and I have therefore every possible reason to expect a certainty of being elected at that time.

'I have also the pleasure of informing you that I have obtained a considerable accession of pupils, two of whom are by the recommendation of Symons, and I am happy to say that five of them will continue with me till May next. I think my former letter mentioned that one of my pupils, the gentleman whom I entered at Jesus College, has engaged to pay me £100 per annum; and with these prospects I fully expect to have discharged all my encumbrances and laid by £150 before I quit college. I feel, therefore, quite tranquil in all anticipations of my own affairs, and let me entreat you by my example never to discard hope and patient expectations of favourable change. What would have been your feelings if at Christmas last you had been involved in my circumstances?

'This additional employment has not, however, been secured without two sacrifices. My time is so completely engaged as to render it a very laborious employment. During some days my pupils alone occupy ten hours. But I trust my health will experience no detriment, especially after the few days' recreation which my present visit will allow me. The other sacrifice I mentioned is, that I have engaged to pass the best part of the Christmas vacation in Oxford. My liberty will last only from the 21st of December till the 6th of January, which will allow me the pleasure of a very short visit at Brighton. But however brief may be the time which I shall have the pleasure of passing with you and my dear mother, believe me it will be most grateful to me, especially if we can look forward to any prospect of your obtaining an accession

---

wrote: 'You are only a long-shore sailor; you date your letter without longitude or latitude.' Lord Palmerston headed his own letter, 'On dry land.'

of practice. I feel confident that you know my character too well to suspect me of making any empty promises, and you may therefore depend on receiving all the assistance which my exertions may be able to afford you; and I am confident that you will not reject my offer, since it is no more than the result of the principles with which you have bred us up—that we should labour in common, and that the interest of one should be for the advantage of all. . . .

'I regret very much that I shall not have a longer vacation, but as the two pupils who are to confine me will pay 110 guineas, I could not think of demurring to that trifling inconvenience.'

Richard Bethell had at this time eight pupils, and the assurances of assistance were far from proving 'empty promises.' The son denied himself many indulgences, and even, it seems, the ordinary relaxations of youth, that he might augment his father's narrow means. He was thus constantly able to give substantial help in times of great pressure, and Dr. Bethell's letters contain frequent acknowledgments of Richard's generosity.

As the time of the fellowship examination approached, Dr. Bethell expressed great anxiety for his son's success. 'As this is the last campaign you will have to go through at Oxford,' he writes, 'I sincerely hope you will be able to go through it safely.' He implores Richard to keep up his spirits, 'and go in, in hopes we may see better and happier days.' He adds, 'I am much obliged to you for your good wishes as to the success of my practice, and wish, if it was only for your comfort, that I could succeed. I am continuing to write my practice of physic, and I am quite

delighted that you are determined to learn the Anglo-Saxon. I would advise you to go on with the translation, if you think it will be of any benefit to you.' Every letter testifies to the tender affection existing between the parents and the son in whom all their keenest hopes and interests were centred. Richard Bethell's reading at this time seems to have been very discursive. Besides the subjects required for the fellowship examination, he read many legal and medical treatises, and dipped deeply into controversial theology. It is evident that, to adopt Milton's metaphor, he was pluming his wings for a flight.

It has been stated that on one occasion, in 1821 or 1822, he was an unsuccessful candidate for a fellowship at Oriel College against Cardinal Newman. Dr. Newman, however, states that he has no reason to suppose that Bethell ever stood at Oriel, though he has some idea that pupils of his were candidates in 1822. In June of that year Bethell, in accordance with his anticipation, was elected to a fellowship at his own college, Wadham.

The following extracts from letters to his wife's uncle, Captain Abraham, penned at a later period, show the importance the writer attributed to an early residence at the University, and explain his views on the disadvantages of the course of training then afforded at Oxford :—

'The fact is that no men, speaking generally, make so little progress in the attainment of an enlarged and liberal mind after they

have quitted the University as those who have been educated at Oxford. The great majority are clergymen (for the lay votes are not, I think, one in five), who have quitted Oxford as soon as their routine there was sufficiently completed for obtaining Orders, to reside as curates in some country town or village, and consequently have never been called on by their pursuits or the influence of society to revise their opinions which they imbibed and carried away from the University. It is principally from having observed this that I have always earnestly recommended the sending boys to Oxford at an earlier age. The routine of study and discipline, until a young man takes his degree, is a mere continuation of his school pursuits, and it is folly to suppose that when this course is ended by him, at two or three and twenty, he will be ready to enter upon the world, or fit to commence the study of a profession. He is, for the most part, wholly ignorant of all those subjects of knowledge which in the present state of society are the means of distinction, and by which in the common converse of the world you discriminate the well-informed from the ignorant man. Yet if you intend him either for law or physic, or even the Church, you leave him no interval for the acquisition of this knowledge, though without it a man is utterly unable to fill any station in modern society either with credit or advantage. For the walk of every profession is now so full that you cannot venture to delay his entrance into it, because you know that for a long time he must of necessity be undistinguished in the crowd, and you wish that the period of expectation and disappointment should pass whilst he is buoyed up by the spirits and elasticity of youth.

'With these opinions, I regret to see that you have resolved to delay your son's residing at Oxford to so late a period. He will not, I conclude, take his degree of B.A. before he is nearly two and twenty—that is allowing him four years of residence—and at that age he ought at once to enter on the study of his profession. He will find the law (what with its mechanical and intellectual parts) all-absorbing; and what time will you have left him for moral and intellectual philosophy, for political economy, for modern history, jurisprudence, not to speak of natural philosophy and the more exact sciences, the

want of time for which all lawyers who feel their value incessantly deplore? The details of our professional business are, for the most part, sordid and unintellectual, and there is no hope for a man unless he brings an enlarged and cultivated mind—a blessing which school training (with which Oxford begins and ends) will never bestow.

'You will attach as much value to my opinion as you think it deserves, recollecting that I have passed through the whole, and can now practically estimate by every day's experience its value and utility in my profession; but I am induced to give it you, because I know the extreme interest you take in the advancement of your sons; and as you have most justly formed and cherish bright hopes of their future progress, which I sincerely believe their abilities will most fully answer and realise, I should not acquit myself if I did not venture to intrude my opinion in the hope of saving what appears to me to be the loss of much valuable time. I expect, as well from their advancing age as from your approaching retirement, that your interest in the success and progress of your sons[1] will become more and more intense.'

Such were the high aspirations and standard of professional training which Richard Bethell had conceived for himself. To the study of modern languages, which at that period was almost wholly neglected at the universities, he attached prime importance. 'I do not think it is possible,' he wrote, some years later, with reference to the education of one of his grandchildren, 'to overestimate the value of the German language to a young man. There is scarcely a subject in history, philosophy, moral

[1] Captain Abraham's second son, Charles John Abraham, who with his elder brother is here alluded to, became fellow of King's College, Cambridge, subsequently Bishop of Wellington, and is now Canon and precentor of Lichfield Cathedral.

and mental science, theology or politics, in which the range of reading is not incomplete without including German publications.'

He writes again to Captain Abraham with reference to the elder cousin :[1]—

'I feel very anxious about the success of Tom at the University, and I much wish, as you are about to send him down as a candidate for Magdalen, that you would let him go a little earlier and try for a scholarship at my college, Wadham. The scholarships there are much better than the demyships at Magdalen College, as they certainly lead to fellowships within seven years (in my case in less than six), and are accompanied with exhibitions which render their value altogether about £50 per annum. There is also great emulation and rivalship in the present contentions for them, which are open to the whole University, and you may judge of the advantages of the system of tuition by the returns of the schools, the class papers. In some years Wadham alone has produced nearly as many first-class men in classics as the whole of the University put together. Thus in 1818, out of seven first-class men, Wadham had three; in a subsequent year, and out of four, Wadham had two, and it has furnished Oriel and Balliol with several of her fellows, who are now tutors there. . . . The present age has done more for education than all its predecessors, but I fear the stream flows more rapidly outside of the universities than within. Give my kind regards and best wishes to both of them when you write, and say I confidently expect great things from them, that they are the forwardest boys I ever met with, and have no need to be afraid of anything they meet at Oxford.'

[1] Thomas Edward Abraham obtained a scholarship at Balliol, and graduated at the age of twenty, with a first class in mathematics and a second class in classics. He became tutor to the present Earl of Derby, and afterwards rector of Risby, near Bury St. Edmunds, and honorary canon of Ely. He married his cousin Ellen, Lord Westbury's eldest child, and died in 1886.

Though he was not insensible to the disadvantages of the academic system of his day, Lord Westbury never underrated his own obligation to his University and College. He was fond of pointing out how those who attain to great eminence in life are generally men who have been distinguished at the University. But he held strongly to the opinion that it was in general useless to send a young man to college unless he was sure of gaining either a fellowship or a scholarship. 'If that be done,' he wrote late in life, 'the University is a great blessing; if not, the education at the University is not worth the expense and risk of evil. But if there is no chance of his getting on the foundation of a college at Oxford or Cambridge, then it would be better, whatever his destination in life may be, to complete his education either at a Scotch University or in Germany.'

CHAPTER II

1822–1840

Studies Law—Reads with Lee, the conveyancer—Is called to the Bar—Judges and Courts of Equity in 1823—Personal appearance and manner—First brief—His engagement—Death of his mother—His marriage—Places of residence—Brasenose College case—Chancery leaders—Sir J. Leach and Bethell—Success as junior counsel—Work and pupils—Home and habits.

On obtaining his fellowship Richard Bethell gave up his pupils and left the University for London, to commence a diligent course of study for the bar. He was joined by his brother John, who was destined for the other branch of the legal profession, and the two lived in a simple, frugal way in chambers on the third floor in Brick Court, Temple. In after years John Bethell would describe in humorous fashion the many experiments and failures in amateur cooking which took place over their sitting-room fire. John had been articled to a solicitor at Bath, and eventually entered into partnership with a firm in Lincoln's Inn; but he always liked science better than law, and, though he practised at intervals through the greater part of his life, he gradually became absorbed in mechanical and chemical in-

vestigations. The specifications of the numerous successful inventions for which he obtained patents would fill a bulky volume. Among the discoveries with which his name is associated was the process of preserving timber for railway purposes by the injection of creosote. With great versatility of powers and wide scientific attainments, John Bethell possessed the sunny, simple manners and philosophic mind which make a man best loved by those around him. The brothers were attached to each other with the truest affection, and, even after their respective marriages, they were seldom long separated. Both had a keen love of sport, though it was long before they were able to gratify it fully. For several years after Richard Bethell left Oxford they were in the habit of going down together in September to shoot over some of the Wadham farms.

Richard Bethell now began to read in the chambers of Mr. William Lee, a draftsman of eminent repute. The staple of Lee's practice was conveyancing, an art of which his great precision and profound acquaintance with real property law made him an excellent exponent. He had several pupils, and would probably have acquired even more business than he enjoyed, but for the inveterate habit of taking so much time over his papers that clients had the greatest difficulty in recovering them. He would settle and resettle his drafts, recast and revise his opinions, and discuss the point of a case with his pupils with perverse iteration, 'hunting and winding

it through all possible ambages,' hauling and tugging at it till it would yield no further doubt or difficulty. Lee's appearance proclaimed the man. Dressed with the primmest neatness, and deporting himself with a rigid formality, he was everywhere recognised as the man of law.

Like other law students, Bethell at once joined a forensic society for practice in the art of public speaking. The society held its meetings in the hall in Lyon's Inn, near the spot where the Globe Theatre now stands, and the best men who came up at that time from the Universities were members of it. Usually the discussion was on some stated point of law, two speakers being appointed to argue on each side, after which any of the other members present could follow; but now and then there was a debate on some general subject. Bethell from the first took a distinguished part in these discussions, and in the course of a few terms was put in nomination for the president's chair, in opposition to a brother of Sir James Parker Deane. Deane, however, was elected. He seems to have been the more popular candidate, his rival's sharp wit having already made some enemies.

On the 28th of November 1823 Richard Bethell, then in his twenty-fourth year, was called to the bar, and began to attend Sessions at Aylesbury, and hold himself out for practice in the Equity Courts. He took a modest set of basement chambers at No. 9 New Square, continuing to reside with his brother

in Brick Court. He afterwards declared that in equity-drafting and conveyancing he determined at the outset that he would conquer every difficulty by his own unaided efforts, asking no questions and seeking no advice, and that he was able to keep his resolution, which will appear remarkable to those who know how greatly experience supplements the skill and lightens the labour of the draftsman.

He used to tell the story of the first exceptions he took to an answer.[1] Never having seen any exceptions before, he drew them by the light of nature, and went before the Master to support them. The Master, on perusing the exceptions, observed that he had never seen any in that form before. 'Most probably not, sir,' rejoined Bethell; 'but I will defy my learned friend or any one else to indicate any particular in which these exceptions fail to attain the object for which exceptions are designed.' He soon acquired extraordinary proficiency in drafting, and, according to a tradition still current in Lincoln's Inn, he could dictate three bills or answers at the same time.

When Bethell began to practise, Lord Eldon, that great maker and exponent of equity, held the Great Seal; Sir Thomas Plumer was Master

[1] Exceptions were objections taken to pleadings for insufficiency, etc., or to the Master's report made in answer to the inquiries referred to him by the decree. The exceptions were first submitted to the Master, and if disallowed could be brought before the Court.

of the Rolls, and Sir John Leach the Vice-Chancellor. The two latter were the only Chancery judges of the first instance, but the Court of Exchequer had general jurisdiction in equity,[1] and one of the Common Law Judges, assisted by Equity Masters, occasionally took causes for the Master of the Rolls. The Appeal Court of the Lords Justices was not yet established.

The Courts of Equity were at that time a very close borough, occupied by the comparatively few practitioners who were acquainted with the subtleties of Chancery procedure. The machinery was cumbrous and slow, and a long experience was needed by those who would understand its working. There were few treatises on the various heads of practice, and still fewer reports of decided cases. The principles evolved by the tender conscience of the Court of Chancery were, for the most part, vague and incapable of precise definition. Its jurisdiction was theoretically of the most extensive range; but there were limits to it which were not easily recognised, and in ascertaining these there was room for much controversy. Speaking generally, equity was an experimental science which gave ample scope for ingenuity in the development of original principles.

Into this narrow circle Richard Bethell made his way with a calm assurance which startled those who

[1] This jurisdiction was transferred to the Court of Chancery in 1841.

had breathed its atmosphere for years. Their astonishment grew apace when, in a short time, they found the newcomer elaborating principles and assuming a knowledge of points of practice after a fashion to which none but the more venerable practitioners had hitherto aspired. He did not appear to desire any social intercourse with his professional brethren, or to consider whether they were willing to bear his rather spinous humour. From the first he evidently felt strong enough to stand alone. '*De l'audace et encore de l'audace et toujours de l'audace*' might have been his motto. His views were expressed with an assurance which seemed to admit of no question. In advising in cases he exhibited the most perfect confidence, and would say he was paid for his opinion, not for his doubts.

His appearance at this time was very prepossessing. He had a well-shaped and most massive head and brow, and fine blue eyes. His hair was light and inclined to curl, but from intense application to study he became bald at an early age. The outline of the features was decidedly good; and the mouth and chin expressed great power and firmness of character. A mincing manner and a precise and measured style of address gave an impression of affectation which prejudiced many when they first met him, but this seems to have been natural to him, and rather academic than indicative of self-satisfaction.[1] He was a little below

[1] At a mixed picnic at Medenham Abbey one of a party of

the middle height, with square shoulders and a strong frame. His habitual expression was serious and intellectual, but there were indications of keen humour in the lines of the mouth, and at times the face would light up with a smile, the charm of which was acknowledged by those who were in his society. A serenity, which appeared imperturbable, characterised the man even in moments of the highest pressure; an unbounded self-confidence and a perfect calmness were the chief elements of his strength. 'I should never have got through the world,' he wrote when he was Attorney-General, 'or be able to get through my present duties, if I had not that inward quiet and freedom from useless anxiety.'

He was happily spared that weary, trying period of probation in which so many of our greatest men at the bar have lingered. Young as he was, he soon began to obtain business of his own. His first brief was given him by his friend Mr. Charles Harrison, of Bedford Row,[1] a few weeks after his call to the bar. Mr. Harrison's brother had married Miss Jane Brice, a member of a West Country family which had long been intimate with the Bethells, and Richard Bethell and his brother constantly accompanied the Harrisons in the afternoon rows which

county magnates was overheard to say: 'What a fine head the man has, and what a pity there's so little in it!'

[1] Uncle of the well-known writer, Mr. Frederic Harrison, and of Mr. Charles Harrison, of the firm of Messrs. C. and S. Harrison.

they were accustomed to take on the tideway at Westminster or Lambeth.

The case involved questions of the validity of the compromise of a doubtful claim under a will, and was argued before Sir John Leach. It is a singular coincidence in connection with this first brief that the construction of the same will, which had been left untouched by the former decree, came before Vice-Chancellor Stuart in 1853, when Sir Richard Bethell appeared in court for the first time as Solicitor-General; and that on this occasion, and also on the appeal from the Vice-Chancellor in the following year, Mr. Lee, who had almost retired from practice on account of his advanced age, was briefed as one of the appellants' junior counsel and led by his old pupil. The Solicitor-General, in his opening statement, mentioned the interesting circumstances which marked his connection with the case. After Lee had ceased to practise he was known to be in the habit of donning his robes and sitting in Court to hear Bethell's arguments in important suits.

Bethell soon became engaged in bankruptcy cases and the equity business of the Court of Exchequer. The immediate results of his practice must have been highly encouraging,[1] for, within a

[1] In after life he told Mr. Frederic Harrison that he made about one hundred guineas in his first year, two hundred in the second, and so on, doubling in each of the first three or four years the amount received in the preceding year; and that after the third year he had as much business as he could do.

year after his call, his prospects were such as to lead him to contemplate matrimony, which would involve the loss of his fellowship. He disclosed the intention to his parents in the following characteristic letter, an example of the somewhat high-flown style of the period:—

'1*st Nov.* 1824.

'My Dear and Honoured Father and Mother—It has always been my pride and happiness to communicate to you every action of my life, and this confidence of my early years has been met by you with such affectionate kindness, and has had such a beneficial effect upon my own character, that I should now reproach myself with ingratitude if I concealed anything from your knowledge. Your example, my dear parents, has shown me the value of sincere affection; and my dear father's most affectionate letter is such a proof of the deep-rooted love he has for you, my dear mother, that I could not but be sensibly affected by it. It has always been my wish that you, who are wrapped up in your sons, should know and share in all their friendships and attachments, and I am sure you will love us the more for being most open and ingenuous to you. You will easily see to what this preface leads, and I trust you will not regard what I am about to tell you as either boyish or premature.

'Very frequently since my return to town I have been in the habit of meeting a young lady at Mrs. W.'s, whose character, good sense, and disposition are so perfectly accordant to my opinion of female excellence that I cannot help entertaining for her the warmest affection. Her name is Ellen Abraham;[1] her father is a gentleman of great respectability and good connections, who resides in Keppel Street, Russell Square; by profession he is an architect, and though I do not personally know him, I am assured that he is a sensible man and a gentle-

[1] Miss Ellinor Mary Abraham was the eldest surviving daughter of Mr. Robert Abraham. Mr. Abraham held the appointment of architect to the Duke of Norfolk, and was much employed in arbitrations and surveys of public buildings.

man. Miss Abraham is just two and twenty. She lost her mother about four years ago, and since that event she has been the mistress of her father's establishment, and on this part of her character I can pass no higher eulogy than to say that her gentle domestic virtues, her attention, her good sense and feeling that regard no domestic occupation as too mean for her, are the parallel of my dear mother's excellence. She possesses much sterling good sense, great beauty and elegance of figure, with great delicacy of mind, and to these are united the advantages of what is ordinarily called an accomplished education. I have long felt the highest admiration and love of her character, but I have delayed to make you acquainted with it till I was conscious that it had become a settled feeling. . . .

'I feel bound, therefore, my dearest father and mother (and I am confident you will bestow your consent and approbation), to engage myself to Miss Abraham, though I must not conceal from you that she has little or no expectations of a fortune, and that our union may possibly be delayed for four or five years. Three years, I trust, will augment my business to £600.[1] . . . Your first impression will doubtless be that I have not acted with worldly prudence in engaging myself to a lady without fortune, but I have thought much upon it, and cannot feel so. Ellen's uncles are solicitors, and her connections will be of great service, and with her character I shall be a rich man. Besides, a fortune, however obtained, may injure my advancement in my profession. Write to me as soon as possible, my dear father and mother, both of you, and I know you will write most kindly that I may show the letter to Miss Abraham, as indeed I did your last, and assure her that you will love her as you do me and John. Dear John is very much attached to her, and thinks I have acted wisely. I am sure you will be proud of her when you see her. You remember your own deep and lasting affection, and I trust, therefore, you will make me happy by giving your blessing to mine and to your most affectionate and dutiful son, RICHARD BETHELL.'

In reply his father assured him that any lady

[1] Part of the letter is here missing.

whom he might love his parents would love also; but he begged Richard to delay his declaration for a time, as his mother's health was in a very critical state, and he feared it might be beyond medical skill to save her. He added that they should not think of controlling in any action of his life so good a son as he had always been, as they were persuaded that his great and good understanding would prevent him from doing what he had never done in his younger years—the taking a false step. As generally happens in such circumstances, Dr. Bethell's objections were not regarded by the young couple as insuperable, and the engagement was formally ratified.

Mrs. Bethell's health was rapidly failing, and early in 1825 Richard Bethell travelled down to Brighton to see his mother, whose ardent wish was to be removed to London, that she might spend her last days in the society of her sons. Dr. Bethell had gone to reside at Brighton for his wife's health, and essayed to practise there as a consulting physician. But he met with little success. Writing to John, his son, he says: 'There certainly never were two better sons than you two, and I think God Almighty will bless you both for your great duty and love to your poor afflicted parents. I am sorry to say that I cannot get a single patient to pay me a guinea. It is most extraordinary and wonderful; so that you see it is quite useless to remain at Brighton.' From a letter written from his mother's bedside to his intended wife we learn how unselfishly the elder

son laid aside his hopes for a time, that he might form, with his brother, a home for his parents in their need.

'My parents have ever found their happiness in the society of their children. It has been at once the comfort and occupation of their lives. They have now to struggle alone with all the wretchedness of affliction, without one cheering countenance. My father assures me that my poor mother must sink under her malady; and though she may linger many, many months yet, that her days are now entirely numbered. She has set her heart upon having the society of her sons to soothe and bless the last months which, in this world, she will ever pass with us. Brighton, therefore, has become an addition to her sufferings, and my father is too much bowed down with the sense of his approaching loss not to earnestly long for consolation and support.

'I have, therefore, promised them in March to take a small house in your neighbourhood, and as soon as the warm weather will allow my mother, please God she has strength to bear removal, that they shall leave Brighton for ever, and coming to town, that we will give up our chambers in Brick Court, retaining those in Lincoln's Inn, and live with them and support and console her last hours. My father's practice has, I regret to say, since my mother's affliction and his own confinement, almost entirely failed him; and I must reward their early sacrifices by devoting my income to their support. Our expenses will not be much increased, as my parents will live in the most retired manner; for, in truth, my poor mother comes but for the purpose of breathing her last in the bosom of her family. To see her sons day by day is all she wants to soothe her dying bed. For a little while this may detract a little from that fund I had proposed to accumulate for you, but it is my duty and yours, and the thought will console our minds in future days. We shall lose our promised stay at Brighton, but we may have one elsewhere, and you will know and bless those who alone with, and next to you, share my affections.'

Miss Abraham, with an unselfishness which did her credit, acquiesced in this arrangement. The

project of forming a home in Town was, however, never carried out, as, with increasing weakness, Mrs. Bethell shrank from the restless confinement of a London street. At her son's suggestion, a house was taken at Richmond, as appears from a letter of his to Miss Abraham, dated the 12th of July 1825 :—

'We came to Aylesbury this morning. John and I drove in a gig. The Duke of Buckingham is in the chair. I have been in Court, but have done nothing to-day ; to-morrow I have three briefs to defend three prisoners, and make speeches to juries. Two are interesting cases, and I shall have to examine a good many witnesses alone. There are about six other counsel. I am not in the least nervous, though I confess I think I know very little about the matter. . . . There is a good deal of business at this Sessions. I see that a counsel may easily make twenty or thirty guineas at least when he becomes known. I shall not now make more than five or six. . . .

'You will rejoice to hear that there is every prospect of my dear father succeeding in his practice at Richmond. He received five guineas last week, and has had a most flattering reception from the medical men of the place ; I thank the Almighty for it. If it continues, it will be all that was wanting to render my poor, dear, blessed mother's last hours contented and happy. And it is the greatest consolation to me, because if I am sure of their being able to provide for themselves, it will allow us to be united without alarm or anxiety lest they should want our assistance, and we should regret our then being unable to afford it them. All things, I trust, conspire to hasten our union.'

Mrs. Bethell did not long survive the removal to Richmond : her illness ended fatally in September 1825. Probably she had expressed the wish that her death might not delay her son's marriage. Difficulties of a pecuniary nature were successfully overcome with the generous assistance of Mr. Abraham, and in

November following the marriage took place at St. George's, Bloomsbury. Dr. Bethell lived till 1831—long enough to be happily assured of the success in life of both of his sons, who to the last requited with the most tender care the many sacrifices which had been made for them in their youth.[1] He had never faltered in the belief that Richard would attain to the greatest eminence. 'Tell him,' he writes to Mrs. Richard Bethell, shortly after his son's marriage, 'I am delighted at his success; but I have no doubt, if we live, that we shall see him very high in his profession. He is a great character, and will be a shining ornament at the bar.' Dr. Bethell's life, chequered with hopes and fears as it had invariably been, presented that best of pictures—a brave man struggling with adversity. It is pleasant to know that at the time of his death, the son of whom he was so justly proud had obtained a considerable practice, and was rapidly coming to the front in 'eager ambition's fiery chase.' The high predictions of the father were being realised.

Upon his marriage Richard Bethell took a small house in Camden Street, Camden Town, which was furnished by the kindness of Mr. Abraham. He had by this time obtained two pupils, who had read with him at Oxford. One or other of the pupils would often accompany Bethell home to dinner, together with his brother-in-law, who had

[1] The younger son, John Bethell, married, in 1833, Louisa, the youngest daughter of Mr. Robert Abraham. He died in 1867.

taken up his residence with the young couple. On their way from the chambers which he occupied in Chancery Lane they occasionally looked in at Sampson Low's, the publisher, in Lamb's Conduit Street, to obtain a supply of Sir Walter Scott's later novels, then coming out, in which Bethell always took a keen delight. The volumes were consigned to the blue bag which contained the legal papers, and was borne by each in turn. After dinner Bethell would dictate to his visitors—a bill to one, an answer to the other—while he stretched himself on the sofa. Now and again, wearied with the day's exertions, he dropped off to sleep, whereupon his companions abstracted a novel apiece from the bag, and so amused themselves till Bethell's returning consciousness recalled them to their labour. He would merely ask for the last word he had dictated, and proceed as if there had been no interruption. In the summer evenings they sometimes took a wherry from Searle's boathouse, then close to Westminster Bridge, and rowed Mrs. Bethell on the reaches between the Temple and Putney. While the Bethells were living in Camden Street their eldest child, Ellen, was born.

Bethell's love of the river induced him to rent a farmhouse at Marlow during the summer months of 1828. In term time he used to go down by the coach on Saturday, returning at an early hour on Monday morning. He was particularly fond of fishing, and would turn out at daybreak to examine

his lines or to snare the jack which the floods of the previous winter had left in the neighbouring ditches. When the long vacation brought its leisure, the little party, reinforced by John Bethell, spent whole days on the river, engaged in matches to see who would hook the most perch or gudgeon, or in rowing to Medenham or Harleyford for a picnic by the weir.

The next year a cottage was taken at Sunbury, on the banks of the river, and there the busy lawyer came down nearly every night by coach, rising as soon as it was light to do his work. As this increased it became necessary for him to be at a still shorter distance from town. Accordingly, in 1830, he secured for the summer a small house at Putney, close to the 'Star and Garter,' and overlooking the river. Friends often joined them in the evening, and sometimes, when the number allowed, an eight was manned, which Bethell stroked. He was an excellent oar, and on more than one occasion he and his brother-in-law rowed from Sunbury to the Temple stairs. On leaving these summer quarters Bethell took a larger house in Southampton Buildings, which served both for a residence and chambers.[1] 'I am happy to say,' he wrote, 'my increasing practice loudly demands this change.'

He used to declare that he never quite knew

[1] This was a common practice in those days. Lord Eldon lived for a time in Carey Street, Lincoln's-Inn-Fields, to save the additional expense of taking professional chambers.

how his success came about, but he thought it was due to self-confidence in difficulties and to painstaking industry: that he was determined to succeed, and had never doubted the ultimate result. He would also laughingly add that his success might be attributed in some measure to the fact that the initial letter of his name stood high in the alphabet. When he was living out of town, he came up one day in the vacation to chambers. A solicitor, who was anxious to obtain an immediate injunction, had been rushing distractedly about Lincoln's Inn in search of counsel to employ, but in vain. At last, in despair, he took up the Law List and began to hunt through the names. Not finding any one available among the A's, he proceeded through the B's, and presently stumbled on Bethell's name, and the owner, being found in chambers, secured in this way a brief and a client.

It is clear, however, that, like Eldon, Erskine, Lyndhurst, and others, he owed his early distinction to his able management of the first important case in which he was engaged. This proved the turning-point in the tide of his career.

It happened that during his *vivâ voce* examination in the Classical Schools at Oxford in 1818, he was put on to construe a difficult passage from one of Pindar's Odes. This was readily and effectively rendered, but, carried away by his appreciation of the poet, he went on through nearly the whole of the Ode, turning it into exquisite English, to the

equal surprise and delight of the examiners, one of whom was Dr. Gilbert, the Principal of Brasenose College, and afterwards Bishop of Chichester. Little did the boy—for he was then nothing more—suppose that the favourable impression thus made would have an important bearing on his future career.

In 1827 an information was filed in Chancery at the relation of Lord Suffield to compel the College, as governors of the Middleton Grammar School, to apply the surplus income of certain charity estates for the benefit of the school.[1] Letters patent had been granted to the College by Queen Elizabeth on the application of Alexander Nowell, then Dean of St. Paul's,[2] by which lands of the annual

[1] *Attorney-General* v. *Brasenose College:* 1 Law Journal Reports, New Series, 66; 2 Clark and Finelly's Reports, 295.

[2] Dr. Nowell, himself 'a dear lover and constant practiser of angling,' will be remembered by the readers of *The Compleat Angler* for the tender tribute which Izaak Walton paid to his memory:—'A man that in the reformation of Queen Elizabeth—not that of Henry VIII.—was so noted for his meek spirit, deep learning, prudence and piety, that the then Parliament and Convocation both chose, enjoined, and trusted him to be the man to make a catechism for public use, such a one as should stand as a rule of faith and manners to their posterity. And the good old man, though he was very learned, yet knowing that God leads us not by many nor by hard questions, like an honest angler, made that good, plain, unperplexed catechism which is printed in our good old service book.' Dr. Nowell, according to Walton, was accustomed to spend a tenth of his time in angling, 'and at his return to his house would praise God that he had spent that day free from worldly trouble, both harmlessly and in a recreation that becometh a churchman.'

value of about £28 were appropriated for the purpose of founding the free school. The rents were to be applied in payment of fixed stipends to the masters and students of the school and allowances to the fellows and scholars of the College. These payments left in fact a small surplus, which was not noticed in the letters patent. The College were also incorporated as governors of the school, and licensed to take other grants in perpetuity for the support not only of the school, but also of the poor scholars of the College. Subsequently other property became vested in the College for the same purposes. The Dean was for a time Principal of Brasenose, and under his superintendence the surplus income was appropriated to the general benefit of the College. This surplus had in 1827 swelled to upwards of £700 a year, and it was claimed that this was wholly applicable for the maintenance of the school.

The case was of extreme importance, not only to Brasenose, but to all other colleges in Oxford founded before the accession of William III. To the surprise of those concerned, Dr. Gilbert expressed a desire that the case of the College should be entrusted to Bethell, then a comparatively unknown and inexperienced counsel. To justify his selection he described the striking impression made upon his mind by the ability shown by Bethell during his final examination. Bethell was accordingly retained. Several counsel of eminence had advised a

compromise, but the Principal and Fellows were encouraged to fight the case by the strong opinion given by the young lawyer. The case came on in 1831 before Sir John Leach, who, mainly influenced, as was understood, by the very able argument of Bethell, appearing with Pemberton, afterwards known as Pemberton Leigh, for the College, decided in their favour. An appeal to the House of Lords followed, but was successfully resisted.

Bethell was accustomed to say that this success at once trebled his practice—a fact which is sufficiently attested by the law reports of that period. Writing to his wife shortly after, he said: 'I have been obliged to write a long letter to the Principal of Brasenose College. On my return I found a letter earnestly pressing me to pay the College a visit, to be present at their festivities, and receive their thanks for my exertions in their behalf in their late case in which I succeeded. They have offered me a bed and every accommodation. Of course I wrote to thank them, but declining it. It is pleasing as a mark of their gratitude, but I have no time or wish to go away but to you and the children.' The College, determined to show their appreciation of his services, thereupon sent him a piece of plate with a suitable inscription.

We may pause here for a moment to glance round the Courts of Equity and notice some of the more eminent leaders during the earlier years of Bethell's career. From 1824 until he accepted the

Chancellorship of Ireland ten years later, Sir Edward Sugden, afterwards Lord St. Leonards, was the acknowledged leader in the Chancery Courts. His profound learning and the dexterous skill with which he handled the most abstruse subjects, so as to invest them with a charm, made him an admirable advocate in equity cases. But like other leading men of the day, Sugden was too much in the habit of treating counsel opposed to him with scant courtesy, and of indulging in a snappishness to be tolerated only in men of his eminence. After the withdrawal of Sugden, Pemberton Leigh and Bickersteth obtained the largest share of the equity practice. These leaders for several years divided the business in the Rolls Court, until Bickersteth was appointed Master of the Rolls, and became Lord Langdale on the elevation of Sir C. C. Pepys to the Woolsack, as Lord Cottenham.

Bickersteth combined considerable legal attainments with the advantages of courtly manners and an imposing exterior. His arguments, chiefly remarkable for a skilful handling of facts, were delivered in an attractive style. Pemberton Leigh, though less pleasing in manner, was far superior to Bickersteth in legal erudition and reasoning, and would fix the judge with a horny eye from which there was no escape. He was a consummate lawyer, and had such a hold on legal principles that he would seldom refer to authorities. His natural disposition was to live very much to himself, but

Lord Westbury, more than thirty years afterwards, on the death of Lord Kingsdown, formerly Pemberton Leigh, bore testimony to actions of elevated feeling and grand self-denial of which few, perhaps, suspected their author to have been capable. Lord Westbury was a warm admirer of his character and ability. On one occasion he was counsel for Lord Kingsdown in an important case relating to some property, in which he succeeded on appeal, and used to say that he felt it a compliment to have been selected.

From 1836 to 1841, when he was raised to the bench,[1] Knight, afterwards Sir James Knight Bruce, enjoyed the best of the business before Vice-Chancellor Shadwell, and Bethell was constantly associated with him. A brilliant and indomitable advocate, he too would adopt a tone of intellectual superiority towards his opponents, and as he swept away their arguments, eye them through his glasses with an air of whimsical compassion which was a very effective method of advocacy. Like many another successful advocate he scarcely fulfilled in a judicial capacity the highest expectations of his friends.

In those days Leach, who had succeeded Plumer as Master of the Rolls, was in the habit of holding evening sittings. His irritable temper made him the

[1] In October 1841 Knight Bruce and Wigram were appointed additional Vice-Chancellors upon the transfer to the Court of Chancery of the equitable jurisdiction of the Court of Exchequer.

terror of all the leaders, but Bethell very soon gained his ear and commendation. 'Mr. Beethell,' he once said, 'you understand this matter, as you understand everything else.' He even asked Bethell to a dinner at which none but leading counsel, with the exception of Bethell, were present, and treated him with marked attention. Leach's ill-considered despatch and disregard of precedent were as notorious as his intemperate deportment towards the counsel of his Court. Probably no other judge than Leach ever had occasion to receive a deputation of the leaders of his Court, who waited upon him to offer their remonstrances against his discourteous treatment of the bar. The gentleness of his manner and the suavity of his address—characteristics in which Bethell much resembled him—were in marked contrast to his quick temper and uncomplaisant language. Alas, that 'words do sometimes fly from the tongue that the heart did neither hatch nor harbour!'

Henceforth, Bethell's time was almost exclusively occupied with the unremitting labours of his profession. The social distractions of the great city had few charms for him, and the only relaxation with which he indulged himself in term time seems to have been an occasional row with his wife on the river, when they took a boat where Middle Temple Lane now joins the Embankment. The little to be learned of his life, outside the law reports, is contained in the few letters to his wife, written on the

rare occasions of his absence from her, from one of which extracts may be given :—

'I am thankful that I got to town in perfect safety. The journey was a most painfully wearisome one; we did not reach town until past eleven o'clock, nor did I get to Chancery Lane till half-past, and then somewhat the worse for the extremely heavy shower we had to pass through after we reached Hyde Park Corner.

'Nothing very material had occurred during my absence, and our interests had in no respect suffered by the happiness I had enjoyed in my absence from business with thee. Indeed, had I known what I learnt on coming to town, that the Master of the Rolls (Sir John Leach) had been taken suddenly ill yesterday, and would not sit this evening, I think it would have induced me to stay to-day with my treasures. I fear this illness of the Master of the Rolls may be a fatal one, or at all events incapacitate him from sitting again before the long vacation, in which case the bar will sustain a great loss through the consequent stagnation of business.[1] . . .

'The difference between your atmosphere and this is hardly conceivable. Saturday night and Sunday London was enveloped in a fog as dense and dark as was ever known. You could not see a yard before you, nor even discern the glimmering of the lamps in the street. Not a coach could move without flambeaux, and all communication was in fact suspended. My time is spent entirely over my papers. Yesterday night I was writing till one o'clock in the morning. I shall afflict your heart as much as mine was by the information that the Vice-Chancellor intends to sit on the Monday next after Christmas, and that I shall be obliged to leave you all by the six o'clock coach on Monday morning. It is the most provoking, annoying circumstance that could possibly happen. Not a day to be given us for repose or relaxation with our families. I have unfortunately one brief of great importance, involving all Bostock's fortunes, that I cannot

[1] Sir John Leach died in September 1834, and was succeeded by Sir C. C. Pepys, afterwards Lord Cottenham.

desert, but I shall not accept any other, and as soon as that is disposed of I shall return and remain with you till we all come back to town. . . .

'I cannot give you a very good account of business. The difficulty of getting fees paid is intolerable, and in addition I have received a letter from Mr. Y——, in which he declines all thought of returning to chambers, and I must therefore restore him half of his fee, that is fifty guineas.[1] Our rule is not to return anything, but I cannot reconcile it to my conscience as a just one.'

In 1834 Mr. Bethell changed his residence, and took a house in Upper Bedford Place, Russell Square, a few doors from where Sir Fitzroy Kelly lived. He then had the chambers at 3 Stone Buildings, which he occupied till he ceased to practise at the bar.

At this period, shoals of informations and petitions were being filed in Chancery against corporations and other bodies, with the object of impeaching their possession or management of property which they held as trustees for charitable purposes. These proceedings were a source of great profit to the equity draftsmen, and Bethell was engaged in scores of them. There was much drafting and advising to be done in the initial stage. Many of the cases were fought out in Court with an energy and at a cost corresponding to the importance of the interests involved; but more often a compromise was arrived at, and a scheme was settled in chambers for the future administration of the charity, and came before

[1] This refers to a pupil's fee, which is paid in advance on entering counsel's chambers.

the Court for confirmation. It was not necessary for the relator, the individual who set the Attorney-General in motion, to have any personal interest in the matter, and though he was liable to costs if his interference proved improper, the proceedings obviously offered some temptation to litigious persons. Still the informations were undoubtedly of service in remedying and preventing the notorious abuses of charity funds. They afforded constant occupation for Bethell's now numerous pupils, and excellent opportunities for arguments which took a wide range of theological and historical disquisition such as he delighted in.

He held very strong views on the expediency of the systematic education of law students in first principles, and would have his pupils read the Civil Law as the only satisfactory basis of legal study. The high standard of training which he recommended had sometimes the beneficial effect of discouraging those whose capacity was obviously ill fitted to meet the exactions of professional life. To one of his pupils who had shown little aptitude for instruction he said, 'F——, read the Pandects; not only read the Pandects, absorb them.' F—— betook himself to the digest, but found the process of absorption so slow and distasteful that he soon abandoned his legal studies for an occupation better suited to his ability.

Half a century ago most lawyers, counsel as well as solicitors, had their habitation in or near

the legal quarter. In those days of early dinners and evening consultations, when men in good practice, especially on the common law side, often did not leave their chambers before nine or ten in the evening, there was much convenience in having a residence not far remote from the scene of labour. Up to 1837, Mr. Bethell had dwelt exclusively in the vicinity of the Courts, but in that year he removed to the neighbourhood of Regent's Park. Here some of the younger of his eight children were born.

As his practice grew larger, he preferred to take a house for the summer months, and spend the long vacation at some seaside place, where his energies, depressed by the almost unbroken labours of the preceding nine months, might be quickly braced by change of air, scene, and occupation. Littlehampton became at this period his favourite resort; the simplicity and freedom of the place, with its single terrace of houses, attracted him, and the pebble beach and sands, which at low water stretch for miles along the coast, gave an equal delight to the hard-worked lawyer and his children. He was always ready to take part in their games of cricket or rounders on the green facing the sea, or to bring his mind to bear on the difficulties of flying a kite. When the children grew older he taught them to row and ride, and, mounted on a favourite chestnut, would often head a party in a gallop on the sands.

These intervals of relaxation were like a late boyhood to him. His childhood had been clouded by such grave and distracting anxiety for his parents and his own future, that he had become prematurely old in his experience of the hard realities of life; and this in after years made it more delightful to him to relax the strain of prolonged application, and renew his youth in the companionship of his children. Those who had only met the stern, cynical advocate in the precincts of the Courts would have marvelled to see him riding, rowing, or sailing with his children, and hear him singing snatches of old airs as he revelled in the rest and sea-breeze. No one had better learned the lesson 'to mix his blood with sunshine, and to take the winds into his pulses.'

John Bethell was a constant and welcome visitor at these times, and the brothers frequently went out sailing together, taking their guns on the chance of getting a shot at sea-fowl. On one occasion their adventure nearly came to a tragical issue. They were sailing off Bognor, when they descried several dark-coloured objects, which they took to be porpoises, gambolling in the sea, at a little distance. Paddling up quietly within range they loaded their guns, and were about to take aim, when white arms, belonging to one of the floating objects, were suddenly flung into the air, above the inflated bathing dress, revealing to the would-be sportsmen the alarming fact that the objects of their aim were

ladies, not porpoises. The ladies, it appeared, being expert swimmers, had been tempted by the solitude of the spot to enjoy a bathe. One of the party afterwards became Lady Russell, but it is improbable that she ever knew of the peril in which she and her companions had been. Mr. Bethell was so delighted with the charms of Littlehampton and the valley of the Arun that he bought two small houses fronting the sea, and for several years made one or other of them his vacation residence.

A slight and unfinished, but graceful sketch, written by his eldest daughter shortly before her death[1] for the information of her own children, gives some idea of his home life at this period, and an extract from her recollections may be given in her own words :—

'The first home I can remember was a large old house in Southampton Buildings. My father made the ground floor sitting-room his chambers, and my earliest recollection is of a long table covered with his papers, briefs, and books, and my mother sitting at it writing from his dictation, as it was her delight to do. He often said the act of writing cramped the flow of his thoughts and ideas. He dictated freely in one unbroken flow of words, never hesitating or changing a word or expression. Later on my parents lived in Upper Bedford Place, and my father had chambers in Chancery Lane. Every evening he would bring his papers into the room where we were sitting and work away, reading or writing, perfectly undisturbed by our chatter, games, or music, every now and then lifting his head to join in the talk or praise the music, as the case might be. Often he would join in our

[1] The Hon. Mrs. T. E. Abraham, Lord Westbury's eldest child, died at Florence in 1880.

games, or read Shakspeare to us, or call upon us to repeat any pieces of poetry we might have lately learnt. His acquaintance with and love for poetry were very great. His whole nature was full of it, although its activity was overlaid by the dry and daily drudgery of the law. To him might well be applied the words of Sir Philip Sydney: "Who is it that ever was a scholar that doth not carry away some verses which in his youth he learnt, and even in old age serve him for hourly lessons?" How he loved to quote to us passages from his favourites, Beattie and Wordsworth. I can never forget the fervid utterance with which, his eyes suffused with tears, he would quote those well-known lines from the fourth book of Wordsworth's "Excursion," beginning,

> '"One adequate support
> For the calamities of human life
> Exists——"

'The celebrated lines of the Roman Emperor Hadrian addressed to his soul,[1] were greatly esteemed by my father. He once gave me these lines to learn by heart when I was a girl, and many years afterwards was delighted at my referring to them when he was reading "Gerontius," a poem which he regarded with great admiration. Of modern poets I think Byron was his favourite,[2] although Wordsworth had a great charm for him. He did not take so much pleasure in the new poets of his generation, and would say of their works, as he did of many of the magazine articles of the day, "This is a mere sound of words to me; I can find no sense in it." Still, parts of "In Memoriam," and many of Robert Browning's and Matthew Arnold's poems pleased him greatly. He had a most sound

[1] 'Animula, vagula, blandula,
Hospes, comesque corporis,
Quæ nunc abibis in loca,
Pallidula, frigida, nudula,
Nec, ut soles, dabis joca?'

[2] Of 'Childe Harold' he would repeat whole stanzas, and he never wearied of the noble verse commencing, 'The beings of the mind are not of clay.'

and retentive memory, with great aptness in quotation. In reading aloud his articulation was clear and distinct; if a pathetic subject, he had *les larmes à la voix;* but he could read humorous passages with thorough appreciation of the fun. I can hear him now as Jack Cade's companion, Dick: "The first thing we do, let's kill all the lawyers." I think our youthful minds never quite forgave Shakspeare for such an utterly shocking suggestion.'

The law is an imperious mistress, and brooks no rival. Like Sir William Blackstone, the legal practitioner finds it necessary to bid farewell to his Muse as he becomes immersed in professional toils. But many a lawyer wisely seeks to counteract the warp of pedantry, and the mental one-sidedness which follows an exclusive devotion to a single pursuit by turning in his leisure to works of imagination as a relief from labour in which that faculty finds no scope. Mr. Bethell delighted in fairy tales and every kind of romance. The *Arabian Nights*, *Robinson Crusoe*, *Gulliver's Travels*, and *Peter Wilkins* were books which he insisted should be read by everybody, for they retained their interest to the very end of life.

CHAPTER III

1840–1847

Is appointed Q.C.—Selects V.-C. Shadwell's Court—Qualifications for leading practice—Influence over the Vice-Chancellor—Method and merits of his advocacy—Obtains a prominent lead—Peculiarities of manner—Is challenged to a duel—Residence at Highgate—Classical tastes—Appointed Counsel to Oxford University—Management of cases—Scheme to promote legal education.

In Hilary Term 1840 Mr. Bethell's position justified Lord Cottenham in granting his application for a silk gown. In most cases 'taking silk' is attended with anxiety, for it results very often in a temporary diminution of income, and sometimes in a total loss of it. The qualities which have gained success for the junior do not necessarily fit him for leading business. The new Queen's Counsel must forego the fees he has been accustomed to receive for drafting and pupils, and though those on his briefs and cases are higher by one-third, or more, than the fees marked for the stuff-gownsman, some little time must elapse before he can obtain a prominent lead. At the time when Bethell was called within the bar the number of Queen's Counsel scarcely exceeded sixty; there are now more than thrice as

many. It was not then the custom to give silk for mere political considerations, without due regard to professional ability and position. The clear line of distinction which half a century ago separated the junior bar from their leaders is now less plainly defined. The number of 'stranded' Queen's Counsel is always on the increase, and not a few rarely hold a brief of their own.

Bethell was pre-eminently fitted for leading business. He had long before made his mark as a lawyer, but the inner bar afforded a larger field for the display of his remarkable powers of advocacy. Some few of the Chancery leaders were then in the habit, which has since become universal,[1] of confining their practice, except in appeals, to a single court, and Bethell selected Vice-Chancellor Shadwell's. On the Common Law side it was never the custom, and latterly it has been practically impossible, except in the Probate Division, to follow the same rule. The cases in the general lists are not assigned to any particular judge, and the judges have no separate courts of their own. A cause may be in one judge's list to-day, and if not reached, be tried before another judge to-morrow. The result is that frequent complaints arise through the inability of counsel to attend to their briefs. This inconvenience can seldom happen in the Chancery Division. The client is pretty sure of getting the

[1] It was not until 1854 that the Chancery Queen's Counsel adopted a resolution pledging them to this course.

undivided attention of the leader he has briefed, which is a considerable advantage. On the other hand, the system which obtains among the equity leaders is not wholly free from objection. A judge naturally has his predilections and prejudices, and has been known to carry them very far in his treatment of counsel, who must, in accordance with their self-imposed rule, continually appear before him. It then becomes necessary for them to study his idiosyncrasies and humour his known foibles. In this way the leaders of the Court lose some of their independence, and the judge is exposed to the risk of becoming dictatorial, if not unfair.

Sir Lancelot Shadwell was by universal consent free from any such imputation. No truer description of this judge can be given than in the oft-quoted words by which Sir James Knight Bruce paid an eloquent tribute to his memory: 'A judge distinguished for his great knowledge of the law he administered; distinguished for his various acquirements; distinguished for his unwearied patience; swift to hear; slow to wrath; pure and blameless in his life; an example of courtesy, gentleness, and amenity; who never uttered a word intended to give pain, nor harboured one unkind thought, or one acrimonious feeling.' Over the Vice-Chancellor's mind Bethell soon came to exercise a marked influence; and his lucid arguments and tactical ability had, it is said, an overwhelming effect in cases of judicial uncertainty.

It seems to be in accordance with some law of nature that a strong judge generally leans on the strongest counsel in his court. Pemberton is said to have had the same influence over Lord Langdale; and it was a common thing for his opponent to say in consultation, 'I think we are right; but it's no use, Pemberton is on the other side.' It was natural that solicitors should be quick to mark this circumstance by employing the successful advocate, and Bethell's practice advanced by leaps and bounds. Between him and the Vice-Chancellor there grew a close and uninterrupted friendship. Though their characters were in many respects very dissimilar, they had tastes in common which drew them together. Sir Lancelot was an excellent swimmer and oarsman, and delighted in all kinds of open-air exercise. He occasionally entertained the Bethells at Barn Elms, a pleasant resort for men who were never so happy as when in, on, or near the river.

Bethell's most frequent opponent in the Court which he had chosen was Stuart, afterwards a Vice-Chancellor, a man of commanding presence—the great highlander, as he was called—but neither in legal knowledge nor advocacy a match for Bethell. Subsequently, they sat on opposite sides of the House of Commons, so that their opposition may be said to have been perennial. The promotion of Knight Bruce and Wigram, and the premature death of Jacob in 1841, threw open the Court to the younger men, and Bethell stepped at once into

the foremost rank. For the next ten years, there was hardly a case of any importance in his Court in which he was not engaged. He quickly gained notoriety in the profession for the most remarkable qualifications—prompt perception, mastery of detail, logical argument, and, above all, indefatigable diligence, with that thorough confidence in his own powers which Dr. Johnson declared to be the first requisite to great undertakings. With such an intellectual equipment he necessarily became a great advocate, and might be expected to rank among the foremost men of his day.

The signal excellence of his advocacy was, first of all, clearness of exposition, the outcome of an amazing quickness of apprehension, and the art of expressing the nicest dependencies of thought in their logical order and in luminous and forcible language. To his vigorous grasp of the facts of a case and the perspicuity with which he determined their relation to the issues he added a power of exposition, which enabled him to drive his argument into the ear of a judge with irresistible force. 'Clearness of expression,' he used to say, 'measures the strength or vigour of conception. If you have really grasped a thought, it is easy enough to give it utterance.' He had also the rare power of lifting his subject on to a higher level, and bringing a theory to the test of original principles.

Another distinctive feature of his method was the command of a finished diction. He was mindful

of the best maxim in elocution—to speak with deliberation. 'A slow speech,' says Lord Bacon, 'confirmeth the memory, addeth a conceit of wisdom to the hearers, besides a seemliness of speech and countenance.' Bethell let slip no sentence so clumsily that the next had to be hastened to cover the retreat of the other; nor did he repeat himself except for emphasis and with design. 'Speak, speak, speak,' was his advice to a Scotch friend, 'coolly, composedly. Do not be fluttered, like the Scotch Unicorn, but stand boldly like the Lion.' Unlike the majority of speakers, he introduced the largest amount of matter in the fewest possible words. His arguments were so concise, and at the same time so aptly expressed, that shorthand writers were compelled to follow him attentively for fear of missing some sentence, the omission of which would destroy the value of the report. There were few of those repetitions and unnecessary phrases which abound in most speeches, and are so easily detected by the practised listener. Each sentence was complete in itself, and conveyed its meaning in language always well chosen, and often extremely felicitous. His voice was clear and musical, and, as he warmed to his argument, it gained a volume, and there was a touch of sympathy which, coupled with the quaint wit of his illustrations, gave intellectual entertainment to his audience. When he was replying in any great case the Court was usually crowded with the ablest young men,

fresh from the University, who considered that to hear Bethell was a liberal education in advocacy.

Over such an audience he exercised the greatest possible sway as a man of speech—clear and convincing. For hours he would maintain an unbroken fluency, without once changing an expression or losing the balance of his sentences. Every address was an oration, gradually unfolded, enlarged, and completed. But his studied articulation and the slow, syllabic pronunciation of his words—what Sir Thomas Wilde (afterwards Lord Truro) called the 'man-millinery' of his style—gave an impression of superciliousness which, in a popular assembly, rather marred the effect of his address, and prejudiced his claim to oratory. 'Deep self-possession, an intense repose' characterised him. No interruption disconcerted him; never off his guard, he showed the same sublime unconcern for interruptions, whether proceeding from the bench or from opposing counsel. 'S—— must not be too sensitive,' he wrote not long before his death. 'I had, when a young man, often disagreeable observations made to me by judges, but I always treated them with the most perfect indifference and contempt.'

One of the earliest cases in which he was retained to lead was a heavy suit, in which it was sought to make two of the members of a firm of solicitors responsible for a fraud practised on the Court by their co-partner in conjunction with other parties, of which fraud the defendant solicitors were

wholly ignorant. The pleadings and evidence were, even for those days, very voluminous. Bethell led for the plaintiffs, and sixteen counsel represented the various defendants. After arguments, which occupied several days, the Vice-Chancellor decided, in accordance with the plaintiff's contention, that the innocent partners, as well as all the actual parties to the transaction, were liable to make good the money which had been obtained by the fraud. Bethell's successful management of this important case ensured him the most prominent lead in his own Court. In 1842 he also established his position as a leader in appeals in the Lord Chancellor's Court; and it became evident that the highest honours of the profession lay within his grasp.

It cannot be denied that Bethell's extraordinarily rapid rise had been accompanied with a greater indulgence in the art of sarcasm, which was with him a peculiarity of speech and manner rather than a defect in disposition. Wit and satire are not forces which win popularity or affection from those at whose expense they are exercised. A man who is honest enough to confess in his heart of hearts that he is a fool will bitterly resent the imputation, though coming with a little more circumstance from the mouth of another. Bethell felt that, intellectually, he had a giant's strength; when roused by pretentiousness or humbug, he was prone to use it as a giant. Like Macaulay, he showed himself too confident of his splendid gifts. He was impatient of very timid

people as well as of dull ones, and took no pains to conceal the feeling. Rather, probably, from consciousness of his superior abilities than from any wilful indifference to the feelings of others, he had the fatal habit of setting people right in a quiet, deliberate fashion, which gave intense irritation.

It is not surprising that these characteristics excited antagonism among his professional brethren. His remarkable success provoked envy and detraction, while his too confident display of intellectual pre-eminence distressed humbler minds. Every ill-natured, stinging remark which wit could devise came to be referred to him. He stood sponsor for most of the good things which went the round of the bar. Many of the stories were, of course, absolutely untrue; with a still larger proportion he had no real connection. When once a reputation for sarcasm has been acquired by a well-known person, it needs little personal effort to sustain it. Every well-invented story or piquant *bon mot*, which is without satisfactory parentage or credentials, may be safely attributed to him, provided it bear some appearance of probability. Bethell was utterly heedless of misconception and antagonism. Many men who are very acceptable in general society are less pleasing in their own homes. It was just the reverse with him. The whole profession recognised the great erudition, the acute perception, the fine and caustic vein of sarcasm, and the lucid method of the advocate; but his few intimates only knew his geniality

in domestic life, his generous sympathy with the distressed, and the real kindliness of his disposition.

It must not, however, be supposed that his manner was without precedent at the Chancery bar. Other leading counsel of that day gave free play to similar characteristics. The peculiarity in his case was that the effect was magnified by the contrast between the pungency of his words and the suavity of voice and manner which accompanied them—'as the soft plume gives swiftness to the dart.' On one occasion a personal encounter took place outside the Vice-Chancellor's Court, as the result of what had been said by Bethell within. He was assaulted by another member of the bar; or, as some one afterwards described it, Bethell's irritating language provoked a retort which took the unusual and unprofessional form of personal violence applied to his nasal organ. It would seem that the bystanders intervened before Bethell could revenge himself, and his assailant, whose temper was so beyond control, shortly afterwards left the bar and secured a good position in a more congenial sphere.

What made Bethell's personal allusions peculiarly maddening was that they usually consisted in the statement of a plain, naked, unanswerable truth, conveyed in the neatest possible terms, with a measured gentleness which gave them an added keenness. Sir Fitzroy Kelly, then *facile princeps* in Westminster Hall, was at one period frequently brought into the Chancery Courts to do battle with

Bethell. On these occasions Bethell, as if bent on showing that the equity practitioners were unrivalled in their own domain, was always at his very best. When Kelly, hard pressed by the telling force of his opponent's argument, hastily and warmly interposed, 'I never heard of such a thing in my life!' Bethell, quite undisturbed by the interruption, would reply in the blandest tones with his best smile, 'No, no; I am aware you never did. We do those things here.'

In truth, he cared for neither praise nor blame. Confident in his own powers, he felt no need of the one or apprehension of the other. He was too much in the habit of thinking aloud, without regard to the effect which the expression of his thoughts might have on the minds of others. 'His heart's his mouth: what his heart forges that his tongue must vent.' There is perhaps no more unfailing source than this of unpopularity.

These peculiarities sometimes brought him into collision with others besides the members of his own profession, and on one occasion he was very nearly involved in a duel by the use of an expression which was regarded as an insult by the person to whom it was addressed. The course which Bethell took on receiving the challenge was singular, and showed that he was bent on giving the satisfaction demanded. If he had put himself in the hands of a friend of his own age he would have no doubt encountered an outcry at the bare idea of

the 'father of a family' exposing his precious life, and steps of some kind might have been taken to avert the peril. He apparently saw that, and therefore entrusted the matter to a friend who had lately been a pupil in his chambers. This gentleman, according to his own account, felt very proud at the notion of the great man reposing such a delicate trust in him; and perhaps this feeling may have blinded him in some measure to the ugliness of the scrape in which he would be involved if the *père de famille* were sacrificed; at all events he accepted the office. Bethell's blood was up, and he was keen for the encounter; he declared that fight he would, and there must be no 'knocking under.' However, his friend made it a condition of undertaking the affair that Bethell should place himself entirely in his hands.

The challenge came from a naval officer to whom Bethell had let his furnished house at Littlehampton. The tenant had written to his landlord with reference to the tenancy, and added a complaint that the stock of kitchen utensils was insufficient. Bethell replied to the first part of the letter in an unobjectionable manner, but upon the latter part wrote thus: 'With respect to the pots and pans, be so good as to communicate with my agent.' At this the officer took great umbrage, and, without more ado, wrote Bethell a challenge. Upon reading the letter Bethell's friend observed that the words of challenge were followed by violent, trucu-

lent expressions, and, inexperienced though he was, he knew enough of the rules governing affairs of honour to be aware that by this breach of the usual courtesies the challenger had forfeited his right to redress. He therefore wrote to the officer, stating that the affair was in his hands, but that he could not allow his principal to give satisfaction unless the violent language was withdrawn. This part of his communication was framed in stern conventional terms, but other words followed, breathing a more kindly spirit, and calculated to give the aggrieved officer an opening for recourse to a less violent method of asserting his honour. The next day, much to his relief, he received a letter from the challenger full of heart and good feeling, and in the result he had no difficulty in terminating the quarrel to the satisfaction of both parties.

But though men of his own standing had often reason to resent Bethell's pedantic assertion of superiority, and the scathing wit with which he assailed any one who thwarted his purposes or wounded his *amour propre*, to the younger members of his profession, and indeed to all who needed his aid, he was singularly considerate. Those who were ready to make some allowance for the peculiarities of his manner found that there lay behind an apparent hauteur and supercilious reserve a natural kindness of disposition, for which others who were prejudiced by those appearances gave him no credit. He lived so apart from the world at that time, and was so

little subject to the influences of general society, that few persons had the opportunity of gaining the intimate knowledge of his character which was in his case the condition precedent of friendly intercourse.

The growing delicacy of his wife's health induced Mr. Bethell for a time to abandon his London residence, and in 1841 he removed to Lauderdale House, Highgate. It was a curious, rambling, old-fashioned mansion, built in the year 1660 by Lord Lauderdale, the well-known member of the Cabal in the reign of Charles II., and, according to Macaulay, the most dishonest man in a notoriously unscrupulous age. The house, so the tradition ran, had at one time been occupied by Nell Gwynne. It stands almost on the crest of Highgate Hill, but although so close to the town, a visitor might, on passing through the tall iron gate into the terraced gardens, fancy himself, were it not for the grand view over London, in the very heart of the country. The gardens were the great charm of the place to Mr. Bethell, for they gave him the perfect retirement and freedom which he loved in his home life. In the very early summer mornings he would saunter about the grounds, sometimes mastering the contents of a brief, at others reading some volume of poetry or the classics—'the parole of literary men.' Though he had little time for general reading he always seemed to be well up in the more important literature of the day, for he had

the happy art of extracting the gist of a subject by what appeared to be a mere cursory examination. When disposed for more active exercise, he would occasionally pull the garden roller up and down the long terrace at five or six o'clock in the morning. After the eight o'clock breakfast, if the weather was fine, he mounted his horse and rode off at a canter to Lincoln's Inn, where the inevitable red bag of briefs and papers had been sent on beforehand.

Considering the circumstances of his youth, it is surprising that he should so readily have taken to riding, driving, and every other description of outdoor exercise. A day's partridge or pheasant shooting gave him keen delight, and one of his favourite castles in the air was to retire from public life while he should still have strength and energy to enjoy the pursuits of a country life. He used to say that to end his days growing his own olives in Savoy was the height of his ambition. He was never so thoroughly happy as when on horseback. In summer some of his children often met him on their ponies, at his chambers or on the road home, and he would explore with them the lanes and villages of the suburbs.

His two eldest sons commenced their school life as day scholars at Highgate school, then, and for many years after, under the Rev. Dr. Dyne as head master. The boys were after a short time removed, principally to relieve their mother, always delicate in health, from some of the cares which the home

education of boys, while there is a young family growing up, always entails. But the friendly intercourse between the families thus originated continued during Mr. Bethell's residence at Highgate. Dr. Dyne wrote to Lord Westbury's eldest daughter some years after :—

'It was a real pleasure when your father returned from his London work, to join them, as I sometimes did, for an hour after tea, with his family around him. He would turn from a mass of law papers upon which he was engaged and enter into an animated discussion on some passage of a classical author, or on the general views of the author, which seemed as fresh in his recollection as if he had only just read them—and all this without showing the least annoyance at having been drawn away from his papers, which were still faithfully read before he left home for the Courts the next morning.

'His elder daughters, in spite of the professional pressure which must have then been very heavy upon him, almost daily received some oral instruction from him which would lead them to take an interest in studies beyond those generally pursued in the schoolroom. His life at that time was, as far as those around could judge, very domestic and full of family affection. I do not remember to have met with any instance where greater kindness of heart towards others was combined with large intellectual power and cultivation, and a varied knowledge of many subjects which was perfectly astonishing. I have known him do acts of kindness to his professional brethren, merely because they had been associated with him in Court, but were not so successful as he had been—men with whom he had no special intercourse and felt no intellectual sympathy.'

Mr. B. B. Rogers, himself one of the most distinguished of the *alumni* of Wadham, was at Highgate school at this period, and Mr. Bethell would often make the boy stand at the other end of the

long drawing-room at Lauderdale House and recite some classical passage. On one occasion Mr. Bethell himself repeated from memory the whole of the first chorus of the *Agamemnon*, upwards of two hundred lines, with perfect delight. 'He was,' says Mr. Rogers, 'the finest classical scholar I ever knew.'

Frequent proof of the readiness with which in his scanty intervals of leisure he would merge the practical lawyer in the philosophical scholar is found in his private correspondence. In September 1846 he writes to Mrs. T. E. Abraham: 'We are once more restored to Lauderdale House after a little tour in Cambridgeshire and Norfolk. I know not when I have felt so much disinclination to travel as during the present vacation. My former desire to use each vacation for the purpose of gaining some new ideas by visiting a new district of country has pretty well worn itself out, which is certainly a proof of creeping on old age; and I have preferred coming back quietly to Highgate, in the earnest hope of employing the next five weeks in a profitable study of jurisprudence, history, and moral philosophy.'

The death of Sir Charles Wetherell in the year 1846 made a vacancy in the post of Counsel to the University of Oxford, and Mr. Bethell, much to his satisfaction, was selected to fill it. His pride and pleasure in becoming thus officially connected with his own University were increased by the fact that the appointment was made and notified to him by

Dr. Symons, Warden of Wadham, who was Vice-Chancellor at the time, and had always maintained a steady friendship with his former pupil.

At this time many of the newly-formed railway companies became involved in litigation both with each other in their competitive undertakings and with the owners of the lands taken. The provisions of the Lands and Railways Clauses Consolidation Acts were continually receiving judicial interpretation in the Courts, and the great agency firms vied with each other in their eagerness to secure Bethell's services. For some he was retained generally, for others specially, the clients taking care to put the cases down for hearing in Vice-Chancellor Shadwell's Court. The fees and refreshers paid by the companies in the fierce heat of their rivalry were such as none but corporate bodies could afford, forming a disbursement which had to be met independently of the result; and as the bills of costs of their legal advisers were not taxed there was every inducement for lavish expenditure.

The other leaders in Vice-Chancellor Shadwell's Court were very sensible of the influence which Bethell's tactical ability had upon the chances of success in doubtful cases. One day, after opening the plaintiff's case, he was called away to attend to an appeal in the House of Lords, intending to return in time for the reply. The leader on the other side, observing this, whispered to his junior to cut the

matter short, so that in Bethell's absence the plaintiff's other counsel might be compelled to reply, when probably the defendant would win. The plaintiff's solicitor happened to overhear the remark. He rushed out of Court, got Bethell after some difficulty to leave the appeal, and took him back to the Vice-Chancellor's Court just in time to make a reply which utterly demolished the defendant's case.

A single instance of the invincible coolness of his demeanour in Court may be mentioned here. In a case before the Vice-Chancellor, Bethell was proceeding to give his definition of what constituted an architect: 'An architect, your Honour will observe, is—' when Sir Lancelot Shadwell exclaimed, 'Oh, Mr. Bethell, we all know what an architect is.' Bethell sat down as if deferring to the Vice-Chancellor, and expectant of his saying more, but nothing came. Whereupon he rose and began again in the same words, giving his definition at elaborate length, to the great amusement of the bar, while the good, easy judge rued the moment when he had attempted to cut Bethell short. His dominion over Shadwell was complete. 'It is useless to argue in this Court,' declared one of the other leaders angrily on Bethell obtaining his third injunction in a fortnight. 'Mr. Vice-Chancellor,' said Bethell in his gentlest tone, 'I move that this Court adjourn till my learned friend has recovered his temper.'

He had an extraordinary facility for getting up a

case, and, what is more rare, an intuition and power of dealing with bare facts which enabled him to assume an intimate knowledge of his case when in reality he had very little. While living at Highgate he was briefed with his old pupil, Mr. A. W. Kinglake, to apply for an injunction in an important and rather intricate matter. Bethell did not arrive for the consultation at Westminster in the morning; worse still, his brief was unread, as the clerk had not been able to deliver it overnight, and therefore the leader knew nothing about the case. He came into the robing-room at the last moment and asked his junior as they walked quickly through the corridor to tell him the more material facts. As soon as they entered the Court Bethell was called on by the Vice-Chancellor to move, on which he untied his papers and opened the case with admirable effect, translating the few hints which he had received into an excellent speech. He said on one occasion that he could not express his utter contempt for any one who was intentionally unfair or illogical in his argument. 'With regard to the facts,' he added, 'they are at your disposal,' meaning, no doubt, that you are entitled to lay out your facts in the form which will most strengthen your own case; treat them as you will, they still speak for themselves.

While at Littlehampton, Mr. Bethell, who was extremely fond of horses, occasionally visited the training-stables in the neighbourhood, and thus

picked up a knowledge of racing matters which on one occasion was displayed with considerable effect. The Earl of Albemarle had a horse which was thought to have an excellent chance of winning one of the classic races. The earl, however, died before the race came off, having on his deathbed given the horse by way of *donatio mortis causâ* to Lady Albemarle. After his death there was some doubt as to the validity of the gift, and it was feared that the executor might come in with his paramount claim and take possession of the animal. It was important to have the control of the favourite pending the race.

In these circumstances Mr. Bethell was instructed to advise what proceedings should be taken to restrain the executor from gaining possession of the horse. There was a consultation at his chambers, when a large number of conspicuous sporting men appeared and filled the room. Instead of discussing the case in the ordinary way Mr. Bethell adapted his manner to what he thought would best suit his company, and addressed them in sporting language. The substance of his advice was as follows: 'You must guard this horse with ceaseless vigilance night and day: for that purpose be careful to engage a sufficient number of men. Now, remember, if any attempt is made to seize the horse you are not to strike the first blow; but if one blow is struck by the invaders, you may strike twenty.' The sportsmen retired, well pleased to find that the rules of equity so nearly coincided with their ideas of natural

justice. Though the horse did not win, control of it was retained until after the race.

The solicitor employed in the case happened to be a solemn old-fashioned person. Lady Albemarle, who had been keenly interested in the prospect of winning, was greatly excited with the apprehension that the horse might be seized, and said with lively gesticulation : 'Now, I declare, if an attempt is made by any one to seize my horse, I'll "scratch" him.' The solicitor, in his ignorance of sporting phraseology, supposed that the Countess intended, in defence of her ownership, to have recourse to the *lex talionis*, and was greatly impressed.

Mr. Bethell had now become the acknowledged leader of the equity bar. He was also the favourite counsel in House of Lords cases, including Scotch appeals, and more than held his own against such strong opponents as Kelly and Turner, Rolt and Parker. Sir Thomas Wilde (afterwards Lord Truro) took care to retain him in an appeal from a decree of Vice-Chancellor Knight Bruce, setting aside a sale of land by Lady Wildè, before her marriage, on the ground of the concealment of a right of way. After a hard fight, Mr. Bethell succeeded in obtaining the reversal of the decree, though the propriety of the decision has been much questioned.[1] 'I had too often witnessed your efforts,' wrote Sir Thomas Wilde, 'not to be fully aware of the value and force

[1] 1 *Gibson* v. *D'Este ;* 2 Younge and Collier's Chancery Cases, 542.

of the unrivalled talent which I had called to my aid, and the report conveyed to me of the address of yesterday calls for my thankful acknowledgments and excites my admiration. While conveying the sense of my obligations to you, I sincerely hope that you may speedily, and while a long remnant of years shall be in store for you, with abundant vigour to enjoy it, arrive at the elevation to which you are surely destined, and which you are no less certain to adorn.'[1]

Rolt had made an even more rapid rise than Bethell, having taken silk within ten years from his call. Like Knight-Bruce he was very fond of quoting scraps of Latin, which he had picked up after he came to the bar, frequently stumbling over the quantities, much to the disgust of Bethell, who seldom failed on such occasions to correct him. One day, when Bethell was sitting in Court reading his brief, Knight-Bruce and Rolt were quoting classical passages against each other, and Knight-Bruce, who disliked Bethell, said: 'Mr. Rolt, we must be careful how we make our quotations in the presence of that distinguished scholar, Mr. Bethell.' Whereupon Bethell coolly remarked: 'I beg your

[1] Lady Wilde, that her champion, as she said, might not be without a trophy of his well-earned triumph, presented Mr. Bethell with a silver-gilt inkstand. 'I hope,' she wrote, 'the sight of it will ever be associated with a recollection of the grateful feeling which the exercise of his great talents, and the manifestation of the most kind interest in my behalf, have indelibly impressed.'

Lordship's pardon. I thought my learned friend and yourself were quoting from some Welsh author.'

In a patent case, before one of the Vice-Chancellors the same counsel were opposed, and Rolt in his opening address said: 'I will now describe to your Honour the compŏnent parts of the contrivance for which the patent is claimed.' Bethell (with a shudder): 'Compōnent parts—compōnent parts.' Rolt: 'Oh, very well; to please the fastidious taste of my learned friend, I will say, compōnent parts.' Bethell: 'Not fastidious, not fastidious, if you please—only classical.'

The Lord Justice was, however, revenged on another occasion, when Bethell was neatly caught in a trap laid for him by one of his most sincere admirers, Mr. E. K. Karslake, Q.C., at the suggestion of Mr. Rolt. Sir Richard Bethell (as he then was) was engaged in a case before the Lords Justices, Knight-Bruce and Turner; and after he had made a very long speech, Mr. Karslake followed, as his junior—Mr. Rolt led on the other side. Mr. Karslake referred to the well-known legal maxim: 'Expressio unius est exclusio alterius,' purposely making short the second syllable of the word 'unius.' Sir Richard Bethell at once turned round and exclaimed: 'Oh, my dear Karslake, what a false quantity!'—'Not so,' replied Mr. Karslake, and quoted the line in the *Æneid*, 'Unius ob noxam,' etc. 'Oh yes,' said Lord Justice Knight-Bruce, 'Mr. Karslake is right. There is certainly authority

for making the second syllable short. That, however, is so in Latin poetry; but we have been a long time prosing.'

It is pleasing to note that Mr. Bethell, amid all the exigencies of an enormous private practice, devoted time and thought to the general interests of the profession. His desire to promote legal reforms found expression, in the year 1846, in an earnest endeavour to induce the Inns of Court to institute a system of sound and comprehensive legal education for their students. In a letter to Lord Langdale, Master of the Rolls, he complains of the neglect on the part of the benchers of this duty.

'The rules of the several societies,' he said, 'by the observance of which they must be considered, both legally and morally, as holding their privileges and their possessions, prescribe to the benchers the duty of seeing that the students do well and diligently perform the "moots"[1] or exercises, and attend the "read-

[1] Stow gives the following account of 'mooting' in the Inns of Court: 'In these vacations after supper in the hall, the reader, with one or two of the benchers, comes in, to whom one of the utter barristers propounds some doubtful case, which being argued by the benchers, and lastly, by him that moved the case, the benchers sit down on the bench at the upper end of the hall, and upon the form in the middle of the hall sit two utter barristers, and on both sides of them, on the same form, sits one inner barrister, who in Law French doth declare to the benchers some kind of action, the one being, as it were, retained for the plaintiff and the other for the defendant; which ended, the two utter barristers argue such questions as are disputable within the said case. After which the benchers do likewise declare their opinions, as how they take the law to be in these questions.'—Stow's *Survey of London*, p. 126. Both 'moots' and 'readings' as compulsory exercises no longer exist.

ings," which were admirably adapted to imbue young men with a sound knowledge of law, and to train them in legal dialectics and habits of ready application of their knowledge, which were excellent preparatives for the active duties of their profession.

'These habits fell into disuse during an age which is to be remarked for its low tone of feeling as to the discharge of public duties, and I am sorry to say that even in the present times we have not hitherto shown a great degree of conscientiousness. Recent circumstances render it the more necessary, and indeed prudent, that we should give our attention to the subject, and if possible redeem the time, for one society has just expended £100,000 in superb buildings, and by two others the sum of £60,000 has been lavished on the decorations of a church,[1] whilst by neither society is one shilling applied to the legal education or the moral encouragement of its students; and will not this glaring anomaly force the most ordinary observer to conclude that our duties are not fully or honestly discharged?'

He proceeded to explain the plan which he had for two or three years been pressing on the benchers of the several Inns for the establishment of a comprehensive system of education for the bar, and bespoke for it the consideration of Lord Langdale, who was known to be ardent in his desire for law reform. In his reply, Lord Langdale, after referring to the unsuccessful attempt which had been made some years before by the Inner Temple to establish lectures, which, though they excited great interest at the time, ultimately failed of success—a great discouragement to this plan of legal education—ex-

[1] The restoration of the Temple Church was completed in 1842. Though in the course of the work the most extensive repairs were needed, the principle of restoration in its literal sense was very faithfully observed by the two Societies.

pressed his satisfaction that the subject was likely to be reconsidered. 'Could we hope,' he added, 'that the Inns of Court might be induced to consider themselves as colleges united in a species of university established, amongst other things, to promote legal education?'

Bethell unfolded the details of his scheme in a letter addressed to the Treasurer of the Inner Temple. He advocated founding four chairs for readers or lecturers on the subjects of real property law and conveyancing, constitutional and criminal law, personal property and commercial law, and equity as administered by the Court of Chancery, the compulsory attendance of all students at the lectures on real property law, as being of universal utility and necessity in all branches of the profession, and a compulsory examination with competition for honours and exhibitions. It was part of his plan that these readers should devote themselves not only to their separate duties, but to the general and public purpose of amending, improving, and digesting the law.

'I hope, therefore,' he wrote, 'that the institution of such a body will be noticed by the Government, if not by the Legislature, and that it may be found possible to form them into a Board of Law (if I may use such a term); and to illustrate my meaning by borrowing another expression, I would first give them the duty of framing a large ordnance map of the law, that we may know our road with certainty, for at present, such is the confusion of modern Acts of Parliament, there are some subjects on which neither the adviser nor the judge can pronounce an

opinion without fear and trembling lest he should have overlooked some modern alteration or recent enactment.

'No Government in the present state of our law and legal institutions would hesitate to avail itself of the aid of such a body, and if this be accomplished, I shall have given to the readers all that I desire in professional rank, public utility, increased emolument, and permanent duration.'

The result of his efforts was that the Bench of his own Inn, the Middle Temple, appointed a lecturer or reader on jurisprudence and the civil law, and offered exhibitions to be competed for by the students in voluntary examinations. The other three Inns soon followed this excellent example, and the Council of Legal Education was formed to secure by a common plan of action a system of legal education, such as that advocated by Mr. Bethell. In recognition of his exertions he was appointed Chairman of the Council, a position which he retained as long as he continued to practise. But compulsory examination of students as a qualification for the bar was not adopted until 1872, a few months before the death of its most persistent advocate.

During the long vacation of 1848 Vice-Chancellor Shadwell and his daughters were at Maelswch Castle, a few miles distant from Llangoed, Brecon, where Mr. Bethell had rented a residence for shooting and salmon-fishing during the autumn months. Many were the picnics and fishing and boating excursions in which the two families joined. On one of these occasions the two eminent lawyers, stroking rival boats with carefully-picked crews,

engaged in a race which, amid deafening shouts from the bank, resulted after a mighty contest in a dead-heat. Sir Lancelot was as ready as a boy for any frolic. He particularly delighted in taking charge of the children, or as he would put it, letting them take care of him, in their rides and rambles. 'In wit a man, simplicity a child,' he won the hearts of all by his geniality and kindness. His marked partiality for the leader of his Court had given rise to the riddle, propounded by some legal wit, 'Why is Shadwell like King Jeroboam?—Because he has set up an idol in Bethell.'

Mr. Bethell revelled in the varied charms of Llangoed Castle, with its breezy hills and hanging woods, commanding one of the loveliest views of the Golden Valley, and dilated on them with all the appreciative enthusiasm of a true lover of the beautiful. 'Capping the woods,' he writes, 'are the Black Mountains, which reflect the last rays of the setting sun, and towards evening are constantly delighting and surprising us by their successive changes of light and shadow, and the infinite variety of hues which their bare surfaces are catching from the sky.' The River Wye ran through the meadows below the house in a succession of small rapids, its steep banks fringed with a noble grove of oaks, chestnuts, and pines, through which wound sheltered paths. It often brought to his mind, he said, Milton's description :—

'And when the sun begins to fling
His flaming beams, me, Goddess, bring
To archèd walls of twilight groves
And shadows brown, that Sylvan loves,
Of pine or monumental oak.'

He took Llangoed Castle on the recommendation of Sir Lancelot Shadwell for a term of years, and contemplated many additions and improvements, but finding that the air disagreed with Mrs. Bethell's health, which had become very delicate, he gave it up after the first summer.

CHAPTER IV

1847–1852

Attempts to enter Parliament—Political views—Defeated at Shaftesbury—Returned for Aylesbury—Expelled from Conservative Club and elected at Brooks's—Position of political parties—Speeches on Chancery Appeals and Jewish disabilities—Precision of language—Appointed V.-C. of County Palatine of Lancaster—Reforms in Chancery procedure—Re-elected at Aylesbury.

GREAT professional success usually disposes a barrister to seek a wider sphere of distinction than the profession itself affords. In this he has other motives than those of mere ambition. When once a leader has attained the highest forensic position he cannot long continue in that stay. He must pass on into the judicial ranks, or retire into private life, or begin the inevitable descent. A fashion obtains in the choice of counsel, which in its rise, duration, and decline is almost as capricious and fickle as fashion in other matters: the popular leader holds his position by a precarious tenure. Mr. Bethell had already refused the offer of an equity judgeship. It was hardly to be supposed that a man of such exceptional powers would, while in his prime, prejudice his chances of the highest honours and sacri-

fice an enormous income for a puisne judgeship. It does not appear that he had grown weary of the advocacy in which he so greatly excelled, but the times were changed and changing, and the necessity of a new departure was strongly forced upon him by his friends. With some reluctance he was induced by their urgent remonstrances to seek a seat in Parliament.

It had long been a matter for surprise and regret among his friends that he had confined himself with such exclusive devotion to his professional pursuits. They believed that an earlier initiation into public life would have strengthened and expanded his character, and relieved it from the academic pedantry which a private education and the narrow confines of the Courts of Equity had encouraged. They feared, too, that his mind, so long accustomed to a purely legal atmosphere, might have acquired a technical bias which would unfit him for the more practical work of a public career. He himself constantly dwelt with regret on the prospect of having to exchange the comparative freedom of his professional position for the restraints of parliamentary life. 'Why should I,' he used to say, 'take upon myself this unwelcome addition to my everyday work? With my family around me I have everything I can desire, and I am perfectly happy and satisfied with the position I hold in the profession.'

His ambition and pride always lay very much more in the full development of his professional

powers as one of the greatest of equity lawyers than in any parliamentary successes he might obtain. He had never cared much for 'the sterile din of politics;' and it would seem that at this time he was indifferent to the doctrines which distinguished parties. The only *rôle* for which he was prepared was that of law reformer, and there has been abundant proof during the present century that legal reforms can be designed and effected as thoroughly by Conservatives as by Liberals. In matters of foreign policy, which then occupied the chief attention of public men, he had little interest.

Lord Brougham, who was approaching his 70th year, had in the four years of his Chancellorship (1830-1834) shown remarkable energy in legal reform. After quitting office with his party in 1834, he might naturally have expected to resume his former position when the Whigs came into office again under Lord Melbourne the following year, but for reasons connected, it would seem, with his personal characteristics, he was not restored, and the Great Seal was put in commission.[1] This neglect rather, it may be, than the change which the moderating influence of time had made in his opinions somewhat estranged him from his

[1] Lord Campbell had put forward his personal claims, urging, according to his own account, that from his position and his services the public would expect that he should be preferred. But the fear of Lord Brougham's resentment gave Lord Melbourne an excuse for refusing.—*Vide Lives of the Lord Chancellors*, vol. viii. p. 466.

party, and in matters of general policy he began to show some leanings towards Toryism. But he remained an ardent law reformer, and was destined to take an important part in the impending changes.

Foreseeing, with his usual acumen, what a strong ally Bethell might prove, Lord Brougham urged him to stand for Frome in the Conservative interest at the general election of 1847, and bespoke for him the support of the Marchioness of Bath and her father, Lord Ashburton, the guardian of the then infant Marquis. The interest of the Wesleyans was all powerful in the borough, and their vote seemed for a time uncertain. But the sitting member had so long held possession undisturbed that, as the nomination day approached, Mr. Bethell saw that the fight was a hopeless one, and retired, much to the chagrin of his partisans at Longleat.

He immediately afterwards allowed himself to be put in nomination against Mr. R. B. Sheridan for Shaftesbury. Here again he was very late in the field, but he entered on his canvass with great spirit, and is remembered to have made some capital speeches. The result of the poll, however, was unfavourable, the numbers being—Sheridan, 213; Bethell, 176. It was afterwards asserted by his opponents that, short as his stay was, Bethell found time to talk the rankest protectionism; but he himself declared, when taxed with inconsistency, that he had canvassed on the principles of Sir Robert Peel—that there were two kinds of pro-

tectionism. His protectionism was designed to relieve the tenant-farmer from the burdens and incumbrances which weighed him down to the earth, and from the exorbitant rent which he paid to his landlord. Protection to the landlord he utterly disclaimed as 'a wicked principle, because it taxed the bread of the people.'

In 1849 he formed some intention of standing for the since disfranchised borough of Shoreham in Sussex. He was solicited, as he afterwards declared, by the late Duke of Richmond to come forward on Peelite principles, and the Protectionist whip went to his chambers to induce him to forego his intention. He did forego it, not, as his political opponents afterwards represented, in consequence of the pressure applied by the Protectionists, but because, as he himself declared, he was unwilling, having no property in the county, to represent so large a constituency. It may, however, be safely assumed that Mr. Bethell was not at that period counted as one of the Liberal party.

Subsequently he received an invitation to stand for Salisbury. His recent experiences made him cautious in accepting the too favourable assurances of partisans. So he sent down a confidential agent to reconnoitre the position. This gentleman took down with him a sealed packet of instructions, which he was not to open until he received a despatch from Mr. Bethell. For twenty-four hours after his arrival the agent held the field, making the

acquaintance of the leaders of the party and attending their meetings, but taking particular care not to commit his principal to any definite action. Then the despatch arrived, and the packet, on being opened, was found to contain a polite, but definite refusal by Mr. Bethell to be nominated.

It does not seem that these disappointments weighed heavily on him; he was content to wait his time. The removal by death of Sir Lancelot Shadwell from the Court in which Mr. Bethell had so long enjoyed supremacy probably made him keener for a change in his position.[1] Several of his contemporaries, merely through political claims, had reached the bench, and he was constrained to practise before men whom he might, without disrespect, consider his inferiors in ability. Moreover, there were unsettling influences abroad; great changes were contemplated in Chancery practice; new courts with new judges were about to be constituted. Bethell was expected to take a leading part in framing the new procedure.

Early in 1851 the Conservatives of Coventry applied to his friend, Mr. T. E. Rogers, with the view to ascertain whether Mr. Bethell could be induced to contest the borough in their interest.

[1] The Vice-Chancellor died in August 1850. Within a week of his death he wrote to Mr. Bethell: 'A little returning strength enables me to express the warmest wishes for the prosperity of yourself, Mrs. Bethell, and all your family. In public life I shall never be able to appear again; but I hope always to be able to wish you the prosperity that you justly deserve.'

He seems to have been at this time in a state of political transition, and to have shared the perplexity in which the peculiar condition of parties had placed many moderate men. The Whig Government of Lord John Russell was drawing to the close of its inglorious existence, but the opposition of the Peelites to Lord John Russell's action on the question of Papal Aggression had estranged many of the Anti-Papal party who might otherwise have thrown in their lot with the Conservatives. The following extracts from a letter written by Mr. Bethell at this juncture explain the peculiarity of his position:—

'I have always considered myself one of Sir R. Peel's party, but the conduct of the would-be leaders, Sir J. Graham and others, in the recent debate, renders it impossible for me to rank as one of their followers. I cannot for a moment agree with Sir J. G., either on the question of Papal Aggression or the extension of the franchise, and I am somewhat disgusted with the whole of his recent conduct.[1] With the Protectionist party I could not possibly act. To become an ally of the present feeble, imbecile, ne'er-do-well Government would be equally impossible.

'I really do not know, therefore, on what footing to come forward. My own views are, I imagine, quite clear and decided, but I am afraid they would be regarded as a sort of "coat of many colours," a kind of patchwork vestment composed of pieces taken from each of the contending parties. I am afraid I should appear to be a sort of nondescript, and that the electors would as little understand my principles as they would my independence

[1] The Ecclesiastical Titles Assumption Bill, introduced by Lord John Russell, was read a second time after seven nights' debate on 25th March 1851. Sir James Graham spoke and voted against it, on the ground of its interference with civil liberty. He had expressed his willingness to entertain the general question of some extension of the franchise.

and indifference to the ordinary objects of ambition. As to Coventry, Edward Ellice is a very old and crafty electionist. If he has not pledged the Government to any man, I do not think they would oppose me, but I fear this would not suit Mr. Wilmot's party. I mean, suppose I was announced on Peel principles of Free Trade and Liberal-Conservatism, but decidedly Anti-Papal, and that at the same time it should appear I had the Government support, or at least non-opposition, would this latter circumstance cause me to be considered as "neither hot nor cold," and therefore to be rejected? I shall be at the House of Lords to-morrow from ten o'clock. If not otherwise engaged, can you come and speak to me there about two, and I will ascertain from the Lord Chancellor the views of the Government?'

The Coventry Conservatives were unwilling to be represented by so lukewarm a politician, and the negotiation fell through. Mr. Bethell's own explanation shows that his views, clear and decided though they might appear to himself, were not those of a partisan; nor, indeed, was he of the stuff from which party-men are made. Both Liberals and Conservatives had been in a state of disorganisation since the repeal of the Corn Laws, and party-lines were for the time confused. But after making all deductions for these circumstances it is evident that Mr. Bethell's political sympathies had undergone some change, and that, slowly but surely, he was veering towards Liberalism.

In the same month a vacancy occurred at Aylesbury through the unseating, on petition, of Mr. Calvert, one of the two members,[1] and at the

[1] The death of Lord Nugent had caused a by-election, and Mr. Calvert's return was successfully impeached on the ground of general treating in the constituency.

request of Mr. (afterwards Sir William) Hayter, Mr. Bethell boldly came forward as an Anti-Protectionist against Mr. Bousfield Ferrand, who was then generally supposed to be the most violent and formidable antagonist that could be met on the hustings. A third candidate, Mr. Houghton, a Liberal, who had just been defeated by Mr. Calvert, also announced his intention of standing, but on the powerful support of the Rothschilds being procured by Lord Brougham for Mr. Bethell, he was persuaded to retire. The constituency numbered 1292 votes, and party-spirit, as is usually the case after a successful petition, ran high.

It might have been supposed that Mr. Bethell's distinguishing abilities would have been lost on the average elector, and that his precision of manner would stand in the way of his becoming a popular candidate; but his nimble wit and the promptitude with which he met adverse criticism astonished even the friends who had gone down with him. But though his speeches obtained a good hearing he was less successful in canvassing, which indeed he utterly abhorred. 'He was very irritable,' writes Mr. Robert Gibbs of Aylesbury, who often accompanied him in his rounds, 'and could not endure "those bores," who, as electors, were continually applying for some private advantages. You would be surprised at the fatal effect which a dissolution had on horses, donkeys, pigs, etc. Every man who had lost one of these animals had an idea that it

was the candidate's duty to replace it.' When annoyed by these importunities, Mr. Bethell, it seems, was wont to express himself with surprising vigour and frankness.

He writes to his youngest son with reference to this subject: 'S—— is here with me, and we are busy canvassing, but it is a most disagreeable task. If you look into *Coriolanus* in Shakespeare, you will see exactly my sentiments about the matter.'

Mr. Bethell had been denounced by the local Conservative paper as 'a learned Chancery privateer,' but the interference of the Rothschild family in the contest seems to have been more resented than the intrusion of the legal stranger. When his turn came to address the electors on the nomination day, he sprang upon the table, threw off his usual manner, and made a rattling speech to the crowded assembly. The *claqueurs* who had been hired to ridicule him ceased to interrupt before he had spoken for a couple of minutes. As soon as he had warmed to his work they became eager listeners, and at last enthusiastic in their applause.

In his speeches he sought to vindicate himself from any charge of inconsistency on the question of protection. He said he had entertained but one set of opinions since first he became a candidate for public life; they were those laid down by the great author of free trade. He was decidedly opposed to Church rates and the establishment of a Roman

Catholic hierarchy in this country. With reference to the suffrage question, a great measure for its extension was in hand; but though the present Government was the only exponent and representative of Liberal policy, he had not the greatest confidence either in its capacity, its strength, or its will to carry that measure. Alluding to reforms of the law, he believed himself competent to do good in this respect, and that was one of the chief reasons why he was desirous to receive the support of the constituency. He referred to his refusal of the position of Vice-Chancellor, because he had preferred the freedom and independence of the bar. On the very day of the election he expressed his strong wish to preserve also the 'freedom and independence' of private life. Towards the close of the poll he told one of his friends he had been praying ever since twelve o'clock that he might not be returned. The prayer was unheard. Mr. Bethell polled 544 votes against his opponent's 518, and took his seat in Parliament on 14th April 1851, as a general supporter of Lord John Russell's Government.[1] It would seem, however, that he had some idea of maintaining the character of a political free lance, for on going down to the House

[1] A petition was presented against the return, purporting to be signed by an elector, whose name was in fact unwarrantably affixed by a solicitor at the request of his partner. For this breach of privilege the delinquents were brought to the bar, and severely reprimanded by the Speaker in accordance with the order of the House.

for the first time, he innocently inquired what seats were appropriated for perfectly independent members. On being told there were none, he placed himself on the Ministerial benches.

The Committee of the Conservative Club, of which he was a member, were not slow to notice the charges of political apostasy made against Mr. Bethell. Notwithstanding his courageous assertion that his views had undergone no material change, and the fact that he had been nominated for Aylesbury by a member of the club,[1] it was plain that his recent speeches contained expressions which were at variance with Conservative principles; and, moreover, he had taken his seat on the Ministerial side of the House. A meeting was summoned by the Committee to consider the charges, and a very large number of the members assembled.

Mr. Bethell having cheerfully asserted his readiness to justify his conduct, attended the meeting, faced his opponents single-handed, and, in a pungent speech, exerted all the ingenuity of his consummate advocacy to prove that the language he had held did not contravene the rule which defined the meaning of Conservatism as professed by the members. One of the more violent of his opponents had something to say in aggravation of the offence: 'And, sir,' he said, 'common rumour asserts,' etc. 'Then common rumour,' retorted Bethell, 'is a lying jade.' The subtle distinctions of the equity lawyer and the

[1] The late Mr. Acton Tindal, Clerk of the Peace for Bucks.

peculiar style of his rhetoric were not appreciated by some of his audience, and at last an old fox-hunting squire shouted in a stentorian voice from the further end of the room, 'Speak up!'—'I should have thought,' replied Bethell, in his quiet tone, now quite reckless as to what he said, 'that the honourable gentleman's ears were long enough to catch my articulate utterances even at that distance.' However, he had absolutely no case, and all his efforts were in vain. A resolution, moved by the chairman, the late Earl of Shrewsbury, to the effect that Mr. Bethell's explanation was not satisfactory, and that he was disqualified from continuing to be a member, was carried by a large majority, and Mr. Bethell retired without further protest.[1]

He was never a really clubbable man, and had withdrawn from the Athenæum three years after his election in 1827, to escape the importunities of would-be members of that club. He was, however, consoled for his expulsion from the Conservative Club in an unexpected manner. Mr. A. W. Kinglake the next day saw Lord Stanley of Alderley, then Under-Secretary for Foreign Affairs, and, having mentioned the circumstances to him, suggested that the new member for Aylesbury should be elected to Brooks's. Lord Stanley knew nothing of Mr. Bethell, but, moved by Mr. Kinglake's friendly representations of his commanding

[1] I am indebted for the statement of these facts chiefly to Lieut.-Col. Sir William Topham, who was present at the meeting.

abilities, so exerted his influence that the ex-member of the Conservative Club was admitted to Brooks's in the course of a few days.

Mr. Bethell soon discarded the 'patchwork vestment' of a political nondescript, and by degrees assumed a pronounced Liberalism. His Conservatism, such as it was, seems to have been confined to the assertion of Peelite principles. For Sir Robert Peel's character and career he always expressed lively admiration, and would eulogise the moral courage and honesty with which Sir Robert, releasing his mind from early prejudices, accomplished the three great reforms with which his name is associated.

The period was one of great interest in political history, both from the peculiar relations of parties and the subjects of debate in Parliament. Lord John Russell's government had just sustained a severe shock through the narrow majority by which Mr. Disraeli's motion in favour of relief for agricultural distress had been rejected.[1] They were further weakened by their defeat immediately afterwards on Mr. Locke King's motion for leave to bring in a Bill to assimilate the franchise in borough and counties by giving the right of voting to £10 occupiers. Chiefly through the abstention of their

[1] The motion was to the effect that the severe distress which continued to exist among the owners and occupiers of land rendered it the duty of Government to introduce, without delay, effectual measures for its relief. It was negatived by 281 to 267.

supporters the Government were beaten in a thin House by a majority of nearly two to one. The unfavourable reception accorded to the Budget, which proposed merely a partial reduction of the unpopular window tax, and renewed the almost equally unpopular income tax, had still further damaged their position, and a Ministerial crisis followed. The Ministry temporarily retired from office, but resumed it on Lord Stanley finding himself unable to form a Government likely to obtain a working majority. Lord John Russell's unsuccessful attempt to reconstruct his administration by including in it Lord Aberdeen and Sir James Graham, both of whom were strongly opposed to the penal measure against Papal Aggression then before Parliament, had indeed left the late Ministers no alternative but to resume their seals.

Scarcely had Mr. Bethell taken his seat when the restored Government sustained a fresh defeat on Mr. Hume's amendment limiting the duration of the income tax to one year, and they were again twice outvoted on questions of fiscal policy before the end of the session. These reverses drew from Mr. Disraeli, leader of the Opposition, an ironical declaration of confidence in the vitality of the Government, on the ground that the dangers which they had successfully encountered, the catastrophes which they had evaded, and the crises which they had baffled—all indicated the possession, if not of immortal, yet of very enduring qualities. It was not expected that the dis-

credited Government would survive the remaining session of the existing Parliament.

Mr. Bethell's maiden speech in Parliament was made on one of Sir F. Thesiger's Amendments to the Ecclesiastical Titles Assumption Bill as to the recovery of the penalties proposed, when, though strongly opposed to hyper-papal pretensions, he supported the Government in resisting an attempt to increase the stringency of the measure. A week later he spoke again on the Government Bill to improve the administration of justice in the Court of Chancery by the establishment of the Court of Appeal. This was a subject on which he was naturally listened to with attention. As the Court of Chancery was then constituted, the Lord Chancellor's Court was the only appellate tribunal in the first instance; and this tribunal, besides being open to the objection that appeal lay from a single mind to another single mind, always had heavy arrears of business through the pressure of the Chancellor's political and judicial duties.

Mr. Bethell illustrated the inconveniences of the existing system by citing an appeal to the House of Lords, in which he had lately been employed. The suit involved half a million of money, and the costs of preparing for the hearing alone were between £5000 and £6000. But three whole sessions passed away without seeing any decision of the case; and then the death of the Lord Chancellor obliged the parties to begin again, the time and money spent being

absolutely wasted. The Lord Chancellor had been so involved in the duties of his own Court that he found it impossible to give proper consideration to the appeal in the Lords. Mr. Bethell cordially supported the proposal to form a fresh Court of Appeal as a first instalment of long-needed reform. He did not rest his arguments exclusively on the interests of suitors. Taking a more comprehensive view, he urged the importance of having, as head of the law, a responsible person to control the composition of Acts of Parliament and fulfil the functions of Minister of Justice.

Towards the close of the session he took part in the debate on Chancery reform. He enlarged on the extended jurisdiction of the Court, and the enormous increase in its business consequent on the railway mania, declaring, with some plausible exaggeration, that four or five judges were required to undertake duties which it would take thirty properly to perform. If, in these later days, when there is difficulty in obtaining the appointment of a sixth Chancery judge, we reduce the thirty by one half, *cela serait encore admirable.* But from the tenor of his observations it would seem that the great Chancery leader had not at that time shaken himself free from the trammels of professional tradition, for he did not advocate any very extensive reform of the procedure in which he was so well versed. When the Bill to create the new Court of Appeal got into Committee he took a conspicuous part in its discussion and amendment.

Early in the session Lord John Russell had introduced a Bill with the object of admitting Jews to Parliament. In the previous session Baron Lionel Rothschild, the Jewish member for the city of London, was, in accordance with the resolution of the House, allowed to be sworn on the Old Testament, but in taking the oath of abjuration he had omitted the words 'upon the true faith of a Christian' as not binding on his conscience. Much discussion ensued, but eventually resolutions were adopted denying the Baron's right to sit or vote until he had taken the oath in the usual form, and pledging the House to take the form of the oath into consideration in the next session, with the view to relieve the Jews from existing disabilities. The Bill now brought in by the Prime Minister to fulfil that pledge proposed simply to omit from the oath the words to which the Jews objected. The Bill passed in the Commons, though by a smaller majority than on previous occasions, but, in spite of Lord John Russell's urgent appeal for deference to the privileges of the Lower House, it was rejected by the Lords.

The day after the division Alderman Salomons, who had been elected for Greenwich, presented himself in the House of Commons and took the oath, as Baron Rothschild had done, with the omission of the concluding words. Upon this he was directed to withdraw, and obeyed; but during the adjourned debate he again entered the House, and not only refused to withdraw but even voted on a motion for

adjournment. In the discussion which followed the law officers expressed their opinion that the oath had not been legally taken, but Mr. Bethell, in an elaborate speech which made a marked impression for its lucid and masterly handling of the subject, took the opposite view. He argued that the ductile character of the oath entitled every member to have it administered in the form most binding on his conscience, and that the concluding words were only the sanction of the oath, not a substantive part of it.

To Lord John Russell's motion that Mr. Salomons was not entitled to sit or vote until he had taken the oath in the form appointed by law, Mr. Bethell moved an amendment, declaring that both Baron Rothschild and Mr. Salomons, having taken the oath in the manner in which the House was bound by law to administer it, were entitled to take their seats. After an exhaustive review of the enactments bearing on the question, he expressed the deliberate opinion that the rule of the judicial courts in the administration of oaths was applicable to the political oath, and deprecated the introduction of a declaratory Act as superfluous, seeing that the admission of Jewish members was opposed only upon petty technical objections which could be triumphantly met upon well-known principles of law. The Attorney-General, Sir A. Cockburn, combated these views with great vigour, and the amendment was rejected by a majority of 47.

On the subsequent motion for the adjournment of the debate Mr. Bethell made a sharp attack on Lord John Russell, who declared his intention to re-introduce a relief bill, denouncing the Prime Minister's original motion as a miserable truism—a piece of bad English—which would make the House supremely ridiculous in the eyes of the country. Subsequently he again spoke at considerable length, declaring that the great principle had evolved itself for the first time:—Shall any citizen of this empire, in all other respects qualified to be elected a member, be excluded from the House on account of his religious faith?[1] He urged the Government to refer the question to the tribunals to which the constitution had committed the duty of interpreting the statute law, instead of sacrificing a great principle by bringing in an Act to make law of that which was already law. In reply, Lord John Russell took his stand upon the decision which the House had come to in the case of Baron Rothschild, maintaining that the question was one for Parliament rather than for a Court of law. The only immediate result of the debate was to display the remarkable differences of opinion among the most eminent of the legal authorities on a purely legal matter.

[1] It will be remembered that throughout the frequent discussions which took place in the Parliament of 1880 on Mr. Bradlaugh's claim to affirm, this principle 'which,' in the words of Mr. Gladstone, 'totally detaches religious controversy from the enjoyment of civil rights' was strenuously insisted on.

In connection with this subject may be mentioned a curious instance of Mr. Bethell's remarkable precision of language, which was so habitual that his hearers were sometimes at a loss to know whether he was stating his own argument or quoting some authority. After one of his speeches on the Jewish disabilities, Hansard's report was sent to him for correction in the usual way. Being intensely busy at the time, Mr. Bethell asked one of his legal friends to look through it for him. On perusing the speech the friend was astonished to find a passage printed in small type as being an extract from a statute which seemed to settle the question of the right of Jews to take the oath in their own way entirely in their favour. His first idea was that Mr. Bethell's ingenuity had discovered a statute which had eluded everybody else's vigilance, but on looking into the matter he found there was no such enactment. It then transpired that Mr. Bethell, founding his argument on the general tenor of an Act of Parliament, and meaning merely to assert his construction of it, had stated his argument with such elaborate precision that the reporter was misled into supposing it to be a quotation from the Act itself.

The same precision marked his ordinary conversation, which was rather a lecture or allocution than the colloquial interchange of ideas. It was admirable for its clearness and cogency, and admitted on all hands to be very improving. But the majority of people resent having their minds im-

proved, except on their own motion and in their own way, and many disliked Bethell's spoken essays.[1] Those who were disposed to listen were well rewarded, for, like Bacon, he seemed to have taken all knowledge to be his province. During a railway journey on which a gentleman who was a stranger engaged him in conversation, Mr. Bethell discoursed with such magical effect on law, physic, divinity, and classics, that his fellow-passenger at the end of the journey was at a loss to determine which was his profession. On such occasions he could interest men in subjects of which they had no previous knowledge.

In the early part of this year Mr. Bethell became Vice-Chancellor of the County Palatine of Lancaster, succeeding Sir W. Page Wood, who had resigned the office on being appointed Solicitor-General. The Court, which had been reformed at the instance of Sir W. P. Wood, exercises the same equitable jurisdiction as the Court of Chancery as regards persons and property within the county, and a salary of £600 a year is attached to the Vice-Chancellorship. It gave Mr. Bethell his first experience of judicial duties.

In 1848 the house at Highgate was given up, and the family removed to West Hill, Wimbledon,

[1] Dr. Johnson expressed himself on this point with his usual vigour: 'Sir, there is nothing by which a man exasperates most people more than by displaying a superior ability of brilliancy in conversation. They seem pleased at the time, but their envy makes them curse him at their hearts.'

where, however, they only remained one year. The following winter was spent at Brighton, for the benefit of Mrs. Bethell's health, after which a house was taken in Gloucester Square, London, with a view to Mr. Bethell's parliamentary duties. In the summer of 1851 their eldest son, Richard Augustus Bethell,[1] married Miss Mary Florence Luttrell, daughter of the Reverend Alexander Fownes Luttrell, Rector of East Quantoxhead, Somerset.

When Parliament reassembled in 1852 it was evident that the Government were seriously disposed to undertake legal reforms. The improvement of the administration of justice occupied a foremost place in the enumeration of the measures promised in the Queen's Speech, probably because the subject was one less likely to try the failing strength of the Ministry by attracting party opposition. Law reform was at this period in perpetual motion. The mover of the address in the House of Commons declared that the Court of Chancery always was, and would be till Parliament reformed it, a plague and misfortune to the country; while the observations of Lord Derby in the Upper House showed an equal readiness on the part of the opposition to undertake its total reorganisation.

Before, however, their promised measure could be presented or even framed, the Government fell some-

[1] The Hon. Richard Augustus Bethell became, on his father's death, the second Lord Westbury. He died in 1875.

what ingloriously before Lord Palmerston's opposition to the Militia Bill; and the duty of commencing the reforms devolved upon Lord St. Leonards, as holder of the Great Seal in the Administration formed by Lord Derby. It was perhaps as well that the measures for improving legal procedure passed just then into the hands of the new Government; for though the contemplated reforms were avowedly founded upon the report of the Law Commission, which had originated with Lord John Russell's Government, the late Ministry had shown a marked inability to place any important measure on the Statute Book.

Substantial alterations were plainly needed in the cumbrous machine of Chancery procedure. In spite of all the abuse lavished on the Court, its business had doubled during the past thirty years. In the time of Lord Eldon, a Chancellor and a Master of the Rolls were at first considered an adequate judicial staff. Since then three Vice-Chancellors and another Appeal Court had been added. Popular writers and public speakers covered the Court of Chancery with ridicule, but seven Judges now failed to satisfy the requirements of the constantly increasing number of suitors who resorted to it. The procedure, not the jurisdiction, was at fault.

The public had long bitterly complained of the cost and delay inseparable from any attempt to obtain relief in equity. Successive Chancellors had tried by issuing orders to simplify the practice; but the

evils of a system which in its forms and pleadings exhibited the peculiar growth of equity jurisdiction demanded a more radical treatment. Before 1852 every suit commenced with a bill, which first set forth with intolerable prolixity the facts of the plaintiff's case. These were followed by various charges and allegations of imaginary circumstances, with the view to elicit admissions of possible facts, and anticipate any possible defence. Then came a sweeping averment that the acts complained of were contrary to equity and left the plaintiff without relief except by the Court's assistance. An interrogating part, repeating by way of interrogatories the matters supposed to be essential to the plaintiff's case, succeeded, and the bill wound up with a prayer for relief and the issue of process.

The whole bill was framed with the utmost redundancy of technical expression. If the suit thus launched was imperfect in its frame or became 'abated' by accident, such as the death, bankruptcy, or marriage of one of the parties, the defect had to be amended by a new bill by way of addition to, or continuance of, the original bill. Thus there were supplemental bills, bills in the nature of supplemental bills, bills of review, bills in the nature of bills of review, and bills of review and supplement; some of which were again subdivided into distinct kinds, each nicely distinguished by a slender difference, between which the bewildered draftsman took his choice

according to his own fancy. After the answer and replication came the examination of witnesses taken by official examiners, not *vivâ voce*, but by written deposition upon written interrogatories. Cross-examination sometimes ensued, to be succeeded by various reconnaissances, more or less in force, by one or other of the hostile parties, by means of petitions, references to the Master, exceptions to the Master's report, or some other interlocutory application, as a prelude to the great struggle at the hearing of the cause, each party displaying throughout a proper reluctance to leap before he came to the fence. There was much justice in Oliver Goldsmith's complaint that such a method of investigation embarrassed every suit, and even perplexed the student, for more time was spent in learning the arts of litigation than in the discovery of right.

Nor when the decree was pronounced was the matter in dispute necessarily laid to rest. The often contradictory notes of the decree on the briefs of the opposing counsel gave rise to fresh disputes as to the form in which the decree should be drawn up. If any party was dissatisfied, as some one generally was, with the minutes settled by the Registrar, he applied to the Court, and the cause came on again before the Judge 'to be spoken to on the minutes.' Long wrangles ensued, which frequently exhausted the greater part of a day. Mr. Bethell was notorious for the promptitude with

which he noted down the proposed minutes on his brief while the decision was being given, and the acumen with which he framed them to the greatest possible advantage of his client.

The whole system seemed ingeniously contrived to create delay and costs. Well might the late Mr. Jacob declare that the importance of the questions in a cause was in this ratio—first, costs; second, pleading; and third, very far behind, the merits of the case. Independently of the pleadings, equity was still a science rather experimental than practical. In their decisions the Chancery Judges were compelled to grope for principles among the infinite details and rapidly-increasing mass of innumerable cases, and treated any dictum of Lord Eldon with the reverence due to a statute.

With commendable alacrity the new Government pushed forward their measures to amend the procedure of the superior courts, thus putting their sickle, as Mr. Bethell complained in one of his speeches at Aylesbury, into the field of standing corn which the Liberal Government had brought to maturity. The remarkable zeal and energy displayed by Lord St. Leonards in promoting these measures,[1] and the very uncommon concurrence of opinion among lawyers in both Houses as to their expediency, made the task of

[1] The Common Law Procedure Act and Acts for Abolishing the Master's Office and Improving the Jurisdiction in Equity.

passing them comparatively light. The Acts of 1852 revolutionised the equity system. The office of Master was abolished, the Masters being, in the tender words of the statute, 'released from their duties,' and Judges' chambers with Chief Clerks attached were established for the transaction of minor business. At the same time the Chancery practice was entirely remodelled. Printed bills took the place of engrossments on parchment; bills of review and amendment were superseded by simple amendment of the original bill; every bill was to contain a concise narrative of the material facts without interrogatories, and oral evidence was made permissible. Mr. Bethell had sat on the Commission for reforming the Court of Chancery; and in the discussions on the Chancery Bills he added considerably to his growing parliamentary reputation.

At the General Election of 1852 he and his colleague, Mr. (now Sir Henry) Layard, were again returned for Aylesbury by substantial majorities.[1] The elections produced little material alteration in the relative strength of the parties; but the comparatively small number of Protectionist members returned to the new Parliament precluded any possibility of a successful attempt to restore a duty on corn. The views of the Government, as expounded in the Speech from the Throne and the

[1] The numbers polled were—Layard, 558; Bethell, 525; Dr. Bayford, 447; Lt.-Col. West, 435.

explanations elicited from Ministers in Parliament, showed a readiness to abide by the verdict of the constituencies, and a desire to escape from the embarrassment of a false position by vague promises of a policy which would mitigate the injustice of Free Trade and relieve the owners and occupiers of land through some readjustment of taxation and other changes in the fiscal system. The subsequent acceptance, forced on the reluctant Government, of Lord Palmerston's resolutions affirming the principle and benefit of Free Trade practically closed a controversy which had occupied the attention of three Parliaments.

We may learn from a letter written at this time by Mr. Bethell to his eldest daughter, whose husband then held one of Lord Derby's livings near Knowsley, how severe is the strain put on those who add parliamentary duties to heavy professional labours :—

'I have been very desirous of writing to you for some days past to thank you for your most affectionate letter of congratulation to your dear parents on their twenty-seventh wedding-day, with which I was very much delighted. My only regret is that you are so far removed from us that we cannot see you but at such distant intervals. I had hoped that I should have been able to have visited you on the occasion of my coming to Manchester next Saturday to hold my Court, but at present I know not how I shall escape from my embarrassments.

'The debate on the great question of Free Trade, which has begun to-night, will very probably last two or three nights, and may not terminate until Friday; and it is not impossible that I may be detained here all Friday night, which is the

time I have fixed for being at Manchester to hold my Court on Saturday. What I shall do I cannot imagine. It is not impossible there may be a division about eleven or twelve on Friday night, and I must, I fear, take a special train to get to Manchester, travelling all the rest of the night. On the Monday after, I have to argue the great case of *Rangers* v. *The Great Western* in the House of Lords, and I do not, therefore, see a probability of my being able to get over to you. My engagements are now so certain to be engrossing during the whole period of the year given to business, that it is useless to calculate on any power in me to do more than just answer the engagements of my profession.'

The operatic case of *Lumley* v. *Wagner*,[1] in which Mr. Bethell was engaged in the summer of 1852, may be mentioned, as it involved an important point of equity jurisdiction on which the authorities were conflicting, and excited at the time general interest. Mdlle. Johanna Wagner, cantatrice of the Court of the King of Prussia, had entered into an agreement with Mr. Lumley to sing at Her Majesty's Theatre for three months, at a salary of £400 per month, and not to sing elsewhere without his authority. Subsequently she repudiated this agreement and accepted an engagement from Mr. Gye, the proprietor of the Royal Italian Opera, to sing for a larger sum at the rival house. On a bill filed to restrain the *prima donna* from singing for Mr. Gye, an injunction was granted by Vice-Chancellor Parker, and the defendants appealed. On the eve of the argument—indeed within forty-eight hours of the hearing of the appeal—the leading

[1] 1 De Gex, Macnaghten and Gordon, p. 604.

counsel for Mr. Gye, one of the appellants, was promoted to the Bench, and therefore compelled to return his brief. In this extremity Mr. Gye sought the advice of Mr. Bethell as to the selection, at such short notice, of a new leader. The case was of an extremely complicated and voluminous nature. Mr. Bethell asked that the papers should be sent to him that he might see their contents before giving the advice desired. On the following day (the day before the argument) he told Mr. Gye that the case was one of such difficulty and importance that to suggest any one as leader was a responsibility towards others which he scarcely cared to assume; but that if Mr. Gye would entrust the appeal to him he would argue it himself. It is needless to say that this offer was gratefully accepted, and the brief was left with Mr. Bethell, who conducted the whole of the argument.

It was admitted that the Court had no power to compel Mdlle. Wagner to sing at Her Majesty's; but Mr. Bethell argued for the appellants that as the Court could not decree specific performance of the entire agreement, the jurisdiction by injunction did not apply to the negative stipulation. Lord St. Leonards, however, held that the Court had power to restrain Mdlle. Wagner from singing elsewhere. Notwithstanding the great extra tax upon his time and labour, which the study and conduct of the case involved, Mr. Bethell persistently refused to accept any fee or remuneration whatever for this generous service.

CHAPTER V

1852–1855

Defeat of Lord Derby's Ministry—Formation of a Coalition Government—Appointed Solicitor-General—Official duties—Ministerial programme of Law Reform—Succession-Duty Act—Colonial Church affairs—Relief of Jewish Disabilities Bill—Views on Legal Education—Bridgewater case—Sir Richard Bethell and the Judges—Legal anecdotes.

THE Government had barely escaped from the difficulty in which they had been placed by the attitude which some of the Ministers had held towards protection when they encountered a fresh one in the opposition made to the proposals of Mr. Disraeli's budget. A hostile combination of Whigs, Liberals, and Peelites put them in a minority of nineteen on a question which they had chosen to regard as vital to their existence, and they resigned. Mr. Disraeli, in closing his reply in the debate, forecast the future: 'Yes! I know what I have to face. I have to face a coalition. The coalition may be successful—a coalition has before this been successful. But coalitions, although successful, have always found this—that their triumph has been brief. This, too, I know, that England does not love coalitions.'

Yet in the existing condition of parties a combination such as that formed by Lord Aberdeen, including Lord Palmerston and Sir James Graham, Lord John Russell and Mr. Gladstone, was the only possible administration. Neither the Whig supporters of Lord John Russell nor the followers of the late Sir Robert Peel were alone strong enough to take office. The leading men of both these parties, long rival and antagonistic, put aside their differences, and agreed to act together.

The reputation which Mr. Bethell had gained in the year and a half during which he had been in Parliament secured for him an official position in the new Ministry. Sir W. Page Wood, who had been Solicitor-General in the last Liberal Administration, took the Vice-Chancellorship vacated by Lord Cranworth's acceptance of the Great Seal, and Mr. Bethell became Solicitor-General and was knighted.

No more signal proof of his adaptability could be given than this appointment to office after such a brief parliamentary experience. Taking his seat in the House of Commons when he was of middle age, his whole life having been exclusively devoted to the technicalities of his profession, exhibiting a refinement in reasoning and a scientific method, which, added to his peculiarities of manner, seemed likely to unfit him for success in a popular assembly where the most eminent lawyers very often fail, he had been able by the sheer force of versatile ability to win his way, in the course of a couple of

sessions, to official rank. With Sir Alexander Cockburn and Sir Richard Bethell as their representatives, the Government were unusually well equipped with legal talent in the House of Commons.

On his appointment he was returned unopposed for Aylesbury, the only candidate for many years—as he proudly told the electors—who had stood unopposed on an Aylesbury hustings. We may note his emphatic advocacy on that occasion of what was then the advanced Liberal programme. He spoke in favour of a large extension of the franchise and the concession of the ballot. Referring to the obstructions in the way of transferring real property, he said he wished to make it as easy to transfer land by means of a register as it was to transfer £100 in the funds—a process which would involve no more expense than was necessary to identify the owner. In concluding his speech he declared that it was his ambition to devote his powers to the reform of the law in the spirit of the maxim that he who reaped an advantage from a profession should endeavour to make it pure.[1]

The official duties of the Law Officers are rather legal than political. They involve, in addition to regular attendance in the House of Commons and the jealous scrutiny of the legal bearing and conse-

[1] 'I hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereunto.'—*Bacon.*

quences of proposed measures, the consideration, outside the House, of multifarious questions of international and public law—in short, every conceivable question on which the Executive requires legal advice. Sir A. Cockburn, writing to his colleague soon after his appointment, specifies a dozen cases which, he says, 'it is certainly very desirable that we should knock off this week'—cases in which such varied subjects as a Convention with the United States, a criminal prosecution, Orders in Council disallowing an Act of a Colonial Legislature, a legacy-duty claim, compensation to Government clerks, the expulsion of a militiaman from a benefit society, and a college charter, were included. For the purpose of dealing with these official matters a vast deal of time has to be withdrawn from private professional business. The scale of remuneration, however, which included the numerous fees on patents, was at that period sufficiently liberal to preclude any apprehension of pecuniary loss in accepting the office.[1]

The new Solicitor-General forthwith announced his intention of practising only in the Court of Appeal and the House of Lords. The effect of this was that he could not appear before the Master of the Rolls or one of the Vice-Chancellors without a special fee

[1] In 1871 new arrangements were made under which the Attorney-General receives £7000 a year, and the Solicitor-General £6000 as a salary for non-contentious business. For contentious business in which their official services are required fees are paid according to the ordinary professional scale.

of fifty guineas, irrespective of the brief fee. And in appeal cases he received extra fees for perusing the papers which had been used in the Court below. 'I daresay,' he writes to his eldest daughter, 'you will be frightened when I tell you the apparently reckless act I have done. I have given up all my business in the Vice-Chancellors' Courts, and mean to confine myself to the Appeal Courts, taking only special retainers in the lower Courts. I find my business, thus relinquished, was worth £8000 per annum. Few persons have acted so boldly, but I think it will answer in the end.' There was little real ground for apprehension. The fees received for private practice, added to his official remuneration, greatly increased his previous income, and while Solicitor-General he made by his profession upwards of £24,000 in one year.[1]

Sir Richard Bethell entered on his new duties with much vigour. His appointment was hailed on all hands as an assurance of the earnestness of the Government on questions of law reform. The recent Procedure Acts had but whetted the appetite of the advocates of a complete reorganisation, and they received the new Solicitor-General *à bras ouverts* as the zealous and able champion of their cause. On the first occasion of his addressing the House in an official capacity, he declared that much remained to be done in the

[1] Lord Eldon's most productive year of practice is said to have brought in no more than £12,140.

reform of the Court of Chancery; that for his part he would never be content until that should be effected without which all law reform would prove ineffectual—the consolidation of jurisdiction, and the administration of equity and common law from the same bench. It is remarkable that more than twenty years elapsed before the fusion which he thus advocated took effect through the Judicature Acts.

Lord Cranworth, in stating the intentions of the new Government in the House of Lords, unfolded a programme which must have satisfied the veriest glutton for legal reform. Testamentary jurisdiction, divorce, the transfer of land, charitable trusts, and the consolidation of the statute law were all indicated as subjects on which the Government were prepared to legislate. The Lord Chancellor was even bold enough to hold out some hope that the consolidation and classification of the public Acts might form the foundation of a Code Victoria—a consummation which seems no nearer now, on the completion of the fiftieth year of the Queen's reign, than when the devout wish for it was first expressed.

In accordance with his promise Lord Cranworth brought in a Registration Bill. Viewed by the light of subsequent experience, the measure was clearly based on a wrong principle. It provided for the registration of deeds—that is, the evidence by which the title is shown—instead of a record of title, or the result of the transactions disclosed by the deeds. The object of either system is to show

an absolute title in some one. But a register of deeds can never simplify title, for it merely puts on record the documents which are abstracted on an investigation of title under the existing practice of conveyancing, and leaves untouched the costly necessity of investigation and search. Moreover, the Bill made no provision for a general map for the identification of the property to which the parchment title related. Notwithstanding the strenuous opposition of Lord St. Leonards, which was particularly formidable on any question of real property law, the Bill passed through the House of Lords, but was afterwards withdrawn.

Lord Campbell declared that 'it was lost in the Commons through the opposition of Sir Richard Bethell, who was allowed to defeat a measure which the Chancellor himself had introduced, and on which the credit of the Government materially depended.'[1] As a matter of fact, when the Bill came down to the House of Commons, Lord John Russell moved the second reading *pro formâ*, that the Bill might be referred to a Select Committee, and Sir Richard Bethell did not say a single word upon the subject.[2] He had long been an ardent advocate of registration, as Lord Campbell very well knew; but he disapproved of the principle of the Bill, and the Committee to which it was referred reported against it.

The opposed third reading of the Government

[1] *Lives of the Lord Chancellors*, vol. viii. p. 182.

[2] Hansard, vol. cxxvii. p. 714.

Bill to remove the Jewish disabilities afforded Sir Richard Bethell the opportunity of making his first important speech on a subject of general interest. It had recently been decided in the action for penalties brought against Mr. Salomons for voting without having taken the oath that Jews were by the existing law excluded from Parliament. The measure, in some form or other, had fourteen times been carried in the Lower House by large majorities, and on each occasion had been thrown out in the House of Lords. Mr. Bright put the pertinent question whether they were to go on year after year bombarding the Lords with the Bill without result, and suggested that it should be made a matter on which the existence of the Government was staked. Lord John Russell declined to accept this heroic advice; he was obliged to confess that, the number of Jews in the country being comparatively small, there was no overwhelming feeling in favour of the measure. The Bill passed the House of Commons, but was once more rejected in the House of Lords, the late Earl of Shaftesbury heading the opposition.

In the highly technical discussions on the Succession Duty Bill, which extended to successions in real property duties similar to those payable in the case of legacies, the Solicitor-General rendered Mr. Gladstone very material assistance.[1] The measure

[1] The Bill, which was drafted by Mr. Peter Erle, brother of Sir W. Erle, and Mr. (now Lord) Thring, was a measure of such

aroused strong opposition in Parliament, and was fought, almost clause by clause, with remarkable pertinacity and bitterness. It is amusing to recall the denunciations and prophecies of evil which were hurled by its opponents at the Chancellor of the Exchequer's head. 'Downright robbery,' 'tyrannical and inquisitorial process,' 'detestable and detested impost,' are samples of the invective lavished on the proposed duty. One orator declared that though the Bill might be passed by majorities of five or six, the question would excite such an agitation in the country—create such a chaos of discontent—as would perhaps shake the foundations of the monarchy and destroy the established institutions of the land. Mr. Gladstone, unmoved by these dire predictions, dexterously piloted the Bill through the shoals and quicksands of Committee, with little material alteration, and it became law.

The Government were also successful in carrying an Act for the better administration of Charitable Trusts, after a delay of thirty years since legislation on the subject was first devised. Commissions had sat almost continuously for twenty years, and had issued masses of reports on the condition of public charities. The abuses in the administration of

extraordinary complication that it might have been supposed that none but a real property lawyer would be able to master its intricacies. It is a notable illustration of Mr. Gladstone's intellectual grasp that, in the opinion of Lord Thring, he understood its provisions as clearly as Sir Richard Bethell himself.

charities had been shown by the reports to be very grave and difficult to check. Under the existing law litigation was generally promoted by parties who had little or no real interest in the matter, and the costs sometimes ate up the whole of the trust property. Instances were given of unscrupulous attorneys having filed informations indiscriminately against a large number of charities merely for the sake of the costs. The new Act provided a cheap and efficient control by means of a permanent board of commissioners, and gave the very necessary power of modifying trusts in cases where the founder's intentions could no longer be carried out in their integrity to the general advantage.

Notwithstanding the anxiety caused by the outbreak of the Russo-Turkish war and the critical state of our negotiations with Russia, an unusually large number of measures, involving the settlement of questions which had long been in dispute, passed in the protracted session of 1853; but the internal weakness of the Government occasioned by differences of opinion in the Cabinet showed itself at the close of the year, in the temporary secession of Lord Palmerston. No definite explanation was vouchsafed at the time, and it was generally supposed that Lord Palmerston had tendered his resignation because he had failed to persuade his colleagues to meet Russian aggression with a more strenuous resistance. It seems, however, that the

chief cause was his disapproval of the intended Reform Bill.

Lord Campbell seems to have been very quick to detect or imagine differences of opinion between Lord Cranworth and the law officers. Referring to 'the career of our *little Chancellor*,' he wrote on the 10th of July 1853: 'I may tell you that the Attorney and Solicitor-General conspire his downfall, each having the hope of replacing him. Their constant habit is to *vilipend* him. Bethell hardly attempts to disguise his eagerness to clutch the Great Seal.'[1] Considering that the Solicitor-General had been only six months in office when these words were penned, the eagerness attributed to him by Lord Campbell could have found little opportunity for exhibition. Be that as it might, the charge came with ill grace from one who had nearly twenty years before pressed his own claims with great pertinacity on Lord Melbourne, and whose hankering for the Woolsack had some time before given rise to a riddle which pointed to his long experience in the 'Seal fishery.'[2] It may be taken as another example of the romance with which Lord Campbell's autobiography abounds.[3]

[1] *Life of Lord Campbell*, vol. ii. p. 315.

[2] Lord Campbell cannot be said to have lost any chance of advancement through diffidence. According to Lord Brougham's account, he had asked in vain to be appointed Master of the Rolls, first on the death of Leach in 1834, and again when Pepys became Lord Chancellor in 1836.

[3] With reference to the posthumous publication of Lord

'The Solicitor-Generalship,' said Lord Bacon, 'is one of the painfullest places in the kingdom.' That Sir Richard Bethell contrived to bear the strain of his extraordinary labours in and out of the House was a matter of astonishment to every one. Yet he never seemed to be in a hurry, and his calm precision, coupled with indefatigable industry, enabled him to get through an amount of work from which other men would have recoiled. The secret of this, he used to say, was that he read his papers very early in the morning, instead of at night. Another great lawyer, Sir Roundell Palmer, now the Earl of Selborne, pursued the same course, and in later years Lord Westbury would cite him triumphantly as one who had profited by his advice, and regret that he (Lord Westbury) could not give the benefit of his experience in this matter to the whole bar.

He had also the habit, which was particularly valuable to him, of obtaining rest at odd moments,

Campbell's *Life of Lord Lyndhurst*, Lord Westbury used to tell of a dinner in the Temple to which he invited Lords Lyndhurst, Brougham, and Campbell, and Sir Charles Wetherell, when the last-named warned Lyndhurst and Brougham of Campbell's designs in terms almost prophetic of what afterwards occurred: 'My biographical friend will exult in exhibiting every little foible—*Hunc tu Romane caveto.*' Probably this was the occasion to which Lord St. Leonards refers in his pamphlet, *Misrepresentations in Campbell's Lives of Lyndhurst and Brougham, corrected by St. Leonards.* Sir Charles Wetherell said that Lord Campbell had added a terror to death. 'I have lived,' Lord St. Leonards complains, 'to find that he has left behind him a new terror to life.'

and, as it seemed, almost at pleasure. When not wanted in the House he would sit in the library, reading his briefs with an attention wholly absorbed. Occasionally while thus occupied he would drop off to sleep, and after a brief interval awake, and without apparent effort resume his work with the same air of diligent study.

The peculiar flavour of his wit and his marked idiosyncrasies of manner amused the House; and he stirred, perhaps, less opposition there than in the Courts or, later on, in the House of Lords. There was an independence of character, an evident indisposition to kow-tow to any one, however powerful, which pleased the members of the popular assembly. His individuality excited general interest, and the stories about him which circulated in the lobby were almost as numerous as those which were retailed at the bar table in Lincoln's Inn Hall. One may be inserted here:—A member who was in conversation with him observed that society was now compounded of strange elements. 'Well,' rejoined Bethell, 'my experience constrains me to say that the world is made up of but two classes, the foolish and the designing.' This compendious classification was not apparently appreciated by the other, who inquired, 'Where, then, are you and I to be placed?'—'My dear sir,' said Bethell, with a winning smile, 'the simplicity of your inquiry assures me that we should not go into the same lobby on that division.'

Parliament opened in January 1854 amid the general anxiety then attending the imminent outbreak of the war with Russia. The serious aspect of foreign affairs did not, however, deter Lord John Russell from introducing a measure of Parliamentary Reform. He declared that he had accepted office with the understanding that the Government was pledged to the measure, and that his personal honour was concerned in promoting it. Both in the House of Commons and in the country there was a very strong feeling that the moment was inopportune for the introduction of a measure which would certainly excite party animosities, and might imperil the existence of the Ministry. The second reading was postponed for six weeks, but the declaration of war came in the interval; and in deference to the general sentiment the Bill was, as every one expected, withdrawn.

With the Bill to prevent corrupt practices at elections Lord John Russell was more successful; and the Bill providing for the better government of the University of Oxford also passed, though the Government were beaten several times upon it, and the measure underwent considerable change. Sir Richard Bethell with Mr. Gladstone did much of the Government work in Committee on both of these Bills. The two ministers acted together in perfect harmony, and, as appears from the following and other letters, with much friendly sympathy :—

'Dear Chancellor of the Exchequer—I am ashamed to send you so poor a present of Greek wine and liquor, but my wine merchant tells me that the wine I lately imported is not fit to send out, and therefore I sent for a few bottles out of a small stock I have in the country, which I mention that you may make allowance for it travelling this weather. The wines are all from Cephalonia, as I have at present none from Corfu, nor could I find a single bottle of the delicious sweet wine of the "woody Zacynthus," which I wished much to send. No doubt if we afforded a market, there would be the greatest improvement in the manufacture. It would give great stimulus to industry and tend greatly to augment the population of the islands.

'Restored to feelings of perfect satisfaction with British rule, the people of the islands might be gradually prepared for self-government, for I agree with you that, except Corfu, I should wish the islands to be part of what we shall one day see, an Hellenic Kingdom or Federal Republic. Meantime the gratitude of the islanders to you for opening their trade would be boundless. I will engage that on one of the most beautiful heights above the harbour of Corfu there shall be erected a στήλη of white marble, inscribed Γλαδστῶνι Εὐεργετῇ (I have not time for the proper characters), and that when you visit the islands you shall be received with universal acclaim.—Believe me, yours very sincerely,

'Richard Bethell.

'*P.S.*—Please direct your butler to put the bottles in a *warm place.*'

In the same session the Solicitor-General introduced a Bill to relieve the Colonial Church from serious disabilities. In the previous year a Bill, promoted by the Bishops, had obtained the assent of the House of Lords, the principal object of which was to establish conventions in which the members of the Church of England in the Colonies might make rules for self-government. Up to that time the

regulations framed by their Bishops had no legal validity, and it was doubtful whether the meetings of the clergy themselves were not illegal. The result was that the Colonial Church was in a much worse position than other religious bodies. Grave constitutional objections were, however, raised, and the measure, receiving faint Government support, was dropped.

Sir Richard Bethell's Bill of 1854 was more limited in scope. It professed to take away the disability through which the Colonial clergy were unable to administer Church affairs, but provided that no regulations should have any force unless confirmed by an Act of the Colonial Legislature. Much misapprehension existed as to the true position of the Colonial Church with reference to the law of England, and the precise effect the proposed enactment would have upon it. It was said that if the Church in the Colonies was a free Church, the Bill was unnecessary; if it was not, the legislation would endanger the supremacy of the Crown and the unity of the Established Church. Such diversity of opinion prevailed that further progress became impossible, and the Bill in Committee shared the fate of its predecessor.

Sir Richard Bethell gave his own views on the subject in a letter to Mr. Gladstone, which is of interest in view of the subsequent decisions in the Privy Council with respect to the status of the Colonial Church :—

'*Hackwood Park, Oct.* 18 [1854].

'I have received a letter from Sir George Grey on the subject of the Colonial Bishops Bill. I do not know that I have conversed with you on the subject since Lord John, in a hasty moment, without consulting me or knowing anything of the plan I had arranged, threw overboard my unfortunate Bill of last session, which, but for so cruel a murder, would, I think, in an altered shape, have become law. I then applied myself to an anxious consideration of the subject, and had several discussions with the Bishop of Adelaide and the Bishop of New Zealand, and the conclusion I arrived at was this—

'1. That although the Statute of Submission (25 Hy. VIII. c. 19) and the Common Law (of which it is in fact declaratory) were universal, and bound the Church of England clergy both here and in the Colonies, yet that they did not extend to prohibit the holding of diocesan synods.

'2. That it would not be illegal in the bishop of any colonial diocese to convene his clergy and laity in diocesan synod, and to settle and agree upon consensual compacts, which should embody all such provisions touching the temporalities of that Diocesan Church, and all such constitutions, rules, and regulations for preserving and maintaining order, discipline, and due administration of matters ecclesiastical, as were consistent with the canons of 1603, and not prohibited by any ecclesiastical law.

'3. That the Colonial Church was not absolutely in need of more authority and regulation than might be lawfully obtained through the medium of such synods, and of consensual arrangements there entered into, and the observance of which might be made an express condition on the licenses to be granted by the bishops in the colonies.

'These conclusions were entirely concurred in and admitted to be correct by Mr. Archibald Stephens, who is the best ecclesiastical lawyer I know, and they were very satisfactory to the Bishop of Adelaide. I do not, of course, mean to represent that this plan would be effectual further than supplying the most crying defects in the system of colonial ecclesiastical administration; but it, at all events, may be sufficient to give assurance of

a safe line of conduct and method of proceeding that, by a little union among the colonial bishops, may be found quite adequate to meet all the most necessary purposes.

'I do not think, therefore, that such a very limited amount of interference as the House of Commons would be willing to sanction by Act of Parliament is needed, if my opinion shall stand the test of examination and appear to be well founded in law.

'If I have already told you all this, pardon my giving you the trouble of reading it again. If I have done so I have forgotten it amid my very numerous occupations.

'Now, referring to a somewhat cognate subject, will you kindly tell me what is the meaning of the consecration of a Bishop of Borneo or for Borneo? Has the Crown granted a patent? or is the bishop consecrated under the "Bishop of Jerusalem Act?" I have had much communication on the subject of missionary bishops with the Bishop of Oxford, but I was not aware of any intention to create a See of Borneo. . . .

'I trust you constantly remember the great end and purpose for which vacations were established by wisdom of old, to restore health to the body and give repose and quiet to the mind; and earnestly trusting that this vacation has been and will be to you abundantly fruitful of such results, believe me, ever yours sincerely, RICHARD BETHELL.

'*P.S.*—Don't think of an answer till you have ten minutes with nothing else to do.'

The political emancipation of the Jews was now attempted by a fresh method. Instead of bringing in a simple Bill of relief, omitting the words 'upon the true faith of a Christian' from the oath, Lord John Russell's proposal now was to substitute for the several oaths of allegiance, supremacy, and abjuration, a single oath which could be taken by Protestants, Jews, or Roman Catholics alike without demur.

The Government did not appear to have foreseen that this Bill would afford an opportunity for rousing a fresh outbreak of the anti-papal feeling which had been partially allayed by the Ecclesiastical Titles Act. Many members who had uniformly voted for Jewish relief refused to support a measure which sought to effect their object by a side wind. It was urged that the proposed alteration in the parliamentary oaths would remove one of the strongest barriers against Papal encroachments. Mr. Disraeli complained that the Jewish claims, which he had on previous occasions repeatedly advocated, were prejudiced by being mixed up with the question of the Roman Catholic Oath, inflaming Protestant fears and exciting Papal pretensions. He hoped to see the day when, by the free will of Parliament, a Jew might take his seat, not by the odious omission of words from one general oath, but by the free declaration of a creed of which he ought on every account to be proud. On a division the Bill was thrown out by a majority of four, and the question seemed once more indefinitely postponed.

On a motion for the appointment of a Commission to inquire into the arrangements of the Inns of Court for legal education, the Solicitor-General made an interesting speech. The Attorney-General, while advocating changes in the existing system, considered that the matter might safely be left to the Societies, but Sir Richard Bethell took a somewhat wider view. 'If ever,' he said, 'there

was a nation in which legal education is a public duty and a public necessity, that nation is England; because by the institutions of the country the people are invited to take part in the administration of the law; and it is our bounden duty, therefore, to provide them with the means by which they may become qualified to do so, by obtaining a general knowledge of the principles of the law.'

He expressed his desire to see the Inns of Court erected into one great legal University, not only for the instruction of law students, but for the purpose of co-operating with the other Universities in the education of the public at large. He contrasted the unfavourable position we then occupied with that of France where the study of the law was systematically pursued, and lamented the want of instruction in original principles which was characteristic of English jurisconsults. At the same time he vindicated his fellow benchers from insensibility or indolence in reference to the subject. The Inns were convinced that they had obligations corresponding with the rights which they enjoyed; but he held that the way in which those obligations were discharged was a proper subject for inquiry; so that, if necessary, additional powers might be given them, to enable them to perform their duty with efficiency.

We have seen that he had long insisted that lawyers should be scientifically educated, and that compulsory examination, for which he could obtain little support, was an absolute essential. The course

of study for the bar which then obtained had been happily described as going into a pleader's chambers for a year or two to learn to tell a plain story in unintelligible language, and it was said that the only qualification for being called was that the student should eat and drink, and be able to write his name. If it be true that the Inns of Court were founded and endowed for the purposes of lodging students and instructing them in the law of the realm, it must be admitted that the benchers had for a considerable period neglected their duties. With the exception of one or two fitful attempts to institute lectures, no provision whatever had been made for the education of students.

Sir Richard Bethell, in his incisive fashion, thus described the system of training for the bar: 'The student went, untrained, unformed, uneducated, into the chambers of a special pleader or a conveyancer; what was the repulsive occupation there? Drudgery, the meaning of which it was impossible for him to understand. After following it for some time certain practical modes of procedure, certain habits of thought, and the knowledge of a few established cases, formed the staple of what was done. If the chambers were those of a conveyancer, a great book was brought down, and the unfortunate alumnus compelled to copy it from week to week, until his very gorge rose at the task.' He was convinced of the insufficiency of University education to give that knowledge of the laws and institutions of the

country which shall qualify every young man to discharge with propriety the political and civil duties incident to his status as a member of the community. But he considered that the duty of legal education ought not to be left in the hands of close and irresponsible corporations.

Thanks in great measure to the unceasing efforts of Sir Richard Bethell, the education of law students is now fairly performed by the Inns of Court. He was one of the members of the Commission entrusted with the inquiry into the matter of legal education. By their Report made in January 1856 the Commissioners recommended that a University should be constituted, with a senate having the power of conferring degrees in law; and that the constituent members should be a Chancellor, Vice-Chancellor, and Masters of Law. The Middle Temple and Inner Temple were willing to carry these recommendations into effect, but the other two Societies refused to concur. Sir Roundell Palmer (now the Earl of Selborne) subsequently made unsuccessful attempts to induce Parliament to intervene, and the recommendations of the Commissioners have never been acted on.

Sir Richard was also appointed one of the Commissioners for the purpose of consolidating the Statute Laws, a reform of which he was a strenuous advocate. There were at that time nearly 16,000 public general statutes, but of these some 14,000 were obsolete, while of the remainder a large pro-

portion were encumbered with useless provisions and unnecessary verbiage. 'A mighty maze and all without a plan.' Of the many time-honoured subjects of law reform this was unquestionably the most venerable. It had engaged the attention of Parliament and the country at intervals during three centuries. The question was first agitated in the reign of Edward VI.; and it was again brought forward in the times of Elizabeth and James I., the latter monarch in a characteristic speech referring to the 'overflow' of conflicting statutes 'crossing and cuffing each other' as productive of much inconvenience to his subjects; while Bacon had declared that 'the leaving on the Statute Book Acts which are at variance with the spirit and temper of the times in which we live impairs the authority of the rest, and we ought not to have the living die in the arms of the dead.'

In the same session a Testamentary Bill was brought in by Lord Cranworth by which the jurisdiction in probate matters of the existing Ecclesiastical Courts—of which nearly 400 were scattered over the kingdom—was to be taken from them and given to the Court of Chancery. The majority of the Law Commissioners had advocated the institution of a distinct Court of Probate, but Lord Cranworth adopted the proposal of the minority, which included Sir Richard Bethell. His plan had the obvious advantage that the probate of a will and its interpretation—questions of validity and administra-

tion as well as questions of construction—were to be given to the same tribunal, on the principle of one court for one cause. Attempts had been made by Lord Brougham, Lord Cottenham, and Lord Lyndhurst, among others, to reform the testamentary procedure, but in vain; the thirty years which Lord John Russell assigned as the usual period for the gestation of any measure of law reform had passed in fruitless endeavours to deal with the question.

The proposed alterations struck at the vested interests of the practitioners at Doctors' Commons —a comparatively small but well-armed body— and of the much larger number of officials of the threatened courts. The long standing conflict of opinion among the would-be reformers as to the tribunal to which the jurisdiction should be entrusted further embarrassed the question. To the principle of the Lord Chancellor's plan Sir A. Cockburn was strongly opposed, and he refused to take any part in promoting the measure. It was popularly objected to on the ground that if all wills were to be thrown into Chancery, legatees and others would be involved in the proverbial delay and expense of that court. The opposition, based on these grounds, was so formidable that the Bill never reached the Lower House. In the excited state of the country, law reform could receive little practical attention, and the difference of opinion between the legal advisers of the Government made this particular question less easy to settle.

The instability of the Coalition, foreseen by the prophetic eye of Mr. Disraeli, had begun to show itself in the reverses and disappointments sustained in Parliament during the session. The prophet was not slow to point to the realisation of the prediction to which his own efforts had greatly contributed. 'The Ministry of all the talents'—'those distinguished and gifted beings'—'the combination of geniuses'—had, he showed, introduced seven measures of the utmost importance. Of these they had been defeated in four, and three they had withdrawn. He proceeded to draw an effective contrast between the measures passed by Lord Derby's Government during their few months of office, and those which their successors had introduced but failed to carry. The Grenville Administration of 1806 had afforded proof that this kind of coalition can only be maintained by the personal ascendency of a single minister. Lord Aberdeen's ministry supplied no such predominating influence, and the very strength of its individual members became a source of weakness. The Government, though only a year and a half in office, were already exhibiting 'the cold gradations of decay.' Sir E. Bulwer Lytton ironically declared that while most Governments had been formed by a combination of opinions, this one was based upon the grander principle of the diversity of talent.

In the summer of this year Sir Richard Bethell

was engaged in the great Bridgewater case, which determined the ownership of estates of the value of more than two millions, and involved an important question of public policy.[1] It was further notable for the diversity of judicial opinion which it provoked. The seventh Earl of Bridgewater devised his estates for the benefit of his great nephew, Lord Alford, for life, with remainder to the use of the heirs male of Lord Alford, but subject to the proviso that, if Lord Alford should die without having acquired the title of Duke or Marquis of Bridgewater, the estates should go over according to the subsequent limitations as if he had died without male issue. The fourth Earl had been created Marquis of Brackley and Duke of Bridgewater, but these titles became extinct on the death of the sixth Earl in 1803, and the testator's object was to induce Lord Alford to use the great influence which the possession of estates worth more than £60,000 a year would give him to regain one or both of the lost titles.

Lord Alford, however, died without having acquired either title, leaving a son, Mr. Egerton, who claimed the estates on the ground that the condition annexed to the limitation to the heirs male was illegal. This claim was naturally resisted by the persons who were entitled if the proviso could take effect. Lord Cranworth, when Vice-Chancellor, held that the condition was valid, and

[1] *Egerton* v. *Lord Brownlow*, 4 House of Lords Cases, 1.

the case went on appeal to the House of Lords, when Sir Richard Bethell, with Sir Fitzroy Kelly and Mr. Charles Hall, was retained by the appellant, and Mr. Rolt, Mr. Malins, and Mr. Giffard represented the respondents. The Judges were summoned to assist in the decision, and eleven of them attended. Of these no fewer than nine[1] agreed with Lord Cranworth that the proviso was valid as a condition precedent, and that, as it had not been complied with, Mr. Egerton took no estate on the death of his father. Chief Baron Pollock and Baron Platt, on the contrary, were of opinion that the proviso was in the nature of a condition subsequent, and void as contrary to public policy, and that therefore the non-compliance with its terms did not prevent the appellant from taking the estates.

The arguments on the question whether the condition was precedent or subsequent were entirely of a technical nature, but those which were based on considerations of the public interest depended on the application of broad general principles. It was urged in support of the appeal that the tendency of a gift clogged with such a condition was mischievous to the community, for it would affect Lord Alford's independence and the proper discharge of his public duties, and supply a temptation to venality, if the retention of the estates by his family depended on his obtaining the marquisate or

[1] Barons Parke and Alderson with Justices Coleridge, Wightman, Erle, Talfourd, Cresswell, Williams, and Crompton.

dukedom. On the other hand, it was submitted that the condition was rather an incitement to great public services likely to attract the attention and merit the favours of the Crown, and that in the exercise of its prerogative the Crown is not liable to be embarrassed by the acts of its subjects. Lords Lyndhurst, Brougham, Truro, and St. Leonards (Lord Cranworth dissenting) allowed the appeal, the result being that the opinions of six judicial authorities finally prevailed over those of ten, though it is true that of the latter all, with a single exception, were puisne judges.

It is worthy of remark that in the Thellusson case a disposition of property was held to be valid, though considered so plainly contrary to public policy that the Legislature immediately intervened to prevent its repetition, while in the Bridgewater case a provision was held to be illegal on the ground that it was prejudicial to the interests of the State. The successful conduct of the appellant's case was a signal triumph for Sir Richard Bethell, to which he always referred with pride. But though the decision was received with a chorus of approval by the press, the principle on which it was based did not altogether command the assent of the profession.

He was also employed in the well-known leading case of *Lomax* v. *Ripley*,[1] in which the validity of a will was impeached as having been made on a secret and illegal trust. Mr. Ripley was desirous of

[1] 3 Smale and Giffard's Reports, 48.

founding a hospital at Lancaster, his native town, but was advised that the provisions of the Mortmain Act would render the gift invalid, if he died within a year after the conveyance of the land he proposed to dedicate to his purpose. Being at the time in very feeble health he made a will appointing his wife residuary legatee in the confident assurance that she would give effect to his intentions, but he declared no trust and did not attempt to impose any obligation on her. The testator died within a year afterwards, and the next-of-kin filed a Bill against the widow to have the residuary gift set aside as made upon a secret understanding to defeat the Mortmain Act. Mrs. Ripley admitted that she was aware of her husband's intentions, but denied that she had, directly or indirectly, engaged to carry them into effect.

A vast mass of evidence was adduced to prove an engagement or promise, but the positive denial of the widow prevailed, and it was held that the gift was unfettered by any trust, and therefore valid. Sir Richard Bethell was leading counsel for the widow, and in the opinion of some who heard his address he surpassed himself in his masterly handling of facts and principles, and the vivid, dramatic picture he drew of the circumstances under which the will was made. It was the effort of a consummate artist.

The late Lord Wensleydale (formerly Baron Parke) used to say of Sir Richard Bethell that he

was the finest advocate he had ever listened to. A solicitor of great experience bears similar testimony, and adds: 'After he had finished his argument, I felt that not one word that could be usefully and advantageously said had been left unsaid, and still more that not one word had been said which had been better left unsaid.' Many were the manœuvres adopted by solicitors at this period to secure his services for their clients, and occasionally there was something like a race to his chambers to deliver the retainer in an important appeal. He was as much in request in charity informations and patent cases as in peerage claims and great company suits. As a boy he had picked up in the cloth manufactories at Bradford a knowledge of machinery, and no invention, however complicated, seemed to puzzle him.

He was quick to detect talent in others, and always ready to give it generous and effective recognition. After a consultation in a case in which he was associated with a junior counsel of comparatively short standing at the bar he observed to the solicitor who had instructed them, 'That young man will undoubtedly rise to the top of his profession.' The junior, whose eminence was thus predicted, was Mr. (afterwards Earl) Cairns, the great Conservative Chancellor.

Sir Richard Bethell was generally credited with a want of appreciation of the capacity of most of the judges before whom he practised. It was said that when one of the equity judges, in reference to

some application to the Court, made answer that he would turn the matter over in his mind, Bethell, turning round to his junior with a smile, which seemed to bespeak intense amusement, said, loud enough to be heard by the bar, 'Take a note of that; his Lordship says he will turn it over in what he is pleased to call his mind!' Other versions of the story, with variations suited to the details, are current; and it is probable that the *bon mot* was really employed by its author on more than one occasion.

After he had written an opinion on a case, the solicitor who had laid it before him came running round to his chambers with the report of another case he had turned up, which seemed to be in direct conflict with the Attorney-General's opinion. Sir Richard carefully read the report and returned it with the single observation, 'What fools these judges are!'

His too obvious self-confidence naturally made him unpopular with the Bench. He had a disagreeable way of showing a judge that he thought him inferior to himself; yet withal he was outwardly so suave and courteous that no offence could be taken openly. The story which gained some currency that one of the Common Law Judges once appealed to him to be addressed at least as a vertebrate animal, and with as much respect as Heaven might be supposed to show towards a black-beetle, may be dismissed as a ridiculous invention.

Another story had at least the merit of being *ben trovato*. Lord Cranworth, before he became Lord Justice, had been for some years a Baron of the Exchequer, and when Lord Chancellor he used to sit continually with the Lord Justices for the purpose, it was said, of making himself better acquainted with the new procedure in Equity, of which he was comparatively ignorant. One day some one remarked to Bethell: 'I wonder why old Cranny always sits with the Lords Justices?' The caustic but humorous reply was: 'I take it to arise from a childish indisposition to be left alone in the dark!'

CHAPTER VI

1855–1856

Defeat of the Government on Mr. Roebuck's motion—Lord Palmerston forms an Administration—Sir Richard Bethell again becomes Solicitor-General—Resignation of Mr. Gladstone and other Ministers—Lord John Russell's position—Bethell defends primogeniture—Appellate jurisdiction of the Lords—Bethell and the Law Lords—Views on the study of Jurisprudence—Testamentary jurisdiction—Life peerages—Defeat of the Government Bill—Failure to effect law reforms.

No sooner had Parliament reassembled in January 1855 than the general discontent caused by the neglect and mismanagement of the war during the preceding nine months found forcible expression, in both Houses of Parliament, in motions condemnatory of the Government. The heart of the country was stirred with a burning indignation at the terrible accounts of the state of affairs in the Crimea. The mere announcement of Mr. Roebuck's motion for a Select Committee to inquire into the condition of the army before Sebastopol, and generally into the conduct of the war, brought about the precipitate resignation of Lord John Russell, then President of the Council.

His secession from the Government, at the moment when, arraigned by a motion of censure, they were fighting for their existence, was much condemned as an act of disloyalty to his political associates. His own explanation of it was that he declined to oppose the motion because he could not say that measures had been taken by which the evils complained of would be remedied or the war more vigorously prosecuted, and he declared that, with all the official knowledge he possessed, there was something inexplicable in the state of the army.

The resignation was the fatal shock to the Government, which had long existed only by sufferance. Though the motion was brought forward by one of their own supporters, the Government treated it as implying a want of confidence, and the Opposition, who had refrained from taking aggressive action on their own account, naturally supported it. The division astonished even the House itself. The Government were defeated by 305 to 148, and derisive laughter took the place of the usual cheers when the numbers were announced. The Coalition Government fell, and hardly any one regretted it. As Sir E. Bulwer Lytton well observed, it is an indispensable element of a coalition that its members should coalesce, and that had throughout been wanting in the fallen Government. It had been a union of party interests, but not a coalition of party sentiment and feeling.

Sir Richard Bethell had the most deep-rooted

sense of the miseries of war, and realised with peculiar force the embarrassments in which the Ministry had been placed by the posture of foreign affairs. It seems that at this juncture, disheartened by the defeat of the Ministry, he even contemplated retiring from Parliament and devoting himself once more exclusively to professional labours. The circumstances of Lord John Russell's resignation were very distasteful to him, and he never quite excused Lord John's conduct on this occasion. For Mr. Gladstone, with whom he had been closely associated in the promotion of several of the Government measures, he had at that time a strong admiration, as will appear from the following extract from a letter written by him on the resignation of the Ministry :—

'. . . This is my last official letter to you. I may truly say that the most pleasurable recollection of my office will be the opportunity it has afforded me of cultivating your acquaintance—I trust I might say your friendship.

'In the event of a dissolution of Parliament I do not think I should be tempted to try to enter it again.

'I confess I have been deeply grieved at the events of the last few days and at the manner in which vanity and ambition in what I thought one of the highest order of minds overpowered the obligations of common truth and honesty.

'"Who would not weep if Atticus were he?"

Many things, I trust, became the Ministry in office, but certainly not the manner of leaving it.'

There was no dissolution, but the interregnum which followed the resignation of the Ministry lasted upwards of a fortnight, in consequence of

the difficulty in forming an administration. Lord Derby and Lord John Russell each in turn received the Queen's commands, but finding insuperable difficulties in the formation of a Government fitted to cope with the exigencies of the crisis, abandoned the attempt. Lord Palmerston was more successful. Both he and Mr. Gladstone had declined to join in the administration which Lord Derby endeavoured to form, though Lord Palmerston expressed his willingness to serve under Lord John Russell. 'It is in the nature of parties,' says Lord Macaulay, 'to retain their original enmities more firmly than their original principles.'

It was notorious that for some months past Lord Palmerston had pressed his colleagues to carry on the war with greater vigour, and in the public mind he was to a great extent excepted from the censure imposed on the late Government. It was clear that, whatever might be the composition of the Ministry, he was the man called upon by the voice of the country to undertake the management of affairs. The Ministry, as constructed by Lord Palmerston, included most of his former colleagues, with the exception of the Earl of Aberdeen and Lord John Russell. Sir A. Cockburn and Sir Richard Bethell resumed their positions as Law Officers.

But a fortnight had barely elapsed before Mr. Gladstone, Sir James Graham, and Mr. Sydney Herbert resigned their offices. They had from the

first been strongly opposed, both on political and constitutional grounds, to the appointment of Mr. Roebuck's Committee as useless and mischievous. It would, they declared, take out of the hands of the Executive one of the most important functions of government; and when Lord Palmerston gave way before the irresistible feeling in the country that the inquiry should take place, they insisted that it was tantamount to a fresh vote of want of confidence in the new Ministry. Thereupon Lord John Russell re-entered the Cabinet as Colonial Secretary. But before six months had passed he was compelled once more to resign office in contemplation of the vote of censure threatened with relation to his conduct in the peace negotiations at Vienna.

As the British plenipotentiary, Lord John Russell had assented to the Austrian proposals for peace, and undertaken to use his influence with the Cabinet to procure their acceptance. The proposals were, however, rejected by the Government as giving insufficient security against future aggression on the part of Russia, and the negotiations came to an end. Lord John, on his return to London, considering that this decision had removed all immediate prospects of peace, concurred with his colleagues in their declared policy of a vigorous prosecution of hostilities, made a bellicose speech in the House of Commons, and got the credit of wishing to cripple Russia, though all the while he remained, as Mr. Disraeli expressed it, a peace member of a

Cabinet of War. When the subsequent publication of foreign despatches revealed what had passed at Vienna, this apparent inconsistency of conduct exposed him to great obloquy and seriously discredited the Ministry. People asked how it came about if Lord John Russell considered that the Austrian proposals afforded a reasonable prospect of an honourable peace, that he had consented to surrender his opinion at the instance of his colleagues, to retain his seat in the Cabinet, and to prosecute the war contrary to his own convictions. Subsequent explanations to a great extent justified his position, but at the time the feeling against him ran very high, and the confidence in the Government policy was seriously compromised.

Several of the subordinate members of the Ministry thereupon made insurrection against 'Johnny,' as they called him, and declared that if he did not resign they all would. They even threatened to sign a round robin addressed to Lord Palmerston praying for his removal. While the matter was in this posture Sir Richard Bethell one night was dozing, as his wont was, on the Treasury Bench, when Sir A. Cockburn rushed up to him in some excitement. 'What, Mr. Solicitor! are you sleeping there when the disgrace of the Government can only be averted by strenuous action?' Thereupon Bethell, thoroughly roused, entered into an animated conversation with the Attorney-General as to the line of action to be adopted by the cabal. The

Speaker, whose curiosity had been excited by what he saw of the incident, presently beckoned the Solicitor-General and asked him what had happened. 'Then, sir,' said Bethell, 'the men of the ship took up Jonah and cast him forth into the sea, and the sea ceased her raging.'

The ship, lightened by the jettison of Lord John Russell, held on her way, though the political outlook was gloomy and threatening, and all Lord Palmerston's peculiar tact was needed to cope with the difficulties of the Ministerial position. Almost the entire Session was consumed in lively discussions on matters connected with the war. Damaging attacks were made on the Ministers, not only by Mr. Disraeli and the chiefs of the Opposition, but also by Mr. Bright, Mr. Roebuck, and other independent members. In these discussions Sir Richard Bethell took no part, but his colleague, Mr. Layard, sitting on the Liberal cross benches, was unsparing in his criticisms. 'From that quarter,' said Mr. Gladstone, 'issue the coldest and most bitter blasts of all.'

On behalf of the Government, Sir Richard Bethell was put up to oppose Mr. Locke King's motion for leave to bring in a Bill for the better settling of the real estates of intestates. The mover, who was rather in advance of his generation in his advocacy of changes in the law, proposed simply to abolish the distinctions of descent in the case of real and personal property, and to apply one uniform law to

all kinds of property of persons who died intestate. The Solicitor-General successfully opposed the motion. He argued that it was a measure framed not so much with a view to amend the law as to change one of the settled institutions of the country by which the members of the community had their views and expectations regulated and determined.

He defended primogeniture as a valued institution on the ground of its social advantages. 'There is not,' he said, 'a profession, calling, or occupation in the country that does not swarm with numbers of industrious, intelligent, earnest, active younger sons, whose industry is stimulated, intellect excited, and talents called forth and matured by the mere circumstance that they have to depend on their exertions, and will not have the property they might probably be looking to if this great institution were abolished.' He declined to come to close quarters with the question on any abstract principle of natural justice, preferring to shelter himself for once behind the venerable declaration, *Nolumus leges Angliæ mutari.*

He also introduced, late in the Session of 1855, the Leases and Sales of Settled Estates Bill, which had been sent down by the House of Lords. The object was to substitute applications to the Court of Chancery for applications to Parliament in cases where parties were desirous of granting leases, effecting sales, or exercising other powers not provided in the instruments under which they took title. It was the first attempt at legislation in that direction,

and the opposition was based on the argument that it was an undue interference with the wishes of settlors, and conferred too extensive powers on the Court of Chancery. Much to the Solicitor-General's disappointment, for he was thoroughly convinced of the value of the measure, the open hostility of its opponents and the lukewarmness of its professed friends proved too strong for him, and the Bill had to be withdrawn. The introduction of the measure, however, had gained for it considerable favour, and he had little difficulty in getting it passed in the following year. *Reculer pour mieux sauter* is the principle of much of our successful legislation.

The appellate jurisdiction of the House of Lords had for some time caused grave scandal, and in the last days of the Session, while a Bill for facilitating the despatch of business in the Court of Chancery was in Committee, the Solicitor-General referred in a very pointed manner to the failure of the Lords to discharge their judicial functions satisfactorily :—

'He quite admitted that scarcely anything was amended in the judicial institutions of this country until the recognition of the necessity of that amendment had been passed on, so to speak, from father to son, and from generation to generation ; and so it was with regard to the House of Lords. It was, therefore, doubtful how long it might be before they got a tribunal in the last resort satisfactory in its constitution. The members of the present tribunal felt themselves at liberty to attend or not attend, as they pleased ; with the exception of the Lord Chancellor all the rest of the Court were mere volunteers ; they attended a judicial sitting as they would a debate ; they felt themselves at liberty to remain during the whole of the arguments or not ; and the result was

that that Court, the decisions of which ought to be unalterable as the laws of the Medes and Persians, was felt to be unsatisfactory in its constitution, and inferior to the lowest tribunal in what ought to be the accompaniments of a Court of Justice.'

These observations, which were certainly pretty strong, considering the speaker's official position, gave bitter offence to the Law Lords. Two days later, on the eve of the prorogation, Lord St. Leonards having called attention to the matter in the Upper House, Lord Campbell assailed Sir Richard Bethell with great virulence. He said :—

'He had witnessed, he must say with indignation, the attack that had been made on their Lordships' judicial jurisdiction by Her Majesty's Solicitor-General. It was a most violent attack, having a direct tendency to bring their jurisdiction into disrepute, and it was astonishing that it should come from an officer of Her Majesty's Government. It was an attack upon the constituted authorities of the country, and upon a public functionary—for he (Lord Campbell) must say that it appeared to him to be an attack on his noble and learned friend on the woolsack, who presided over their Lordships' proceedings when sitting as a Court of Appeal. It seemed to him, if the report were a just representation of what fell from the Solicitor-General, that he thought that justice would never be satisfactorily administered in their Lordships' House until he (the Solicitor-General) was presiding on the woolsack.'

Lord Campbell went on to say that their judicial jurisdiction was of essential importance to their Lordships to enable them to preserve their importance and usefulness; and any assertion that this jurisdiction was unsatisfactory and mischievous must be an attack on the constitution of the country itself.[1] The

[1] It will be remembered that the Judicature Act of 1873 transferred to a specially-constituted Court the supreme appellate

attack was totally unfounded. The endeavour to represent Sir Richard's remarks as an attack on Lord Cranworth was unfair; for the Solicitor-General had confined his complaint to the Law Lords, who sat as volunteers, and had founded it rather on the constitution of the Appellate Court than the failure of any individual member of it to discharge his duty. Though Lord Campbell professed to consider that the attack was 'totally unfounded,' he afterwards admitted that Lord Brougham, with Lord Cranworth and Lord St. Leonards, had 'contrived to get the appellate jurisdiction of the House into still greater discredit;'[1] that the Solicitor-General had shortly before besought his attention to 'the deplorable condition of the appeal business;' and (early in the following year) that 'the judicial business in the House of Lords could not go on another Session as it did the last.'[2] No one, certainly, had a better right to criticise the defects of the ultimate tribunal than the counsel who was engaged in twice as many appeals as any one else.

Sir Richard Bethell was the first President of the Juridical Society, which was formed in the year 1855 to develop the science of jurisprudence, and

jurisdiction of the House of Lords. Subsequently a strong feeling arose against this surrender of an ancient privilege; the jurisdiction of the peers was restored, and the present intermediate Appeal Court was established.

[1] *Lives of the Lord Chancellors*, vol. viii. p. 582.

[2] *Life of Lord Campbell*, vol. ii. pp. 332, 338.

promote the investigation of subjects having relation to law, social, moral, and political. It has now ceased to exist, but in its time the Society did much to encourage inquiry into the sources and operation of laws, and to stimulate professional opinion on questions of reform. In his inaugural address Sir Richard directed attention to the neglect of the study of jurisprudence by English lawyers, and traced the causes and results of such neglect with admirable succinctness.

After noting the contrast which existed in England between the indifference of the professors of law and the anxiety shown by those engaged in other departments of science, and lamenting that there was no general association for mutual aid and instruction among members of a profession who ought to regard themselves as students of the most exalted form of knowledge—moral philosophy embodied and applied in the laws and institutions of a great people—he traced their peculiar neglect of the study of jurisprudence to the resistance offered in our early legal history to the adoption of the civil law, which gave rise to the distinctions between law and equity, and led to the establishment of the Court of Chancery.

'By this division the mind of the student of law, as administered in the Courts of Common Law, became a stranger to some of the most important doctrines. He was excluded from all acquaintance with the administration of justice founded upon accident, mistake, fraud (except in its grosser forms), trust, fiduciary relations, the prevention of injustice by restraining the com-

mission of meditated wrong, the direct performance of contracts, and the enlarged power, consequent on the rule that he who seeks equity must do equity, of enforcing the obligations of moral duty, conscience, and good faith. Was it possible that lawyers who had severed themselves from the study of these large departments of moral science could be proficient in the study of jurisprudence? . . .'

While each body of practitioners cultivated its own separate inheritance without concerning itself about the entire domain of jurisprudence, was it wonderful, he asked, that English lawyers were not distinguished among jurists?

'Great part, no doubt, of the evil resulting from the cause I have described would be removed if we possessed a Code or Digest—an *Universum Corpus* of English law. But this is one of the peculiarities of the English legal mind, that it has always been averse from the duty of extracting, consolidating, and arranging legal rules and principles in a plain and simple order and form; it prefers that these rules should be scattered up and down many hundred volumes of decided cases, where they lie involved and entangled in different combinations of facts and circumstances; and that a rule should be painfully extracted for the occasion from a mass of statutes passed at different times, expressed in terms of varying import, and frequently inconsistent with and contradictory of each other.

'This, again, is another great obstacle to the progress among us of the science of jurisprudence.

'Cases are argued not on principle but supposed precedent—not from reason but from memory; and he is esteemed the best lawyer whose recollection enables him to cite the greatest number of former decisions bearing some resemblance to the case which requires to be decided.

'Connected with these causes of our inferiority in jurisprudence is the antipathy which the English lawyer has always felt to the study of the civil law. This would almost seem to be a tradi-

tionary feeling. But the voice of all Europe has for ages pronounced its study as essential to the formation of a legal mind. In their judgment you might as well doubt the value of classical literature as a means of enlightened education. This peculiarity of the English lawyer is often noticed by continental jurists, and not always in terms of courtesy. One of them addresses us in the following doggerel lines :—

'"In Institutis,
Comparo vos brutis ;
In digestis,
Nihil potestis ;
In Codice,
Satis modicè ;
In Novellis,
Similes asellis ;
Et vos creamini Doctores,
O tempora ! O mores !"'

In conclusion, he referred to the want of a systematic course of legal education as one of the chief obstacles to the progress of the science of jurisprudence, and insisted that it belonged to the Universities of England and to the Inns of Court to fill up this void.[1]

In the course of this year (1855) Sir Richard rented Hackwood Park, near Basingstoke, from Lord Bolton. In addition to some fair shooting, the estate afforded excellent fishing over three miles of the River Loddon. Soon after taking Hackwood he commenced the artificial hatching and breeding of trout, which had lately come under his notice. He seemed to know all about it intuitively, and after much trouble contrived to teach the old water-bailiff how to milk the fish into a bowl,

[1] *Juridical Society Papers*, vol. i. p. 1.

mix the ripe ova and milt with a wooden spoon, and place them in boxes or hampers of gravel in a protected stream to hatch. At first the keeper was firmly convinced that his master was playing some practical joke upon him; but he lived and learnt, and before long had great success, turning millions of fry into the Loddon for several years.

The conclusion of the Treaty of Peace with Russia in the spring of 1856 placed Parliament once more in a position to entertain legislation on subjects of domestic improvement, which during the war had necessarily been in abeyance. Measures for extinguishing the testamentary jurisdiction of the Ecclesiastical Courts, altering the law of divorce, and consolidating the statute law, were again announced by the legal members of the Government, while the new-born activity of the ex-Solicitor-General, Sir Fitzroy Kelly, in the matter of these and kindred projects, threatened to force their hands and win for the Conservatives the credit of the reforms. Law reform again became a popular subject, and private members began to press forward with proposals, more or less crude, of amateur legislation.

The Solicitor-General was naturally anxious to secure Mr. Gladstone's all-powerful support for the measures on testamentary jurisdiction which he had framed, and with that object addressed to him the following letter. 'I regarded it at the time,' writes Mr. Gladstone, 'as a striking example of power and ingenuity of statement.'

'*April* 25 [1856].

'My dear Mr. Gladstone—I have been unsuccessful in several attempts to have the pleasure of some conversation with you in the House of Commons, and therefore am giving you the trouble of reading a long letter.

'First, I wished much to have talked to you about the new Examination Statute at Oxford. I was not aware of any intention to give publicity to my opinion, or I should have been more anxious to state reasons in support of it. I should be glad if the statute could be made in this Parliament to assume a different form, but *on that* it was not my province to volunteer an opinion, and therefore I simply stated that the form proposed involved no violation of the statute. But I foresee many inconvenient and mischievous consequences unless there be great forbearance and prudence on both sides.

'I want next to beg your attention to my Testamentary Jurisdiction Bill, and to express a hope that you will give it your support. The only cry attempted to be raised against it is, that all wills are to be thrown into Chancery. This is simply untrue. The business of proving wills, and any litigation consequential thereon, will be the proper ἔργον of a distinct Court, and will not be thrown into the general mass of the business of suitors in Chancery. It is true that the Court is declared to be part of the Court of Chancery for two reasons: first, as the most convenient way of declaring that the New Testamentary Court shall have all the powers of a Court of Construction and a Court of Administration, functions now discharged by the Court of Chancery alone; secondly, because, concurrently, and at the same time with the course of litigation as to a contested will, it is most necessary that the estate and property should not be left, as now, derelict and abandoned, but should be preserved, collected, and administered, as far as it can be administered, among persons whose interests are unaffected by the litigation. But these are the functions and duties of the Court of Chancery. The great objects therefore of consolidating the scattered jurisdictions of our country, and guiding them by uniformity of principles and rules of procedure (which alone would justify and require the abolition of the

Ecclesiastical Courts if they were innocent of offence), cannot be secured unless the Court of Probate be made an integral part of the Court of Administration, or at least has imparted to it that additional jurisdiction now possessed by Chancery alone, which is necessary to enable it to act efficiently and finally. But whilst I impart these powers by making the Court co-ordinate with the Court of Chancery, I link it with the Court of Chancery *only* by giving the first appeal from its divisions to the ordinary Court of Appeal in Chancery, and this is essential to prevent the infinite delay and expense of carrying every trifling matter to the House of Lords.

'Again it is essential to have one tribunal for wills of real and personal estate. It is objectionable to direct in terms that wills of real estate should be proved. I have therefore substituted a well-known procedure in Chancery for Probate—that is, the establishing the wills, which is the same in effect though not in name nor in *fiscal consequences*, but this great object of making one tribunal for all wills, both of real and personal estate, could only be accomplished by giving the Court the jurisdiction of Chancery. There is very much more, but I must not weary you; I will only say that I mean to propose a clause providing for country clergymen, who now act as surrogates, and securing them against a diminution of income. How glad I should be if in fighting this Bill and the other I am about to mention through Committee, I knew that I should be sitting by the side of yourself and Sir James Graham.

'It has frequently been said on the Opposition side of the House that they would oppose the Testamentary Bill, unless a Church Discipline Bill were brought in.

'I have long felt too (which is more important) the great necessity of not leaving the correctional discipline of the Church in the obstructed and impracticable state to which the recent statute (Clergy Discipline Act) has reduced it. But I approached this subject with great diffidence and very great anxiety.

'It has been the subject of three or four months' anxious consideration, and I now send you the Bill I have had prepared. No one has seen it but the Cabinet, but as the Lord Chancellor has expressed a favourable opinion, I think I shall be authorised to

bring it on. Therefore I send you a copy. It is useless to attempt to comment on it in a letter.

'You will take a deep interest in the question and no doubt a large share in any parliamentary discussion.

'The next paper I send you is one long promised, the opinions, etc., relative to the legal right of the Colonial Church to hold diocesan synods.

'I should have been glad if my Bill of 1853 had passed for the purpose of this being done under imperial sanction.

'I dread the consequences. The infinite variety of ecclesiastical regulations which may result from the exercise of this power, and possibly their frequent opposition to one another. The conclusions and practice of one diocese may be in direct contradiction of another, and matters of administration in Canada may become wholly different from those in Australia. An Imperial Home Court of Appeal therefore seems to be imperatively required, and the appellate tribunal I have endeavoured to construct in the Bill may be an instrument for preserving uniformity. Forgive my inflicting on you so long a letter, which is written *in strepitu curiæ*, and by frequent interruptions rendered necessarily unconnected. As I have not time to write to Sir James, could you kindly communicate to him what I have said? I hope he will recollect his constant wish to be "in at the death" of the Ecclesiastical Testamentary Jurisdiction.—Believe me, with great regard, yours very sincerely, RICHARD BETHELL.'

The grant of a life peerage to Baron Parke, with the title of Lord Wensleydale, now gave rise to an important controversy as to the validity of this exercise of the Royal prerogative. Moved by the urgent representations of Sir Richard Bethell, the Government had been casting about for some means to strengthen the judicial capacity of the peers, which was bringing great discredit on their jurisdiction. Sir W. Page Wood, Mr. Pemberton Leigh,

and Dr. Lushington having each refused the offer of a life peerage, the Government selected Sir James Parke, one of the Barons of the Exchequer, and a man of great legal attainments, for that dignity.

The question was beset with difficulties. Baron Parke himself was a wealthy person, and he had no son; there was therefore in his case no objection to conferring an ordinary peerage; but there was a growing indisposition on the part of the judges to accept hereditary peerages, on the plea that they were unable to transmit to their descendants adequate means for suitably maintaining such onerous dignities. It was therefore desirable to make a precedent. But no life peer had been created for upwards of four hundred years, and Lord Lyndhurst, Lord Derby, and Lord Campbell opposed on constitutional grounds the right of Lord Wensleydale to take his seat in that character. It was contended that the non-exercise of the prerogative during so long a period afforded a strong inference that it had never lawfully existed, and the Government, after twice suffering defeat on the question, were glad to escape from a position of embarrassment by conferring the usual peerage.[1]

As the result of these proceedings a Select

[1] The question was settled just twenty years after by an Act giving Her Majesty express power to appoint Lords of Appeal in Ordinary entitled to rank as Barons during life and to sit and vote in the House of Lords during office.

Committee of Peers was appointed to report on the appellate jurisdiction of the House of Lords. They examined the leading counsel practising in the House, and among them Sir Richard Bethell. The preponderance of opinion was in favour of retaining the jurisdiction of the Lords, but there was a general agreement that the working of the existing system was unsatisfactory. It appeared from the evidence taken before the Committee that appeals had occasionally been heard by the Lord Chancellor and Lord St. Leonards, who generally differed in opinion, and that then, instead of having the case reargued, they affirmed the judgment of the Court below, in accordance with the rule *semper presumitur pro negante*, by which an injustice was done to the appellant, and the law remained unsettled; that sometimes the number hearing the appeal had been reduced to one; and that a learned lord would now and then take part in a judgment without having heard the whole of the arguments.

Sir Richard advocated the constitution of a Judicial Committee of five peers, in which the jurisdiction and functions of the Committee of the Privy Council should be merged. He emphasised his objections to the existing tribunal with courageous frankness, and made some observations on the mode of delivering judgment and the marked absence of solemnity in the proceedings which again brought him into collision with Lord St. Leonards, who

resented the observations as applicable to himself. The Select Committee made a report which condemned the existing system as emphatically as the Solicitor-General had done in the House of Commons, and entirely justified his charges. They recommended that appeals should be heard by not less than three law lords; that, to secure the regular attendance of that number, two law lords should be appointed Deputy Speakers, with salaries of £6000 a year; and that the Court should sit notwithstanding the prorogation of Parliament.

These proposals were in their substance adopted by the Government, and embodied in a Bill which passed the House of Lords without much difficulty. The Bill was a compromise between those who objected to life peerages in the abstract and those who desired to reinforce the strength of the appellate tribunal. The Government promoted it as the best arrangement of the difficulty, while Lord Derby and his followers in the House of Lords saw in it a means of escape from the unpleasant position of appearing to oppose the Royal prerogative. But in the House of Commons the measure met with formidable opposition. The Attorney-General (Sir A. Cockburn) moved the second reading, and presented the Bill, almost apologetically, as the most efficient measure to cure the evil, seeing that the Lords would not consent to part with their jurisdiction.

In the debate which ensued it was evident

that the recognition of the principle of life peerages was more objectionable to some of the opposers of the Bill than the constitution of the proposed tribunal, while others, who were persuaded that the Crown did possess the prerogative in question, resented any provision that by implication restricted it. Lord John Russell and Sir James Graham strongly opposed the Bill, and Sir Richard Bethell, on behalf of the Government, wound up the debate. The second reading was carried, but on going into Committee three days later, a fresh attack was made by Mr. Gladstone and others which destroyed the Bill, a motion to refer it to a Select Committee being carried by a majority of twenty-two. Lord Palmerston and Sir Richard Bethell, in reply to pointed inquiries during the debate, had been compelled to admit that the Bill acknowledged the prerogative and limited it, so that there could not be in the House of Lords more than four peers for life at any one time—an admission which satisfied none of the objectors and sealed the fate of the measure.

The main obstacle to accomplishing legislation on any of the legal subjects which were brought before Parliament lay, as before, in the discordant opinions of lawyers respecting the best methods of procedure: *quot homines, tot sententiæ.* The attempts of the Government to redeem their promises were singularly unfortunate, and exposed them to the taunts of the Opposition. A Church Discipline Bill introduced by Lord Cranworth was rejected by

the Lords; the Testamentary Bill brought in by Sir Richard Bethell in March lingered on till July, and then ceased to exist, in consequence, as he complained, of his having fallen into the fatal error of attempting to please all the world; and a Divorce Bill which had passed the House of Lords with difficulty was abandoned late in the Session in the Commons: ill-fated measures, *impositi rogis juvenes ante ora parentum.*

In replying to Mr. Disraeli's sarcastic review of the Session, Lord Palmerston declared it to be a necessary result of our free constitution that the best measures cannot be carried until a considerable time has elapsed, until they have been well discussed and are well understood in the country, until prejudices have been overcome and interests have been silenced, and the great majority has become convinced, not only of the existence of the abuses, but also of the efficiency of the remedies which it is proposed to apply. With this cold comfort Ministers were fain to console themselves for their several disappointments. An impression had become current, having been sedulously put about by the Opposition, that the Government were not in earnest in their projects of law reform, and that they sought merely to earn popularity by introducing Bills which were hustled out of existence in the hurry of the Session without any reasonable hope of their becoming law. Sir Richard Bethell referred the failure to what he designated the 'unprofitable talk and discussion' in

which Parliament spent its time to the neglect of the public business—an observation which drew down on him a lecture from Mr. Gladstone for assuming 'a position of such marked superiority, such exemption from common failings, and such distinction from the ordinary feelings of mankind.'

Lord Campbell, on his part, declared that the projected law reforms had been lost by the way in which the legal members of the Government thwarted each other.[1] While admitting that he had for some time been denominated the 'Leader of the Opposition' in the House of Lords, he took the characteristic step of writing a letter to Lord Palmerston, in which, in the guise of a sincere and warm friend of the Government, he begged the Prime Minister to try to compose the strife which subsisted between his legal functionaries, to which he attributed the failure of all the measures of law reform which had been brought forward. Lord Campbell's diary, into which this remarkable effusion was copied, does not give Lord Palmerston's letter in reply, but the tenour of it may be easily conjectured.

Grave differences had lately arisen with the United States on the question of the enlistment of recruits in the States for the British forces, which became the subject of much diplomatic negotiation and frequent discussion in Parliament. At length, towards the close of the Session of 1856, a

[1] *Life of Lord Campbell*, pp. 331, 343.

distinct motion of censure on the Government in reference to the matter came before the House of Commons, and led to a prolonged and animated debate, in the course of which Mr. Gladstone made a sharp attack on the conduct of the Government. He held that the neutrality laws had been knowingly broken by their agents, but declined to vote for the motion on the ground that it was undesirable in foreign transactions to weaken the hands of the Government unless those who censured them were prepared to displace them from office. Sir Richard Bethell followed with an effective criticism of Mr. Gladstone's speech, which he termed 'a mere intellectual exercitation.' The occasion was well suited for an exhibition of the Solicitor-General's peculiar powers. He cited numerous authorities on international law, analysed the evidence of the blue books with masterly skill, and presented the case for the Government in the best possible light. It was the first important occasion on which the two statesmen, soon to be engaged in deadly single combat over a very different subject, had crossed their swords.

CHAPTER VII

1856–1857

Becomes Attorney-General—Correspondence with Lord Palmerston—Proposed Ministry of Public Justice—Chinese question—Defeat of Government on Mr. Cobden's motion—Dissolution of Parliament—Again returned for Aylesbury—Increase of Lord Palmerston's majority—Measures for relief of Jewish disabilities—Sir Richard Bethell's proposal—Fraudulent Trustees and Joint-Stock Companies Acts—Conviction of British Bank Directors—Testamentary Jurisdiction Acts.

In November 1856 Sir Alexander Cockburn was promoted to the post of Chief Justice of the Common Pleas in succession to the late Sir John Jervis, and Sir Richard Bethell became Attorney-General—Mr. James Stuart Wortley, the Recorder of the City of London, being appointed Solicitor-General.[1] This promotion made it necessary for Sir Richard to solicit re-election; and in his address to his constituents at Aylesbury he entered with some detail on the programme of law reform to be brought forward by the

[1] Mr. Stuart Wortley, a son of Lord Wharncliffe, was a member of the Privy Council, and some question arose as to the propriety of his returning to practise at the bar. In the last few years there have been several instances of Privy Councillors continuing to practise after their appointment.

Government during the next session, with especial reference to a measure for rendering simple and expeditious the title and transfer of landed property.[1]

His re-election was unopposed, but a few days after he received the following letter from the Prime Minister :—

'94 *Piccadilly, Dec.* 10, 1856.

'My dear Sir Richard—I hope that in framing the Testamentary Jurisdiction Bill due care will be taken that its provisions shall not lead directly or indirectly to the extension of probate duty to real property. I consider it essential to the proper working of our constitution to preserve as far as possible the practice of hereditary succession to unbroken masses of landed property. That practice was much broken in upon by the application of the succession duty to landed property; that measure was, however, deemed necessary, but I could not be a party to any further inroad upon a principle which I consider of great political import-

[1] In the address were the following passages: 'The important subject of the transfer of land has long engaged my attention; and I am happy to inform you that a plan is in preparation which, I believe, will greatly facilitate the sale and conveyance of real property. The relief which such a measure will afford to landowners and farmers, by giving perfect security of title and increased freedom of trade in an article of such permanent value and importance, can hardly be overestimated. . . . I may venture to assure you, in addition to what I have already stated, that in the coming session measures for rendering simple and expeditious the title and transfer of landed property, for the abolition of the ecclesiastical courts, for the amendment of the law relating to marriage and divorce, for the consolidation of the statute law, and for rendering criminal those gross breaches of trust which have of late been a scandal to the country, will be immediately introduced, and prosecuted with energy and despatch.'

ance, and far outweighing in gravity any of the legal improvements which your Bill is intended to effect. Moreover, I have always thought that it is a fundamental mistake in political economy to seize a portion of the capital of the country and to convert it into spendable income.

'Lord Hatherton, whom I met the other day at Woburn, asked me to give you the enclosed extract from a Staffordshire paper.

'May I ask whether you have got a Bill for the abolition of Church Rates? I am not aware that any other member of the Government has prepared one.

'Upon the general question adverted to in the Staffordshire article I must say that the established practice for members of the Government at public meetings is to dwell on what the Government of which they are members has done, but not to tell the world what that Government intends to do.—Yours sincerely,

'PALMERSTON.'

The reproof was not merited, as appears from the Attorney-General's reply; but it gave an opportunity of contradicting what had been industriously fastened on him by ignorant or mischievous people:—

'*Lincoln's Inn, Dec.* 11, 1856.

'Dear Lord Palmerston—I have had the honour of receiving this morning your Lordship's letter, and beg leave to advert to its several topics in the order in which they are mentioned.

'In the Testamentary Bills which I have had the honour to introduce I have drawn a marked distinction between the process of probate now applied to wills of personal estate and the form which I desire to introduce as to wills relating to real estate. This was done for the purpose of preventing the possibility of its being said that henceforth probate was to be required as to wills of real estate. This received the approbation of Government in 1855 and 1856.

'As to Church Rates I have prepared no Bill, nor ever thought of proposing one for their abolition. All that I said at Aylesbury was that I had voted for their abolition, but as to what was

intended by the Government on the subject, I have never at Aylesbury nor elsewhere said one word. The whole of the newspaper statements on this subject are founded on a false statement that appeared in the *Globe* newspaper.

'I now come to the grave rebuke contained in the latter part of your letter, which your Lordship has rendered more pointed by sending me an extract from a country newspaper in which a passage is under-scored, charging the Attorney-General with imprudence in stating the intentions of the Government in the future session.

'It is to me a matter of surprise that a statement that certain measures of law reform which were introduced last session and expressly postponed until the next session would be again introduced should be regarded as a revelation of the policy of the Cabinet.

'The only statement made by me to which this observation does not strictly apply is the mention of the measure relating to the registration of title, as to which the Government issued a Commission to ascertain the best mode of effecting it, and believing that to have been ascertained, the announcement of an intention to introduce a Bill on the subject was merely to state what the Government had previously avowed to be most desirable, and in all these statements I certainly considered that I spoke with your Lordship's sanction, for on the closing day of last Session, when I parted from your Lordship, I had the honour of stating to you these very measures, and in answer to your request that I would mention what seemed to me to be desirable, I received from you an expression of your desire that they should be particularly attended to by me during the Vacation.

'With great submission therefore to your Lordship, I cannot feel that I have been guilty of any "imprudence" in anything that I have either written or said to my constituents.

'But if your Lordship continues to think so, which I am quite sure you will frankly state without the medium of any newspaper extract, it is my duty to bow to your judgment and to adopt the only course which can relieve the Government from the consequences of my indiscretion.—I have the honour to be your very faithful servant, RICHARD BETHELL.'

The failure of Lord Cranworth's Bill of 1853 had made the Government rather shy of a measure so certain to attract formidable opposition as the registration of deeds or titles, and the Lord Chancellor was not prepared to go so far as the Attorney-General in a radical attempt to alter the existing system of conveyancing. Lord Palmerston evidently feared that Sir Richard Bethell's ardour for this particular reform might prove inconvenient. But he readily accepted the explanation, without looking at the papers supplied in proof of it.

Sir Richard Bethell had now attained the highest rank which the bar can afford, and he declared that his ambition was satisfied. Following the precedent he had set when he was made Solicitor-General, he intimated his intention of practising only in the House of Lords unless specially retained. For appearing in any inferior Court he received a special fee of a hundred guineas, in addition to the fees on the brief.

As soon as Parliament met Mr. (afterwards Sir Joseph) Napier,[1] who was indefatigable in his advocacy of law reform, renewed his motion in favour of the formation of a separate department of public justice, charged with the general supervision of the legal and judicial business of the country. While approving of the proposal, Sir Richard Bethell refused to recognise the appointment of a separate Minister of Justice as a necessary consequence of it. His own view was that the objects desired might be more

[1] He became Lord Chancellor of Ireland.

effectually carried out by means of the existing machinery, for it would be impossible to place in the Cabinet a new Minister of Justice, so long as the Lord Chancellor and the Home Secretary were both members of it, without introducing discordant functions and the possibilities of disagreement where unity was essential.

He enforced by many illustrations his views as to the want of any principle of uniform administration, both with regard to law and also procedure. If the written law demanded revision, consolidation, and reduction, the unwritten law, embodied as it was in unauthorised and unauthenticated sources, such as the reports of cases, required the same treatment in a tenfold degree. He believed that it would be in the power of the Lord Chancellor, if furnished with a sufficient staff, to accomplish the three great objects in view—a general superintendence over the administration of justice in all its departments; the effective prosecution of amendments of the law; and the giving prompt and effectual assistance in conducting the business of current legislation.

The address which he afterwards delivered to the Juridical Society, on vacating the office of president, expressed with more freedom his views on this subject. As the Department of Public Justice is still unformed, passages from the address may be read with interest. It sketches also the outlines of his scheme for codifying the whole of the law :—

'The first thing that strikes every member of our profession who directs his mind beyond the daily practical necessity of the cases which come before him is, that we have no machinery for noting, arranging, generalising, and deducing conclusions from the observations which every scientific mind could naturally make on the way in which the law is worked in the country. Now, look how differently the moral sciences, and every part of physical science, are treated here. Is not science among us pursuing the great Baconian method of induction? Are we not always making experiments, recording the results of our observations, and at length, when a great quantity of facts are ascertained, we advance with certainty the boundaries of each science? Why is not that applied to law? Take any particular department of the common law—take, if you please, any particular statute. Why is there not a body of men in this country whose duty it is to collect a body of judicial statistics, or, in more common phrase, make the necessary experiments to see how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth, and the progress of mankind? There is not even a body of men concerned to mark whether the law is free from ambiguity or not; whether its administration is open to any objections; whether there be a defect either in the body or conception of the law, or in the machinery for carrying it into execution. The consequence is, that in the moral science of the law we never make an advance, because we never generalise, and have not persons who (as moral, political, or scientific men do in their peculiar line) interest and concern themselves in observing the effect of the law; whether the instrument we have destined for a certain duty is calculated to perform it well.'

He urged that it should be the duty of men, appointed by a Minister of Justice, to look through all the law, civil and criminal, and collect from the authentic records of past cases those practical conclusions which will serve to guide us in the improvement of the machinery of the law, and in the law

itself, in order to fit it to the existing state of society. And he strongly insisted that there was a more crying necessity for this in a country which depends for much of its practical law—in other words, the application and development of legal principles—on decided cases.

'An advocate knows that a certain rule has been enunciated, but is uncertain where to find it; he therefore cites A *v.* B, C *v.* D, and so on to the end of the alphabet; and applies this laborious process to show that such and such is the rule. It is frequently extracted with great difficulty, and often with some uncertainty; for the opposite counsel says there were some particular facts in the cases cited which are not in the case at the bar; the Judges accede to the distinction suggested, and say the cases are different; and that *dictum* must be interpreted *secundum subjectam materiam*, so that the unfortunate rule is often maimed and mutilated in extracting it from the mass of rubbish in which it is involved. Why should not all this be submitted to men able to examine and comprehend the authorities, and embody the rule to be derived from them in one single abstract proposition, which should remain a neat, ready, and applicable instrument fit to be used at all times? But this process, so simple and so natural, and the principle of which you are obliged to apply so constantly, is only codification. Now, one duty of the Minister of Justice would be to take the decisions of the current year in connection with those of past times, and enunciate and express in a compact form those general rules for which, as the law stands, you are obliged to apply to authority whenever you want to deduce a rule to be applied to the case before you. . . .'

He argued that there had arisen, in forms never known before, new relations of society and combinations of men which the law was utterly unable to meet.

'The reason of all that is, that there is not in our Constitution a body of men armed with authority to take the different cases as they arise, and see if, owing to peculiar circumstances, it has become requisite to lay down some new principle by authority, and with that view take some case to the highest tribunal, and there have it settled once for all. For in England, although society has the greatest possible interest in the results of particular cases, yet whether from those cases shall accrue benefit to society depends entirely on the litigant parties to them. For example, a case is erroneously decided by one of the ordinary courts of law, or one of the Vice-Chancellors. A rule of great mischief is established by that decision, but it does not suit the litigant party who has been defeated to carry it further; the consequence is, that it passes into a precedent, so that any Judge of co-ordinate jurisdiction, before whom the same point is raised on some further occasion, says he is bound by that decision, and he accordingly acts upon it. Thus matters go until some remarkable case arises, when the mischief is remedied; that consequence does not always follow, for oftentimes even a Superior Court is obliged to give continuance to an error, from the inconvenience that would arise from abandoning a long-settled rule.

'All this is mischievous in the highest degree; but all the mischief arises from the Government not exercising the sort of control I have pointed out. As a remedy, I would arm the body of men of which I have spoken with authority, whenever they find a decision such as I have described, with the power of stating a case in an abstract form, in order that matters of great importance to the community may be settled at once.

'But how stand matters at present? It has occurred to me again and again to bring cases to the House of Lords, with the view of settling a point on which there was a series of conflicting authorities; and I have found as much difference of opinion *intra muros* as *extra muros*, so that after the appeal was heard the law was in a worse condition than before. All this arises from the absence of a body armed with the superintending power I have described.'[1]

[1] *Juridcial Society Papers*, vol. ii. p. 129.

Of no less importance in his opinion was the duty of preparing legislative measures which, he said, ought not to be left to 'the imperfect struggles of gratuitous, and often dilettanti, amenders of the law.' Referring to the disgraceful exhibitions of verbiage to be found in so many Acts of Parliament, he condemned the existing system under which he had been compelled in the House of Commons to draw upon the instant, and write on the crown of his hat, clauses of proposed enactments which were afterwards put on the statute book.

The foreign policy of Lord Palmerston was subjected to severe criticism in the debates in the early part of 1856 on the Address in answer to the Queen's Speech, which was full of wars and rumours of wars. The conduct of the Persian Government in capturing Herat had provoked hostile operations for compelling satisfaction and the observance by the Shah of his treaty engagements; a quarrel had arisen with the King of Sicily which had led to the discontinuance of diplomatic relations with the Court of Naples; and alleged acts of violence and outrage on the part of the local authorities at Canton had involved the British Government in an inglorious war with China. Mr. Gladstone concurred with Mr. Disraeli in attributing these foreign broils to the aggressive spirit of intermeddling in the affairs of other countries. But if Lord Palmerston had, as was declared, a peculiar talent for getting into such

difficulties, he had also the happy knack of getting out of them again, and the state of our foreign relations threatened little danger to the Government. The Session, however, had not proceeded far before a fatal difficulty arose from the quarter where perhaps it was least expected.

In October 1856 a lorcha, called the *Arrow*, which was trading in the Canton River under the British flag, had been boarded by Chinese officers, who took from her twelve of the fourteen men who formed the crew, on a charge of piracy, and hauled down the British ensign. There was great doubt whether the *Arrow* was really a British vessel; she was Chinese built, manned and owned, and though she had been registered as a British vessel for trading purposes, the registration expired without being renewed. If she was a British ship the Chinese authorities had no right to board, but should have applied to the British Consul, in accordance with treaty arrangements, for the surrender of any offender they might suppose to be in her. The Chinese appear to have believed that the lorcha was not a British vessel, and to have acted on that conviction.

On the affair coming to the knowledge of Mr. (afterwards Sir Harry) Parkes, the British Consul at Canton, he demanded the immediate restoration of the men seized, that the charge against them might be properly investigated in accordance with the provisions of the treaty. The Chinese,

however, refused to comply with this demand, whereupon Mr. Parkes reported the matter to Sir John Bowring, our Plenipotentiary at Hong Kong, who took it up very warmly. In his reply Sir John Bowring pointed out that the *Arrow*, being at the time unregistered, had no right to fly the British flag; but he added that the Chinese authorities had no knowledge of this, and must have therefore intentionally violated the treaty. The demand for the return of the men with an apology was repeated with increased urgency, and coupled with the threat that if redress was not afforded in forty-eight hours active measures would be taken. The Imperial Commissioner, Yeh, still denied that the lorcha was a British vessel, and refused satisfaction. Eventually he returned the men, but without the formalities required by the Consul. It was hardly denied that two of the men were notorious pirates, and Yeh asked for the return of these two, to which he was entitled under the Treaty.

Though, according to Lord Palmerston, Yeh was one of the most savage barbarians that ever disgraced a nation, his arguments were undeniably sound, and his letters would have done credit to an European diplomatist. Sir John Bowring had long been possessed with the fixed idea that it was essential to British trade to gain admission for our merchants into Canton, and seems to have thought the incident afforded a convenient opportunity for enforcing a claim which

had been persistently denied. Accordingly, without referring to the Government at home for instructions, he took advantage, as he said, of 'the development of events,' and instructed Admiral Seymour to open hostilities. A Chinese war junk was first seized, then some forts were battered down; after that the whole of the Imperial fleet of junks was captured and sunk, the palace of the Governor of Canton was shelled, and eventually the city itself was bombarded and a forcible entry made.

With the loose morality which has too often characterised the dealings of self-styled civilised powers with Eastern nations, the Government approved of the action taken by their representatives at Canton. A large number of their independent supporters were, on the other hand, shocked with what seemed to them a grave outrage on humanity and justice. Lord Derby in the House of Lords, and Mr. Cobden as the leader of the peace party in the Commons, moved resolutions of censure, on which concurrent debates ensued. The debate in the Lords was remarkable for speeches of extraordinary eloquence and cogency from Lords Derby and Lyndhurst. In the other House Lord John Russell and Mr. Gladstone, Mr. Roundell Palmer and Mr. Robert Phillimore, made common cause with the leaders of the Opposition in supporting the resolution.

Sir Richard Bethell may be said to have

held the leading brief for the Government, and it was acknowledged by his opponents that he never gave a more striking proof of his masterly ability than when, during the debate, he kept for a considerable time the attention of a popular assembly riveted on a dry legal argument. Addressing himself strenuously to combat the constitutional doctrines advanced by Lord Lyndhurst in the House of Lords, he contended with much plausible dexterity that the title of the *Arrow* to the character of a British ship rested on a treaty with the Chinese, not on Colonial registry, and that Sir John Bowring was therefore justified in vindicating the ship's right to the immunity accorded by the treaty. Lord Palmerston took much the same line, but his speech showed less concern for the legal merits of the case. He enlarged on the atrocious barbarities charged against the Chinese; represented Yeh's attitude throughout as one of flagitious falsehood and studied insult, and grew very warm over 'the combination' of the independent Liberals with the Conservatives to censure the Government. In the House of Lords the resolution was defeated; but in the Commons, after four nights' debate, the division resulted in a majority against the Government of sixteen.

Lord Palmerston had been challenged by Mr. Disraeli to appeal to the country on a platform of 'No Reform! New Taxes! Canton Blazing! Persia Invaded!' After the adverse vote the

Government could only pursue one of two courses —resign office or advise a dissolution. They chose the latter alternative, and the Parliament, then in its fifth session, was dissolved on the 21st of March 1857.

The general election came at a most inconvenient time for Sir Richard Bethell. Hardly a month had elapsed since his re-election on accepting the Attorney-Generalship when the dissolution compelled him again to appeal to his constituents. The all but universal dissatisfaction expressed in the borough at Mr. Layard's vote against the Government on Mr. Cobden's motion induced Mr. Bernard, a gentleman possessing strong local claims, to come forward as a Liberal-Conservative in the hope of displacing one of the sitting Liberal members, and a fierce struggle for the two seats ensued.

Sir Richard Bethell, in his speeches, severely animadverted, as his chief had done, on the 'combination of discordant parties, the accidental coincidence,' which had brought into the same lobby members whose votes could have but one effect—that of placing a Tory Government in power. But though he expressed regret for his colleague's vote, he stood by him loyally, and pressed on the electors the value of his services, and of his experience and energy in Eastern affairs. But it was all to no purpose. In vain did Mr. Layard defend the fatal vote on the highest grounds of political morality, and avow his unshaken fidelity to Liberal principles

and his intention to support the Government in prosecuting the Chinese war with despatch and vigour. At Aylesbury, as elsewhere throughout the country, the only cry was: 'Are you a supporter of Lord Palmerston's Government; if so, how came you to vote against him?' The personal popularity of the Prime Minister settled the question in Mr. Layard's case, as it did in the case of Messrs. Bright, Cobden, Milner Gibson, and other prominent members of the hostile majority. Mr. Bernard was returned at the head of the poll, and Mr. Layard found himself at the bottom of it.[1]

The Attorney-General had hurried back to town on Government business before the poll was declared. The next day he wrote to his eldest daughter:—

'I have been very unwell—no sleep, no digestion—but have no time to think of it, as I have all the Solicitor-General's business as well as my own to do. This has been the case for five weeks, and I fear it will be so for some time. Fortunately, I have an iron nervous system. At Aylesbury I had great trouble—much treachery, and great efforts by Mr. Layard to supplant me. The Conservatives, however, were determined not to let him do so, although he does vote with them, and so I came in with a large majority. But for Layard's machinations, getting his friends to plump for him, I should have been at the head of the poll.'

Mr. Layard's friends, on the other hand, declared that he had been unfairly neglected by Sir Richard Bethell's supporters. There had been some dispute

[1] The numbers polled were: Mr. T. T. Bernard, 546; Sir Richard Bethell, 501; Mr. A. H. Layard, 439.

between the agents, but Mr. Layard seems throughout to have behaved with perfect loyalty to his late colleague.

The Solicitor-General was seriously ill, and must have resigned at once had not Sir Richard Bethell generously undertaken the duties of both offices for a time, in the hope that Mr. Stuart Wortley might recover his health. This hope was unhappily not fulfilled, and Mr. (now Sir Henry) Keating was soon after appointed Solicitor-General on the resignation of Mr. Stuart Wortley.

Lord Palmerston came back with an increased majority, conveying the approval with which the constituencies regarded his administration and, still more, his foreign policy. Several of his more distinguished opponents had lost their seats, and he could afford to be generous towards those who had recently refused their support. No Minister, perhaps, ever met Parliament under circumstances more favourable for Government legislation. That the assurance of his unassailable popularity in the House and the country put him in the best of humours is evident from the following letter to the Attorney-General :—

'*Downing Street, May* 13, 1857.

'My dear Sir Richard—We are disposed to deal with members this session as people deal with their tradesmen at Christmas, and let them bring their Bills in. Therefore, if Erskine Perry does not say anything highly objectionable in moving for his Bill,[1] you

[1] Sir E. Perry's Bill to Amend the Law of Married Women's Property was based on the principle of giving wives equal rights

may as well say that he may bring it in, but that we cannot support it on the second reading. If he goes into a long speech and holds doctrines which will require refutation and reply, you will know how to dispose of him, and we shall have to consider whether the leave to bring in should be opposed.

'There is afterwards a motion of Locke King's about Statute Laws,[1] with regard to which it would be desirable that you should be in your place.'

Early in the Session of 1857 the question of the admission of Jews to Parliament came up again for discussion. The Government introduced a Bill to substitute one oath for the existing oaths of allegiance, supremacy, and abjuration, omitting the words 'Upon the true faith of a Christian.' After considerable opposition the Bill passed through the House of Commons, but was rejected, at the instance of Lord Derby, by a small majority of the Lords.

It then occurred to the advocates of the rejected measure that its object might be attained by amending Lord Denman's Act of 1838, which declared

of property with their husbands. The motion for leave was not opposed by the Attorney-General, and the Bill was read a first time, but made no further progress. Its objects were practically effected by the Act of 1882. Sir Richard Bethell was in favour of the middle course of allowing the husband to enjoy the income of his wife's personal property, subject to the obligation of maintaining and protecting her; if that duty were not duly discharged, the life interest to revert to the wife for her separate maintenance.

[1] Mr. Locke King moved for the dissolution of the Commission, appointed in 1853, which was charged with the consolidation of the Statute Law, on the ground of the great expenditure incurred with small results. Sir F. Kelly joined with Sir Richard Bethell in opposing the motion, which was negatived.

that oaths in courts of justice might be taken by persons in the manner most binding on their consciences. Lord John Russell immediately brought in a Bill to extend that Act to oaths taken in the High Court of Parliament. Before, however, it came on for second reading, Sir Richard Bethell suggested that the desired relief might be obtained more easily through the Statutory Declarations Act of 1835, which enabled a declaration to be made in lieu of the voluntary and extrajudicial oaths, the taking of which, for frivolous and unnecessary purposes, had at that time become a public scandal. Not only were thousands of poor pensioners compelled to take oaths before they could obtain their pay, but a baker would go before a magistrate and be solemnly sworn that his bread was the best that the world could produce.

The Act had been commonly supposed to apply only to oaths taken in courts of justice, but there was a vague reference in it to 'other bodies corporate and politic,' which might, by a somewhat strained construction, be held to include the House of Commons. If this view was correct, a resolution of the House was all that was required to open the door to Jewish members. Sir Richard was anxious that it should be made the subject of a Government resolution, but his interpretation of the Statute seemed to his colleagues too doubtful to justify a proceeding which was open to constitutional objection. Lord Palmerston wrote:—

'*July* 31, 1857.

'My dear Sir Richard—I will consult George Grey on the subject of your letter, but I own that it seems to me to be scarcely within the latitude of official congruities that a member of the Government should make a motion which the Government would deem it their duty to oppose, and though I have not myself looked at the Act which you mention, yet George Grey told me yesterday that he had done so, and that he was of opinion that the Act would not properly bear the construction necessary in order to make it usher in the Jews. There is, moreover, another consideration not to be disregarded, namely, that the House of Commons having repeatedly and deliberately determined to proceed by method of Bill, it becomes questionable whether they should now turn round and cut the knot by resolution.'

The Attorney-General, as will be seen, had taken the right view of the difficulty, but in the face of the Prime Minister's objection he could do nothing officially to give effect to it. Thereupon Lord John Russell, as a private member, took up the matter, and moved for a Select Committee to inquire whether the Act of 1835 was applicable to oaths taken by members of the House of Commons. The motion was agreed to; but the Committee, by a narrow majority, considered that the Act did not apply, and this ingenious attempt to escape from the difficulty caused by the opposition of the Lords ended for the moment in failure.

The first important duty of the Attorney-General in the new Parliament was to introduce a Bill, which he had himself prepared, to make fraudulent breaches of trust criminally punishable. He explained that in all other countries it was a principle of law to hold

the betrayal of trust reposed by one man in another to be one of the greatest of crimes; but in our law there was at that time the remarkable peculiarity, that fraud or theft, when accompanied by breach of trust, was divested of its criminal character. A person who stole £500 would be punished by the criminal law; but if a man upon his death-bed called in a friend and told him, 'I propose to make you executor of my will, and commit to you all my property for the benefit of my wife and children,' and the executor accepted the trust, proved the will, and then robbed the widow and orphans of their property, the law said that he was not a criminal, but a debtor.

But the anomaly did not rest there. Our ordinary tribunals refused to recognise the act as creating a debt, and referred the persons defrauded to the Court of Chancery—a wanton aggravation of their original injury. True to its hide-bound principles, the common law declined to recognise the equitable distinction between trustee and cestui-que-trust, holding that as the trustee was the legal possessor of the trust property, in fraudulently converting it to his own use he did not take the property of another, but only that which was legally his own.

The Bill was framed to make the breach of a private trust penal as a misdemeanour, instead of extending to it the existing law of larceny. Clauses were added to reach the delinquencies of directors of companies, by which the public mind had lately

been scandalised. The fraudulent appropriations in such cases were effected through the medium of false accounts and representations, which were coupled with acts to give a colour to them, such as the payment of dividends out of a fictitious capital. To take a typical case: A Bank was established, with a nominal capital of upwards of £300,000. No more than £40,000 was raised, but the directors proceeded to trade on an extensive scale, borrowed £300,000 on debentures, and misappropriated the whole of the money. The result was that the unfortunate shareholders were called upon, under a Winding-up Act, to pay more than half a million of money. This peculiar species of robbery was also met by direct enactment, and made punishable by imprisonment like any other criminal breach of trust; but in the case of an ordinary trustee no prosecution was to be commenced without the sanction of the Attorney-General. The measure was well received on all hands, and speedily became law almost without alteration.

At the same time Sir Richard Bethell brought in a Bill to facilitate the winding-up of insolvent companies, which quickly passed through both Houses. As the law stood, as soon as a company failed a conflict of jurisdiction arose between the Courts of Bankruptcy and Chancery. The duty of winding up the estate and settling with the creditors belonged to the Court of Bankruptcy; the proceedings for apportioning the contributions of the

wretched shareholders and settling their rights *inter se* could only be taken in Chancery. In the case of the British Bank the creditors numbered 6000, and the shareholders 300; and every single creditor had the right of suing every single shareholder. One creditor for less than £150 commenced twenty-five separate actions. Small debts were bought up by unscrupulous persons merely for the purpose of bringing actions. The result was that a large number of the shareholders fled the country, and others became bankrupt, through the impossibility of coming to terms with so many creditors. The Bill empowered the majority of the creditors, in number and value, to appoint a representative for the settlement of their claims and by that means to bind the whole body, and enabled a shareholder on giving security to obtain protection from the Court against vexatious proceedings.

In the course of his speech introducing the Bill the Attorney-General, much to the public satisfaction, declared his intention of trying, without delay, whether the law as it then stood was not strong enough to meet the case of the British Bank directors, which was the most flagrant of the disgraceful frauds which had culminated in the failure of many joint-stock banks, the widespread ruin of the shareholders, and a general sense of commercial insecurity. Accordingly the directors, including a Member of Parliament and an Alderman and Sheriff of the City, were tried for conspiracy on an elaborate

indictment framed by Sir Richard Bethell. The evidence disclosed a course of fraudulent dealing by the publication of false reports and balance sheets, the payment of dividends when there were no profits, and the issue of new shares when the bank was hopelessly insolvent, which left the defendants no chance of escape. They were all convicted, and, with one exception, sentenced by Lord Chief Justice Campbell to various short terms of imprisonment. All moved for a new trial, and Lord Campbell had some difficulty, according to his own account, in inducing his puisnes to refuse the rule. The result of the trial did much to pacify the indignation of the public and restore a feeling of confidence.

The Fraudulent Trustees Bill had not got through Committee when Sir Richard Bethell was called upon to take in hand the Testamentary Jurisdiction Bill, sent down from the House of Lords. The previous discussions on the subject had led to considerable modifications in the form of the measure, but its object was the same—the abolition of the testamentary jurisdiction of the Ecclesiastical Courts, and the constitution in their place of a single Court for probate and administration. Instead of referring these matters to the Court of Chancery, as had been previously proposed, a new Common Law Court was to be established. The introduction of the Bill was hailed with a chorus of congratulations; every one approved of its principle, but freely criticised its details.

The second reading passed unopposed, but in Committee the progress of the Bill was jeopardised by an amendment which was so distasteful to the Attorney-General that he threatened to drop the measure. In addition to the principal registry in London, it was proposed to establish district registries, with power to prove wills where the estate did not exceed £1500. The reason for this limit was that greater skill and experience than the district registrars might be expected to possess were required to guard against fraud and mistakes. If probate were improperly granted, persons who had paid money under its authority might be called upon to pay it again; the question therefore was one in which bankers and companies, as well as the community at large, were seriously interested. The country members, however, successfully resisted the limitation. The Attorney-General made several strong protests, and tried in vain to induce the House to reconsider its decision. When the matter was thus at a deadlock Lord Palmerston intervened, the limitation was withdrawn, and the Bill passed. Sir Fitzroy Kelly gave a generous support to this and other legal reforms promoted by his rival, such as is rarely obtained from political opponents.

CHAPTER VIII

1857

Law of Divorce prior to 1857—Divorce Bill—Sir Richard Bethell's statement—Mr. Gladstone's opposition—Protracted struggle in Committee—Violent attacks on the Attorney-General—Re-marriage of divorced persons—His forcible protest against dispensation of clergy—Renewed opposition in the House of Lords—Bill passes—Offer of judgeship of Probate Court—Cases and anecdotes.

NEXT came the great question of divorce. More than one Commission had reported in favour of establishing a separate Court, so that the dissolution of marriage might be effected by judicial decision instead of by a special Act of Parliament. By this change the expense incident to the existing procedure would be materially reduced, and the remedy which lay within the reach of the wealthy would be extended to the poor. As the law, or rather practice stood, the privilege of obtaining a release from the marriage tie depended on a mere property qualification. If a man had £1000 to spend, he might rid himself of an unfaithful wife; if not, he must remain her husband. Very rarely indeed did the House of Lords entertain a wife's application for divorce.

The well-known anecdote of Mr. Justice Maule gives a forcible illustration of the process under the old law, and is such an excellent specimen of judicial irony that it must not be omitted here. A hawker who had been convicted of bigamy urged in extenuation that his lawful wife had left her home and children to live with another man, that he had never seen her since, and that he married the second wife in consequence of the desertion of the first. The Judge, in passing sentence, addressed the prisoner somewhat as follows :—

'I will tell you what you ought to have done under the circumstances, and if you say you did not know, I must tell you that the law conclusively presumes that you did. You should have instructed your attorney to bring an action against the seducer of your wife for damages; that would have cost you about £100. Having proceeded thus far, you should have employed a proctor and instituted a suit in the Ecclesiastical Courts for a divorce *a mensâ et thoro;* that would have cost you £200 or £300 more. When you had obtained a divorce *a mensâ et thoro,* you had only to obtain a private Act for a divorce *a vinculo matrimonii.* The Bill might possibly have been opposed in all its stages in both Houses of Parliament, and altogether these proceedings would cost you £1000. You will probably tell me that you never had a tenth of that sum, but that makes no difference. Sitting here as an English judge it is my duty to tell you that this is not a country in which there is one law for the rich and another for the poor. You will be imprisoned for one day.'

These observations, exposing the absurdity of the existing law, attracted much public attention, and probably did more than anything else to prove the need of its reform.

The long-postponed Bill was the first item of legislation undertaken by the House of Lords. It passed that House after undergoing a vast amount of hostile criticism and dogged opposition, the Bishop of Oxford (Dr. Wilberforce) in particular distinguishing himself by his vigorous attacks on its principle and provisions. Such delay was occasioned by these discussions that the Bill did not reach the House of Commons till very late in the session. Here a preliminary skirmish took place which foreshadowed the reception it was likely to obtain. The opportunity was not favourable for the introduction of a measure of such gravity and consequence. Intelligence of the sudden outbreak of the Indian Mutiny had reached the country in the previous month, and the terrible anxiety which it caused occupied the public mind to the exclusion of almost every subject of domestic interest. Everything pointed to the probable postponement of the Bill to a future session.

The 24th of July was the date fixed for the second reading, but no sooner had the Attorney-General risen to explain the Bill than Mr. Henley interposed with a motion to postpone the second reading for one month. He was supported in this most unusual proceeding by Mr. Gladstone in a speech of great length and energy. Sir Richard Bethell good-humouredly met the demand for time to consider the measure by declaring that, judged by their speeches, there never were men more profoundly able

or better prepared to discuss the question in all its details. Lord Palmerston was less conciliatory. He had been asked how long he proposed keeping the House sitting, and he replied, so long as might be necessary to dispose of the important measures before it, and plainly hinted that the middle of September was a possible date for the termination of the session. The motion was negatived by a large majority.

On the 30th of July the Attorney-General made his postponed statement. He commenced by admitting that the Bill had excited anxiety and alarm in the country at large. It was believed by some to be an attempt to introduce new principles affecting relations which lay at the very foundation of civil society. That alarm was entirely groundless. The Bill involved only long-established principles, and gave a local habitation to doctrines that had been recognised as part of the law of the land, and administered in a judicial manner, although through the medium of a legislative assembly for nearly two centuries.

He sketched the rise and progress of the existing law of divorce as judicially administered by Parliament. Anterior to the Reformation the doctrine of the Roman Catholic Church of the indissolubility of marriage was generally accepted as the law of the land, and the subjects of marriage and divorce were delegated to spiritual tribunals, which proceeded upon the principles of the Church. When the

Reformation came a new view was taken. The Commissioners entrusted with the duty of reforming the ecclesiastical laws were unanimous in altering the received doctrine of the Roman Catholic Church tribunals, and in affirming the dissolubility of marriage. Unfortunately, the ecclesiastical tribunals, instead of being subjected to the ordinary rules as Courts receiving their authority from the Crown and administering the common law, were permitted to retain their ecclesiastical character, to exercise their own functions and administer their peculiar principles. The result was, that although for nearly a century after the Reformation marriage was regarded as a bond of union capable of being dissolved for the gravest causes, yet about the commencement of the seventeenth century the old doctrine was restored by a decision of the Star Chamber, and the Ecclesiastical Courts were declared not to have the power of granting a divorce *a vinculo matrimonii*. Their jurisdiction being thus limited to granting a divorce *a mensâ et thoro*, it followed that no tribunal was armed with the requisite authority to sever the marriage tie.

The matter remained in that state until Parliament, coming to the relief of the law, and of what might be called the necessities of the country, established the system of parliamentary divorces. To speak of legislative interference as nothing more than the passing of peculiar laws to meet peculiar emergencies, and to denominate these judicial sen-

tences of Parliament as mere *privilegia* was, he urged, to use language inaccurate and inapt. The administration of justice upon settled principles, and according to rules previously fixed, was essentially a judicial act, and it mattered not whether the duty was discharged by a body calling itself a Legislature, or by two or three individuals sitting in an ordinary Court of Justice. That interference on the part of Parliament was, in truth, the only mode by which justice could be administered in the absence of any regular tribunal which should be the habitation and seat of the principle of the law.

The system had been established for a century and a half, and it was plain by historical deduction that in the House of Lords there was a tribunal for that purpose proceeding upon permanent rules, imposing the conditions upon which alone divorce could be obtained. The party seeking it must have thrice proved his injury before he was entitled to a divorce *a vinculo matrimonii*—first in the Ecclesiastical Court, then in an action for damages for what was commonly called *crim. con.*, and lastly in the House of Lords.[1] In one particular only did the Bill go beyond the existing law—in cases of malicious desertion; in other respects it adhered to the rules universally understood for the administration of justice with regard to divorce. But while it embodied the settled law it altered most materially

[1] In Ireland at the present day this threefold proceeding is necessary to obtain a divorce.

the form of its procedure, and got rid of 'that most abominable proceeding,' the action of *crim. con.*, which he held to be a great reproach to the country.

Reverting more fully to the historical argument, Sir Richard reminded the House of the Marquis of Northampton's case in the reign of Edward VI., in which the question arose whether a man who had obtained a divorce in the Ecclesiastical Courts, on the ground of his wife's misconduct, could be permitted to marry again. It attracted the attention of Cranmer, and while the case was under discussion certain questions were submitted for the consideration of the most eminent lawyers and divines, whose opinions were afterwards embodied substantially in the Canons of 1602. He cited in *extenso* the replies of these learned persons, and insisted that they amounted to a distinct recognition of the principle of divorce *a vinculo matrimonii*, which was also shown by the practice of the Ecclesiastical Courts to require persons there divorced to enter into bonds not to marry again. When it was discovered that these Courts were incompetent to pronounce a decree of divorce *a vinculo*, as they proceeded merely on the authority of the civil and canon law, there arose the practice of obtaining divorces through the medium of Bills passed by the Legislature.

Since 1703 there had been no recorded instance of any Bishop objecting in Parliament to the passing of any of those Bills upon the ground which had been taken in recent petitions to Parliament, that

marriage was, both by Scriptural authority and English law, indissoluble. If marriage was indissoluble on Scriptural authority, every one of those Bills had been a violation of that authority. Sir Richard Bethell allowed that the authority of Scripture was binding on legislative assemblies as much as on judicial bodies or private individuals; but could they, he said, listen to the argument that they were about to fly in the face of Scripture when they found that their Bishops, age after age, had been parties to those Bills, and when the two Houses of Parliament had, in all those instances, recognised the very principle of law which was embodied in the Bill? If they rejected the Bill, they would disapprove the whole of the existing practice of legislation, retrace their steps, condemn all that had been done for the last two hundred years, and must refuse ever after to receive any one of those *privilegia* which they had been accustomed to admit.

He next adverted to the Scriptural argument with reference to the passage in St. Matthew's Gospel—*παρεκτὸς λόγου πορνείας*—and combated with much ingenuity the discordant renderings which the Greek and Hebrew text had received, and the inconsistent reasoning founded on them by the opponents of the Bill. He urged from the sacred character of the marriage vow that what severed a bond of Divine institution was the most effectual means, according to the letter and spirit of Scripture, of dissolving the union :—

'This,' he said, 'was written in Scripture, and it was written in the heart, for every human being capable of appreciating the sanctity of marriage must feel that, when one party to the marriage was guilty of that sin which struck the very soul from the contract, the holy character of the union could never again be restored.'

In a lighter strain the Attorney-General anticipated the divergent arguments which might be expected from his principal opponents. He pointedly referred to Mr. Gladstone as a great master of eloquence and subtle reasoning. 'If that right hon. gentleman had lived—thank Heaven he had not—in the Middle Ages, when invention was racked to find terms of eulogium for the *subtilissimi doctores*, how great would have been his reputation!'

Having described the contradictions within the House, and expressed the fear that there were equal contrarieties without — *Iliacos intra muros peccatur, et extra* — he entreated the House to abide by the exposition of the Scriptures which had been the received interpretation, not only by their own Church, but by all the Protestant Churches in Christendom; to believe that those Churches could not err as a body, and that the interpretation on which their ancestors had acted for so many years in the administration of justice was the right one.

Passing on to the vexed question of the intermarriage of the guilty parties, and the solemnisation of that marriage *in facie ecclesiæ*, he referred to the

fact that no less than 6000 clergymen had petitioned that the House would not lay a load upon their consciences by requiring them to celebrate matrimony in such cases with the office of the Church. If it were right in the interest of morality and humanity that the guilty parties should be permitted to marry, as had hitherto been the law, then nothing, he declared, could be more dangerous or fraught with more unhappiness to the clergy and to the Church than to listen to their desire to be relieved from the obligation of obeying the law of the land. The true union of Church and State in this country was produced by this, that the Church was subordinate to and upheld by the common law, like every other institution, on the principle of the supremacy of the Crown. Sir Richard Bethell's speech occupied two hours, and was very well received.

The case against the Bill was presented with the most telling force on all points by Mr. Gladstone. He began by urging the strong feeling which existed against the Bill, and the great danger of precipitancy in legislating on such a subject under Government pressure. The Bill undertook not only to deal with the civil consequences and responsibilities of marriage, but also to determine religious obligations and cancel the most solemn of vows; while, though not invested with any theological authority, it set itself up as a square and measure of the consciences of men. 'I must confess,' said Mr. Gladstone, 'that there is no legend,

there is no fiction, there is no speculation, however wild, that I should not deem it rational to admit into my mind rather than allow what I conceive to be one of the most degrading doctrines that can be propounded to civilised men—namely, that the Legislature has power to absolve a man from spiritual vows taken before God.'

He met the assertion that the Bill made no change in the law, but merely reduced to legislative form what had long had legislative effect, by an emphatic negative. The Bill carried divorce to the door of all men of all classes, and was therefore to all intents as completely novel as if it had no parliamentary precedent. Entering upon the theological argument under protest, as a discussion which could not properly be conducted in a popular assembly, he adduced much historical testimony, particularly that of the Primitive Christian Church, to refute the propositions advanced by the Attorney-General as to the dissolubility of marriage. Coming down to the Reformation, Mr. Gladstone forcibly summarised Sir Richard Bethell's argument, turning aside for a moment to interpolate an amusing personal reference:—

'While I am mentioning my honourable and learned friend, it would be ungrateful in me not to take notice of the undeservedly kind language in which he thanked Heaven that I had not lived and died in the Middle Ages. My hon. and learned friend complimented me on the subtlety of my understanding, and it is a compliment of which I feel the more the force since

it comes from a gentleman who possesses such a plain, straightforward, John-Bull-like character of mind—*rusticus abnormis sapiens crassâque Minervâ*. Therefore, and by the force of contrast, I feel the compliment to be ten times more valuable. But I must say, if I am guilty of that subtlety of mind of which he accuses me, I think that there is no one cause in the history of my life to which it can be so properly attributed as to my having been for two or three pleasant years the colleague and co-operator with my hon. and learned friend. And if there were a class of those *subtilissimi doctores* which was open to competition, and if I were a candidate for admission and heard that my hon. and learned friend was so likewise, I assure him that I would not stand against him on any account whatever.'

Mr. Gladstone went on to declare that the Attorney-General had surpassed himself in liberality, for he gave a ninth beatitude—'Blessed is the man who trusts the received version'—a doctrine much more in keeping with the Middle Ages, with those *subtilissimi doctores*, than with the opinion of an Attorney-General of a Liberal Government in a Parliament of the nineteenth century; that was, blessed is he who shuts his eyes and does not attempt to discover historical truth; who discards the aid of legitimate criticism; who, in order to save himself trouble and pass an important Bill without exertion, determines not to make use of the faculties that God has given him, and throws discredit upon scholarship and upon the University of which he is a conspicuous ornament by refusing to recognise anything but the received version. This sally was received with much laughter.

Referring to the social aspect of the question, the

speaker, with glowing eloquence, deplored the change which the Bill would work in the marriage state as shaking the great idea of the marriage contract in the minds of the people, marking the first stage on a road of which they knew nothing, except that it was different from that of their forefathers, and carried them back towards the state in which Christianity found the heathenism of man. In conclusion, he declared that he resisted the measure because it offended his own conscientious feelings; it was a retrograde step, pregnant with the most dangerous consequences to their social interests; it was not desired by the people of the country; it contained a proposal harsh and unjust towards the ministers of religion, and involved an insult to religion itself; and lastly, because it was pressed forward at a time when it was impossible to bring the mind of the country and the House to an adequate consideration of its magnitude and importance. Although he might be utterly powerless in arresting its progress, he was determined, so far as it depended upon him, that he would be responsible for no part of the consequences of a measure fraught, as he believed it to be, with danger to the highest interests of religion and the morality of the people.

Mr. Gladstone's speech held the House spellbound even during a minute theological disquisition, and its conclusion was greeted by prolonged cheering. It was felt that all that could be urged against the measure had been said and said in vain.

After a forcible reply from Sir Richard Bethell, in which he addressed himself exclusively to the arguments of Mr. Gladstone, who had, he said, transcended himself on that occasion, and, like Aaron's rod, swallowed up all the rest of the opponents of the Bill, the second reading was carried by a majority of 111.

Not satisfied with this decisive result, at the very next stage Mr. Samuel Warren moved to defer the committal of the Bill for three months, which raised a fresh debate on the principle of the measure. The motion was negatived, and then the long struggle may be said to have commenced in earnest.

Clause by clause, line by line, at times almost word by word, the progress of the measure was challenged by an opposition which was to a great extent captious. Frequent appeals were made to the Prime Minister to withdraw the Bill, but in vain. The lengthy debates upon it afforded plenty of opportunities for the exhibition of the parliamentary tact by which Lord Palmerston was so greatly distinguished. He seldom spoke, however, except under pressure of a direct appeal, but left the Attorney-General to bear the brunt of the fray. Sir Richard Bethell rose to the occasion. Almost unaided and alone he stood his ground against a host of implacable assailants, who gave and received no quarter, seeking to overwhelm him as much by the sheer weight of numbers as by dialectical ingenuity and personal invective. Every

weak point or possible ambiguity on which objection could be founded was seized upon as affording ground for fresh attack or resistance. The Attorney-General never for a moment shrank from an encounter which became at last almost a contest of physical endurance. He displayed a readiness of resource, argument, and retort, a perseverance and *aplomb* which went far beyond his previous reputation. Occasionally Lord Palmerston came to his rescue with a warm rebuke of the Opposition or a judicious compromise. The heat of the struggle in the House corresponded with the extraordinary sultriness of the weather, which made the extension of the session particularly trying.

One of the most important amendments was moved by Lord John Manners to give jurisdiction to local courts in cases of judicial separation. This the Government strongly resisted, but it was carried on a division by a narrow majority. A still more important amendment was proposed with the object of extending to the wife the same right of divorce as was given to the husband.[1] On this proposal Mr. Gladstone again made a telling appeal, founding his argument on the principle of the equality of the sexes in the highest relation of life.

[1] In the case of the husband, adultery must be coupled with cruelty or desertion to entitle the wife to a dissolution of the marriage. As the tendency of recent legislation is to give a married woman an independent status and equalise the rights of the sexes, it seems unlikely that this distinction will be much longer maintained.

But the distinction made by the Bill was affirmed by the House.

A further amendment on the same clause gave Mr. Gladstone, Lord John Manners, and Mr. Henley the opportunity of attacking the Attorney-General with so much violence that at length he claimed the right, as having official charge of the Bill, to be treated with some consideration. He said he had been taunted with showing disdain and insensibility on the question of giving equal facilities of divorce to the wife and the husband, but there was a distinction between any private feelings which he might entertain if the whole of the marriage law was being altered, and what he felt to be his duty in promoting a measure based, as he declared, on the limited principle of embodying the existing law. Having thus defended himself, he carried the attack into the enemy's quarter with a vigour and effect which brought Mr. Gladstone again to his feet. He complained bitterly of Sir Richard Bethell's charges of inconsistency and insincerity,—'charges,' he said, 'which have not only proceeded from his mouth, but gleamed from those eloquent eyes of his, which have been turned continuously on me for the last ten minutes.' He commented severely on the Attorney-General's statement of his duty with regard to the Bill. It was pushed by him through the House as a ministerial duty: he received it from the Cabinet for whom he considered it his business to hew wood and draw water. Upon

this Sir Richard Bethell ejaculated in a melancholy tone, 'That is true,' which caused some amusement. Lord Palmerston defended his subordinate from this fresh onslaught with a characteristic retort. No doubt it had been necessary, he said—and ably had the Attorney-General acted up to the necessity—to 'hew' around him, and in so doing he had cut severely right and left; perhaps, too, as a 'drawer of water' he had drawn tears of repentance from the eyes of those who had abandoned their former opinions.

In the course of the discussion on this clause, which occupied ten hours, Mr. Gladstone made upwards of twenty speeches, some of them of considerable length. He was on his legs every three minutes, in a white-heat of excitement, while the Attorney-General sat composedly, getting up the Shrewsbury Peerage case with a pile of blue-books and papers before him. As soon as Mr. Gladstone had finished, he would rise, and, having in a few words disposed of the points raised, resume his place and his work. Mr. Gladstone had told Lord Palmerston that he was determined that the Bill should not be carried until the Greek Kalends, and in reply to the question put to him in the lobby by Sir Richard Bethell, 'Is it peace or war?' fiercely replied, 'War, Mr. Attorney; "war even to the knife!"'

So the battle raged on with undiminished intensity. On the 16th of August Sir Richard Bethell wrote to a member of his family:—

'I have had to maintain my ground and vindicate one of the worst drawn, miserably expressed Bills I ever saw in my life against a host. Gladstone's violence also gave a vehement personal character to the debates. In the middle of it I was obliged to sit up the small portions left of two nights in the House of Commons to get up the Shrewsbury Peerage case.[1] However, it has done me very little harm either in body or mind. I am a little tired, but the others are much worn and jaded. I expect three days more of hard fighting, and that I shall not start for Scotland until Wednesday night. I shall travel all night.'

Upon the clause allowing divorced persons to marry again another amendment was moved by Sir W. Heathcote for Mr. Gladstone, whose attendance was prevented by a domestic calamity, to exempt the clergy from any liability for refusing to solemnise any such marriage. This concession to conscientious scruples was, after much discussion, reluctantly accepted, but not without an impressive warning by Sir Richard Bethell of the danger of granting to any class a dispensation from obedience to the law. He said :—

[1] In the great Shrewsbury Peerage case Sir Richard Bethell appeared, as Attorney-General, and obtained an adjournment for two days to enable him to consider the evidence. During these days he was occupied with the Divorce Bill at morning and evening sittings, and requested one of the solicitors engaged in the case to wait upon him in his room when the House rose. The debate was not over till 2 A.M. The solicitor then had a conference with the Attorney-General which lasted an hour and a half. Sir Richard asked for explanations with reference to some points which, in his opinion, ought to be the subject of comment, and requested the solicitor to have them ready at nine o'clock. The solicitor reappeared at the appointed hour with a written statement, and found the Attorney-General still at work in his room, which he had not left since the House rose.

'You are about to give the clergy an exemption and an immunity, and upon what ground? Upon the ground of the sin, guilt, and criminality of the charge affecting those who come before them with a request that a holy and religious ceremony may be performed. But if an exemption be granted on those grounds, where are we to stop? Will the clergy not reason most consecutively from this exemption when they say, "You have exempted us from doing violence to our consciences in this matter, but why do you leave us under the necessity of submitting to the violation of our consciences in others?" . . . Suppose some notorious free-liver, some gross, libidinous man, who has shaken off all feelings of decency, and who by his past life has outraged all the principles of morality, presenting himself for the solemnisation of this holy rite, what would be the feelings of the clergyman? That is the result which you must contemplate if in any single instance you make up your minds to emancipate the clergyman from the overpowering authority of the law.

'You are about to trust the clergy with the fatal gift—fatal it will be to the peace of many—of exercising the right of private judgment as to whether or not they shall dispense those holy rites which they have been commissioned to administer. This will pervade all the services of the Church. Take the burial service or the baptismal service. The Church of England clergyman will reason most consecutively according to his impression of the great principle which we are about to introduce into the Bill when he says, "I must decline to read the burial service over an unbaptized man; how can I commit to the earth, 'in the sure and certain hope of a joyful resurrection,' the body of a man who I know to have died in the commission of some great sin?" Will not his argument be, "You have sanctioned by this Bill the right of appeal from your law to that law which is written in my heart; that appeal I have a right to make, but if I have a right to make it in this instance I ought to make it in others." The result will be that he will no longer be the minister of religion dispensing those holy rites in full trust and confidence that, as he knows not the heart of man, that heart may be penetrated with repentance, that the notorious sinner, even the sinner of yesterday, may have had a new heart

given to him, and that in so short a space of time he may have come into a fit state of repentance to receive those holy ceremonies. That is the humble trust, confidence, and assurance with which each minister of religion now dispenses those holy rites. But you are about to take away from him entirely that ground of his administration, and you are about to tell him—for if the exemption is good in this case it is good in all others—that he ought not to be a minister of religion dispensing the holy rites of the Church to those whom he believes to be unworthy recipients of them. . . .

'I cannot approach the subject without a deep feeling of the importance which attends the decision of this question. I cannot presume to set up my opinions or my view of the matter against those of so many eminent and deeply pious men, and of so many most competent persons as are here assembled; therefore I express with the greatest diffidence the feelings which I entertain in my own mind; and if I give way, I give way not from conviction, but purely in deference to the united body of authority, and to the judgment of persons who, I must assume, have weighed this matter well, and who, deeply feeling for the interests of the Church of England, believe that those interests, and the happiness, the peace, and the quiet of her ministers will be promoted by the introduction of this principle. Well, God grant it may be so! But, though it comes from a feeble voice, I warn you of the things that must come in its train; and I beg you to pause before you give to the clergy of the Church a fatal gift, which may be the very fount and origin of that dissension, that discord, and that rending in twain which God forbid we should ever live to see!'

The earnest tone of this protest produced a great impression on the House. On the other hand, the force of the conscientious objection raised by so large a body of the clergy was conceded by the majority of members, and it is clear that the Government would have been beaten if they had refused to give way on the point.

The effect of the concession was somewhat limited by a clause introduced by Sir Richard Bethell, which provided that when a clergyman refused to perform the marriage ceremony between persons who, but for such refusal, would be entitled to the performance of that ceremony, it should be lawful for any other minister licensed within the diocese to perform it. This was strenuously opposed as a dangerous innovation of the parochial system, but was carried.

At length, on the 21st of August, the Bill came on for third reading, when its principal opponents entered their final protest. The reading, however, passed without a division, and the Bill went back to the House of Lords. Lord Redesdale, the Chairman of Committees, who led the Opposition, at once announced his intention of moving forthwith that the amendments made by the other House be taken into consideration that day six months. This proceeding, which would have strangled the Bill, took the Government entirely by surprise, for the amendments had not even been printed nor any day fixed for their consideration. A heated discussion ensued, in which stronger expressions were used than commonly find currency in the Upper House. Ministers were aware that if the motion were pressed to a division they would be left in a minority and the Bill lost. Happily the strong personal appeals made from the Government benches prevailed, Lord Redesdale consenting with some show of mag-

nanimity to allow the measure to go forward. This was, as subsequently appeared, the most critical point in its progress. Three days later, when the Lord Chancellor moved that the Commons' amendments be taken into consideration, Lord Redesdale and Lord St. Leonards opposed the motion chiefly on the ground that the alterations were so important that there was not sufficient time left to consider them. On a division the Government obtained the narrow majority of two, and the Bill once more escaped destruction.

The alterations made in the Commons were agreed to, with one or two exceptions. The clause giving a local jurisdiction in cases of judicial separation or restitution of conjugal rights, which had been unsuccessfully opposed by Sir Richard Bethell, was struck out.[1] Upon the clause giving the husband power to recover damages from the co-respondent another keen struggle took place. The Government, being in a decided minority of the peers present, called in the aid of a larger number of proxies than the Opposition could command, and by that means secured a small majority.[2] The Lords' amendments were promptly assented to by the House of Com-

[1] By the Matrimonial Causes Act 1878 the Court or magistrate before whom a husband is convicted of an aggravated assault on his wife may, if satisfied that the future safety of the wife is in peril, make an order having the effect of a decree of judicial separation.

[2] The ancient practice of calling for proxies on a division was discontinued in 1868 by a standing order of the House.

mons, which had been waiting for the return of the Bill, and the measure, which from first to last had been the subject of one of the keenest parliamentary struggles ever witnessed, became law.[1]

The cruel hardship of the delay and expense incurred in obtaining divorce was obviated by the Act, which has had a more extensive operation than was expected. It was supposed that there would not be more than twenty or thirty cases a year. In the first year the number was between two and three hundred, a large proportion of which was attributed to long-standing grievances. But subsequently the number steadily increased, and at the present time it amounts to several hundreds every year. The speedy success of the Act was largely due to the ability with which Sir Cresswell Cresswell presided over the Court.

In a recent article[2] Mr. Gladstone, chronicling the deeds and misdeeds of the Legislature during the last half century, has declared that, were he recording his own sentiments only, he should set down the Divorce Act as an error, though he conceived it had the approval of a majority. It would

[1] It may be mentioned that, by a Bill of 1859 to amend the procedure of the Divorce Court, Sir Richard Bethell proposed to give the judges power to sit with closed doors when, in the interests of public decency, they thought it desirable. The clause met with opposition from all parts of the House, and, finding that he was its only advocate, he withdrew it. A similar proposal made by Lord John Manners in 1860 shared the same fate.

[2] '"Locksley Hall" and the Jubilee,' *vide Nineteenth Century*, January 1887.

appear that he is still unreconciled to the existing law, and the following letter shows that he remains consistent in his disapproval of its principle :—

'My objection to the Divorce Bill,' writes Mr. Gladstone, 'was very greatly sharpened by its introduction of the principle of inequality. But there is behind this the fact that I have no belief whatever in the operation of Parliamentary enactments upon a vow, a case which appears to me wholly different from that of the Coronation Oath. I think it would have been better to attempt *civil* legislation only, as in the case of the Wife's Sister Bill.

'Lord Westbury and I were placed in conflict by the Divorce Bill. But he was the representative of a prevailing public sentiment as well as of an Administration ; I of an opinion which had become isolated and peculiar. I remember learning, with some consolation, from Lord Wensleydale that, after hearing the debate, he was against the principle of the Bill.'

It is but fair to add that, after the Act had passed, Mr. Gladstone, with the generous frankness which distinguishes great men, wrote a letter to the Attorney-General expressing regret for any language he had used during the debates on the Bill which might have given pain.

With reference to Sir Richard Bethell's advocacy on this memorable occasion Sir Henry Layard writes: 'As a speaker he was unrivalled in the House of Commons, during the time I had a seat in it, for his close reasoning and for the admirable lucidity with which he pressed his arguments. Perhaps the most remarkable instance of his powers in this respect was his support of the Divorce Bill, in which, by general consent, he far surpassed as a

debater and logician all his antagonists, although Mr. Gladstone was included amongst them.' Sir Richard used at that time to say of Mr. Gladstone that he was the only debater then in the House of Commons whose subtlety of intellect and dialectic skill made it a pleasure to cross swords with him. This pleasure was, no doubt, reciprocal.

Immediately he was released from his parliamentary duties Sir Richard Bethell hastened to Scotland, where his youngest son and daughter had preceded him. He had rented a moor near Blairgowrie, in Perthshire, on which there were two houses, one of them a small shooting-box affording but scanty accommodation. Notwithstanding his recent labours and want of proper sleep he did not on arrival appear at all jaded, but at once threw himself with great zest into the pleasures of shooting grouse. This entailed more severe exercise than he was accustomed to, though his love of sport and scenery and the fine air carried him on, and he would not confess to feeling over-fatigued. But at the end of a fortnight the reaction came, and he took a chill which resulted in a rather serious attack of congestion of the lungs.

The weather had turned cold and wet, and the wind made its way unpleasantly through the little wooden house in which he was laid up. The stable adjoined the bedrooms, and the noise of the animals, plainly heard through the thin partition, was an addition to the discomforts of the situation

which prevented the invalid obtaining the little rest which the intervals between violent fits of coughing allowed. He was obliged to remain through the night in a sitting or standing position, while the dreary days were passed in reading or writing at an improvised desk. The only available doctor lived miles away, and he, though competent enough in his sober moments, was often in an unfit state to prescribe if he happened to be called in late in the day. One afternoon he found his patient very ill, and told Miss Bethell that it was important that leeches should be applied to his chest that night, promising to send them out from the nearest town. No leeches, however, made their appearance, but just before midnight a small boy arrived, empty-handed, but with a message—'The doctor was sair fashed he could na' send the leeches; they were so worn out they could do nae mair sucking.' Some time passed before Sir Richard recovered from the effects of this illness, but when able to travel he went to Edinburgh and consulted the eminent Dr. Simpson, who pronounced his constitution splendid.

On his return to town he received from the Prime Minister the following official acknowledgment of the services he had rendered in conducting to a successful issue the probate and divorce reforms:—

'94 *Piccadilly, Oct.* 1, 1857.

'My dear Sir Richard—The new Judge of the Probate Court cannot, as you know, be actually appointed till next January, but as he will have to prepare Regulations, we think it desirable to

settle who should fill the office, in order that the person fixed upon may, between the present time and January next, be able to frame those Regulations.

'Your official position and your professional eminence make it impossible for me to take any step in the matter without first ascertaining what your own inclinations in regard to this new office may be, and I should therefore wish to know whether it would be agreeable to you to undertake its duties. I trust I need not say that I should think myself fortunate if I was able to submit to the Queen an arrangement which would secure so able and distinguished a head for this new Jurisdiction.—My dear Sir Richard, yours sincerely, PALMERSTON.'

In reply Sir Richard Bethell wrote refusing the offer :—

'. . . I fully appreciate this mark of your Lordship's good opinion, and I thank you very sincerely for the kind expressions contained in your letter.

'In conducting the Divorce and Testamentary Bills through the House of Commons I had to prepare clauses which added considerably to the salary and patronage of the future judge.

'I think the House of Commons and the country had a right to consider that I was acting as a disinterested adviser, and the belief that I was so gave weight throughout to my advocacy of these important Bills.

'I cannot think, therefore, that it would be right in me to accept this office. It would be said, and apparently with justice, that all my exertions were directed to my own aggrandisement. On this ground I must respectfully decline your Lordship's offer.

'Other considerations, and particularly my enfeebled health, would have led me to accept it.

'I trust you will approve of my reasons, and that it will not be a matter of regret to you that I still remain your Attorney-General.'

But though now for the second time he refused a Judgeship he began to show signs of discontent with parliamentary life. Strange to say, not-

withstanding his remarkable success in an arena in which so many professional reputations are damaged, he had little pleasure in it. 'I have not been well lately,' he wrote to his daughter, Mrs. Mansfield Parkyns, 'and am very tired of the life I am leading. Public life and office give me no gratification. I have now worked hard for two and thirty years, and really long for repose.'

His practice had, if possible, increased since he became Attorney-General, and he may be considered to have attained in this year the zenith of his professional reputation. Out of seventeen reported cases in the House of Lords (including Irish and Common law appeals) he was engaged in no less than thirteen. When we consider that the greater part of this work was undertaken during the Session, while he was continually engaged upon the heavy measures which have been mentioned, we may marvel at such energy and capacity.

At this time it was a common practice for a widower who desired to marry his late wife's sister to resort for a temporary residence to some foreign country, where the validity of such a marriage was recognised, in the hope of evading the disabilities of the English law. There were public advertisements inviting persons to avail themselves of the law of foreign countries in relation to such marriages, and much anxiety began to be expressed by those who had relied on the representations made. The Brook case conclusively settled that

such marriages, wherever contracted, were absolutely void.

Mr. Brook in 1850 had gone through the form of marriage, according to the rites of the Lutheran Church, at Wandsbeck in the Duchy of Holstein, with his deceased wife's sister, both parties being at the time domiciled in England, and having no intention of residing abroad. They returned to England, and Mr. Brook died in 1855, leaving two children by the former marriage and two daughters and a son by the second marriage. This son died an infant shortly after his father, and the question was, who was entitled to the real and personal property given to the infant son by the father's will. The other children claimed as heirs and next-of-kin of the infant, but this claim was resisted by the Attorney-General on behalf of the Crown, on the ground that the second marriage was invalid and the children of it illegitimate, and that therefore the property had devolved to the Crown. After a long and learned argument it was so held, in conformity with the principle that the English law binds English subjects wherever they may be.[1]

Sir Richard Bethell was one of the leading counsel in a heavy case, which was one of seven suits instituted with respect to the property of Dr.

[1] *Brook* v. *Brook*, 3 Smale and Giffard's Reports, 481. Up to 1835 marriages within the prohibited degrees were merely voidable; their validity could only be questioned during the lifetime of both parties.

Peter Cochrane.[1] The estate, notwithstanding the great drain which had been for several years made upon it in litigation, amounted to nearly a quarter of a million, and its ultimate destination hung upon the issue. Dr. Cochrane, a Scotchman by birth, had entered the East India Company's service, and remained in India for many years. While there he went through a form of marriage, according to Mahommedan rites, with a native lady. He afterwards married an English lady, and, leaving India, resided for five years in Scotland. In consequence of unpleasant domestic events he then left Scotland for France, where, five years afterwards, he died. During this period he retained servants at his Scotch residence, and constantly gave directions by letter for the management of his property, particularly his fine stud of Arab horses. The invalidity of the marriage with the Indian lady having been declared, the question arose whether his domicile was Scotch or French.

Vice-Chancellor Kindersley held that the Scotch domicile had not been abandoned, and his decree was affirmed in the House of Lords. No less than twenty-three counsel appeared, and as many days were occupied by the suit. Sir Richard Bethell, who led for the successful plaintiff, had one thousand guineas on his brief, and a refresher of one hundred guineas a day while the case lasted; his speech alone occupying several days. It was the kind of

[1] *Lord* v. *Colvin*, 4 Drewry's Reports, 366.

case in which he showed to the greatest advantage.

His sublime *sang froid* increased with his reputation. During his argument one day in the House of Lords, Lord Campbell stopped him and asked for an authority for the proposition which Sir Richard had laid down with such confidence. 'My Lord,' replied Bethell, 'such is the law. But as I have to be elsewhere in a few minutes, my friend, Mr. Archibald, will produce to your Lordship abundance of authority in support of it.' Mr. Archibald anticipated his leader in retiring from the Court as soon as he heard this assurance. On a similar occasion, in response to a like inquiry, the Attorney-General coolly turned to his junior and said, 'Get me a case.' The affrighted junior, at his wit's end, rushed away on the hopeless quest, and took good care not to return before the Court rose, while Sir Richard proceeded with his argument on another point.

When Attorney-General he had a consultation with a junior, now a leading member of the common law bar. Sir Richard, as his custom was, went through their case at some length, and finished with: 'Such is our case; and what can the other side possibly reply?' His junior, who had gone into the question with exhaustive care, ventured to suggest some of the points on which their opponents might be expected to rely. The Attorney-General listened with attention. 'Well, and what then?' he asked. The other was encouraged to proceed. 'And you

think they will say *that?*' Bethell rejoined, 'Yes, perhaps they might; but what d——d fools they would be.' On another occasion he had finished an elaborate address just before the Court rose at the mid-day adjournment. His junior, who would in the ordinary course follow on the same side after lunch, observed: 'Mr. Attorney, you have evidently made a strong impression on the Court.'—'I think so too,' said Bethell, 'don't disturb it.'

The late Sir George Jessel used to say of Bethell's advocacy that he was excellent for the plaintiff, as he had a reply, and by that time had mastered his case, but that, in his later years, when he had less time or took less trouble to read his papers, he was not so good for the defence, for he would fill up the facts too much, or put forward an argument of law which the facts did not wholly warrant.

He did not despise the lesser arts of advocacy. At the conclusion of a very long speech by Mr. Malins, the Attorney-General said quietly, but so as to be heard by the whole Court, 'What a fatal gift is fluency!' The observation took all the sting out of his opponent's address.

He was particularly fond of exhibiting his reasoning powers in consultation, and while thus employed detested any interruption. One day the solicitor's clerk corrected him as to a date, which was quite immaterial. The Attorney-General paused, looked at him significantly, but said nothing. A little later

the offender again interposed, whereupon Sir Richard turned to him and said in his silvery tones, 'Will you have the goodness to go outside that door—and shut it?'

Fond of shooting himself, he did what he could to enable others to partake of the sport to which lawyers are notoriously partial. Sir James Parker Deane mentions an instance of this :—

'The consultation was in one of the heavy Church cases going on at the time, when Sir Richard Bethell lived in Westbourne Terrace. The first consultation was had there some time in the afternoon or evening; there was not time to finish all that could be said, and in dismissing the rest he fixed the next consultation for, I think, the following day in Lincoln's Inn in the afternoon. He had always been most kind to me, so I waited till the others had left Westbourne Terrace, and then said I wished he had named an earlier time, as I was to have left for Scotland on the following morning. "Why did you not say that before the others left?" was his reply. "At what time do you want to go?" I said by the ten o'clock train. "Very well," said the Attorney-General, "you are living near, and I will see that we have our consultation here to-morrow at seven in the morning." And so I got down in time for August 12.'

The coverts at Hackwood were kept carefully stocked with pheasants, and the shooting-parties were made the occasion of filling the house with visitors. Sir Richard himself shot with the deliberate precision which was characteristic of all his actions. But some of the sportsmen were less experienced or less cautious, and he was one day shot in the knee and had a narrow escape.

Though one or two stories are current of his

having shot keepers or beaters, it does not appear that any such incident ever occurred. He was, in fact, extremely careful in shooting, particularly in covert. In walking for partridges his near-sightedness compelled him to keep his eyes on the ground to secure his footing, and he would carry his gun at the trail, and often at half-cock. When a bird or hare got up he would adjust his glasses on his nose, cock the gun, and aim very deliberately. He was much addicted to the use of wire cartridges, and was constantly making marvellous long shots, of which he was not a little proud. A sportsman of the old-fashioned type, he liked to see setters or pointers at work, considering this the chief charm of the sport. He was very particular about the breaking of his dogs, and would often work them himself in the most systematic fashion.

Though careful himself in handling a gun, Sir Richard sometimes rashly courted a danger, for he delighted to bring down from London, to stay a day or two at Hackwood, some solemn, old bankruptcy official, and make the unhappy man, who hardly knew one end of a gun from the other, join in one of the bigger shoots, telling him to stand near him (Sir Richard), and only to fire at rabbits. He would discuss legal arrangements with him between the beats, or while the game was being driven up, the guest, in a black coat and tall hat, and with a pair of Sir Richard's old gaiters on, looking utterly miserable between his fear of the gun in his hands

and the lectures he was getting from his host, and no doubt wishing himself a hundred times safe back in his office. As the hares and rabbits began to dash up to him, and the guns, advancing with the beaters, were blazing away all round, he might be seen poking his gun at one rabbit after another, but too dazed or alarmed to shoot, while Sir Richard was yelling at him : 'Shoot, Mr. ——, shoot! Why on earth don't you fire?' till the rest of the party could hardly hit anything for laughing, and took care to give the novice a wide berth for the rest of the day.

CHAPTER IX

1857-1859

Orsini Plot—French feeling against England—Conspiracy Bill—Unpopularity of the measure—Defeat and resignation of the Government—Lord Derby forms a Ministry—Lord Campbell's attack on Sir Richard Bethell and the reply—Jewish Relief Bill—Continued opposition of the Lords—Compromise and settlement—Shrewsbury Estates case—Defeat of the Government and dissolution—Elected at Wolverhampton.

PARLIAMENT was unexpectedly summoned to meet in December 1857, in consequence of the grave financial crisis which had occurred. The failure of a large number of banks and mercantile firms, arising principally out of the derangement of American trade, created a panic in the commercial world which threatened the most serious results. So severe was the monetary pressure that the reserve of bullion in the Bank of England sank to little more than seven millions, and the bank rate rose to ten per cent. In this emergency the Government suspended the Bank Charter Act to allow the issue of additional notes in excess of the statutory limit. This step was a departure from the law, which required a Bill of Indemnity. The Bill having passed without opposition, Parliament adjourned.

During the recess the diabolical attempt to assassinate the Emperor of the French, known as the Orsini plot, excited an outburst of irritation in France against this country. Some of Orsini's accomplices had set out from England, where they concocted the conspiracy, prepared their means of action, and obtained the bombs which were thrown under the Emperor's carriage. England has never forgotten to entertain strangers, and it is inevitable that the asylum freely extended to political refugees of all nations should give shelter to a few foreign anarchists and conspirators. Among the congratulatory addresses to the Emperor on his escape which poured in from all parts of France, some which came from the French army contained very violent accusations against England. They declared that the English people in sheltering the conspirators became accessory to the attempted crime, and described England as a den of assassins which ought to be cleared out. There was a very general idea in France that every conspiracy against Louis Napoleon had been organised in this country, and that our laws gave an undue immunity to the conspirators; consequently the irritation against the supposed apathy of the British Government was excessive.

The silly vapouring of a few fire-eating colonels might, however, have been passed over with contempt if the addresses had not been printed in the *Moniteur*, the official gazette of the French

Government. This publication made it appear that the addresses were the reflex of the Emperor's own views, and it was resented as a deliberate insult to the English nation. Unfortunately this feeling was intensified by a despatch sent by Count Walewski, the French Minister of Foreign Affairs, which called attention to the doctrines of assassination openly preached by conspirators in England, and suggested that some measures, without particularly indicating them, should be adopted to deprive such persons of the right of asylum.

This imputation on the state of our law was afterwards represented, rather unreasonably, as an attempt to bully the country into legislation. The Attorney-General was for taking immediate action against certain Frenchmen, resident in England, who were accused by the French Government of complicity in the plot against the Emperor; but Lord Clarendon formed a truer estimate of the force of the public feeling aroused by the French demand. He wrote:—

'*Foreign Office, Jan.* 20, 1858.

'My dear Attorney-General—Of course no one can lament more than I do any unnecessary loss of time or vacillation or want of pluck upon a matter of such *enormous* and *urgent* international importance, but we must all make allowance for each other and for the emasculating influence of parliamentary responsibility and public opinion. I have had a good deal of talk on the subject to-day, and the feeling seems to be with you that the case may be brought within the Treaty, but the doubt is as to what construction would be placed on it in the certain event of a *habeas corpus* being sued for to bring it before the Queen's

Bench. Nevertheless, I think that this will not prevent our acting on the Treaty if we get a clear opinion from the law officers that the case comes within it. The case went for your opinion this morning, and of course it is most important as soon as possible to have an answer.

'If we act on the Treaty, I quite agree with you that Persigny should be advised to employ a competent English lawyer to put the deposition from the French Government in a proper form. That would be far better than the English Government giving directions in the matter.

'The feeling in France is as bad as possible and is becoming worse by comparison, for Walewski says that the Governments of Belgium, Switzerland, and Sardinia have met the wishes of the French Government and are acting most satisfactorily.

'It is quite true that many superior officers have returned their English decorations to the Minister of War.'

As soon as Parliament reassembled Lord Palmerston gave notice of his intention to introduce a Bill to amend the law with respect to conspiracy to commit murder. The motion for leave was strenuously opposed on the ground that if it were necessary to alter the law the time and mode of doing so were ill chosen, and would create the impression that the alteration was proposed at the dictation of the French Government. Mr. A. W. Kinglake moved an amendment which affirmed that it was inexpedient to legislate in compliance with Count Walewski's demand until further information was before the House of the subsequent communications between the two Governments. It appeared that as soon as the Emperor's attention was called to the effect produced in England by the objectionable addresses, he directed a despatch to

be sent attributing the publication to inadvertence, and expressing his regret. No official answer had been returned to Count Walewski's previous despatch—indeed, for the most part it was unanswerable—but Lord Clarendon conveyed to him verbally the sentiments of the British Government. After two nights' debate the amendment was withdrawn, in order that the division might be taken upon the main question, and leave was given for the introduction of the Bill by a majority of 200.

Pending the second reading of the Conspiracy Bill, the introduction of the measure for transferring the government of India from the Company to the Crown, to which strong party opposition was offered, gave the Government an unexpectedly large majority. We are told by the Hon. Evelyn Ashley that Sir Richard Bethell, walking home with Lord Palmerston after this latest triumph, remarked to him that he ought, like the Roman consuls in a triumph, to have somebody to remind him that he was, as a minister, mortal.[1]

The reminder, if needed, soon came. On the 19th of February the Conspiracy Bill—the 'Alien Bill' as the Opposition dubbed it—came on for second reading. An amendment was proposed by Mr. Milner Gibson, which expressed regret that the Government before inviting Parliament to amend the law of conspiracy had not felt it to be their duty to reply

[1] *Life of Lord Palmerston*, vol. ii. p. 142.

to the despatch of the French Government. The strong feeling which was daily growing in the country that the Government were truckling to France found very forcible expression in the debate. Since the conclusion of the peace with Russia a succession of questions, arising on matters of foreign interest, had occasioned awkward misunderstandings between the two Governments, and shaken public confidence as to the stability and value of the French alliance. Moreover, Lord Brougham and Lord Campbell laid it down with great confidence that no change in the law was really needed.

The Conservatives, most of whom had voted with the majority for the introduction of the Bill, observing the turn of the tide of popular opinion, now professed to consider that circumstances were altered by the fact that the French despatch had not been formally answered and its allegations denied. Mr. Disraeli declared that the question, from having been one between the Parliament of England and the Government of France, had become a question between the House of Commons and the Prime Minister, and that the honour of the country must be vindicated before the Bill was proceeded with. Mr. Gladstone joined in the attack with an eloquent denunciation of restriction on liberty, and was answered by Sir Richard Bethell.

It was on the Attorney-General's recommendation, given before he had either seen or heard of Count Walewski's despatch, that the measure had

been proposed, and he indignantly rejected the imputation that it was a child of foreign growth. His view of the existing state of the law was that when foreigners in this country conspired to commit a crime, the crime if actually committed abroad would not be punishable by the English law. Upon the principle that whatever tends to interrupt the amity of the Crown with other Powers is an offence against the law, a conspiracy to murder a foreign Sovereign might be punishable; but that principle did not extend beyond the person of the ruler. He declared emphatically that the sole object of the Bill was to make the foreign refugee, while in this country, amenable to the same law as the British subject.

Mr. Disraeli followed Sir Richard Bethell, and Lord Palmerston wound up the debate with a speech the defiant tone of which showed that he anticipated defeat. The Conservatives and Radicals went into the same lobby, and the Government were beaten by 234 to 215. This catastrophe was, according to Mr. Greville, totally unexpected, and due to official mismanagement.

Lord Palmerston immediately resigned. A question of foreign policy thus suddenly destroyed the large majority by which he had been uniformly supported. It was a remarkable result that he, of all men, should be successfully charged with servile submission to a foreign power. His last Ministry, of but ten months' duration, had strikingly exempli-

fied, both at its outset and its finish, 'the fickle reek of popular breath.'

Lord Clarendon, as Foreign Secretary, had to share with Sir Richard Bethell much of the obloquy of the defeat. Questions arising out of our foreign relations had given an unusual amount of labour and anxiety to the Law Officers. On the eve of the Ministerial resignation Lord Clarendon wrote to the Attorney-General :—

'Many thanks for your kind and sound advice, which I mean to follow, and ever and anon to go to bed like a Christian. It is no unmeaning compliment to say that I shall always retain a most agreeable recollection of our relations together, and my only regret is that our communications were not more frequent, as I was always the gainer by them.'

Lord Derby succeeded in forming a Ministry, with Mr. Disraeli in his former position of Chancellor of the Exchequer and leader of the House of Commons. Sir F. Thesiger became Lord Chancellor as Lord Chelmsford, on the refusal of Lord St. Leonards on account of his advanced age to resume office,[1] and Sir F. Kelly and Sir H. M. Cairns

[1] Lord St. Leonards was in his seventy-eighth year, and had always preferred the life of a lawyer to that of a statesman. In reply to a letter from Lord Westbury in 1861, referring to the publication of the eighth edition of the celebrated treatise on *Powers*, Lord St. Leonards wrote:—'I have always preferred the *Powers* as the most logical of my works, but that, as you observe, is partly owing to the nature of the subject. My scheme of numbered placita, which adds greatly to the writer's labour, compels him to be careful in the treatment of his subject; he cannot introduce a case anywhere or throw it into a note. In an early edition I stated that this was my favourite work, which

were appointed Attorney-General and Solicitor-General. Lord Derby had tried in vain to induce Mr. Gladstone, the Duke of Newcastle, and Lord Grey, to join a Conservative Government 'not indisposed to progressive improvement.'

On the same evening that the resignation was announced in the House of Lords, Lord Lyndhurst asked Lord Campbell, as Lord Chief Justice, whether his attention had been directed to a definition of the law relating to aliens laid down by one of the law officers of the Crown—meaning Sir Richard Bethell —'in another place.' In reply, Lord Campbell declared that the statement had at once astonished and distressed him. He deemed it a misapprehension—he would not say a mis-statement of the law—which must be immediately corrected. The statement imputed to the Attorney-General was as follows :—

'The state of the English law I believe to be this, that foreigners are able to do in this country

I remember excited the bile of a reviewer. Your quotations and your just observations on them entirely accord with my own views. Law like our's would soon escape from us if for a while we ceased to prosecute our studies. Our moral and mental faculties, like common machinery, if not in constant work, require to be kept gently in action in order to be fit for work. For myself I long ago determined, humanly speaking, that I would not die in harness, but that I would die as I had lived, a lawyer. I have taken care to avoid the former, and with the aid of a gracious Providence I hope to realise the latter. I am not in the habit of writing about myself, but your obliging letter has drawn me out. If in the vacation you should have spare time I should be very glad if you would spend a day here.'

that which your own subjects are unable to do, and that which would be a crime in natural-born British subjects is a matter of impunity in foreigners.'

That, Lord Campbell declared, was not the law of England, and in his opinion it would be most disastrous if it were supposed that it was. While aliens lived under the protection of the English law, they were liable for any infraction of the law exactly in the same manner as every other person in the realm. Both Lord Cranworth and Lord Brougham suggested that the Attorney-General must have been misrepresented in what he was reported to have said.

The personal character of this attack and the way in which it was delivered were peculiarly offensive to Sir Richard Bethell. It was made just before the adjournment of both Houses for the re-election of the new Ministers, so that there was no immediate opportunity for reply. Lord Campbell had said that the question was put to him without any previous concert, but it was a curious coincidence that in rising to reply to it he pulled from his pocket a newspaper containing a report of the Attorney-General's speech on which the question was founded.[1]

As soon as the House of Commons reassembled, the ex-Attorney-General took his revenge by means of a personal explanation. He began by begging the attention of the House to some considerations

[1] Hansard, 3d Series, vol. cxix. 10.

which appeared to him to affect in a material degree the regularity and decency of proceedings in Parliament, if not the privileges of members of the Lower House. He proceeded:—

'If there be in any nation two deliberative assemblies acting in concert with each other, it seems consistent with propriety and also with the obligations of decency that if a speech be delivered by a member of one of those deliberative bodies in considering a measure brought before it, it should not be competent for any member of the other Assembly, before the measure is submitted to them, to take that particular speech and to make it the subject of criticism, and to accompany that criticism by personal and offensive observations. It is impossible to conceive anything that would more tend to interrupt the order which should prevail in deliberative assemblies, or which could more interfere with regularity and propriety of conduct on the part of the members than such a course of proceeding. But, Sir, one might condone this—one might pass it over without remark—if it were the accidental exuberance of zeal or enthusiasm on the part of some young member of either House. One might even forgive it if the offender had been accidentally betrayed upon one occasion only into such forgetfulness. But if it turns out to be a practice repeatedly pursued, frequently remonstrated against in private, although forborne to be noticed in public; if it turns out to be a practice followed by grave and reverend and aged men, entitled to be regarded as leaders in the assembly of which they are members, and who may fairly be expected to afford to younger members examples of order, regularity, and of decency —more especially when these grave and reverend personages happen to be invested with the highest judicial functions—then it becomes unquestionably a most unfortunate thing, which no one can contemplate without the deepest regret and pain.'

The sustained gravity and carefully-chosen invective with which Sir Richard denounced his assailant afforded great amusement to the House.

He proceeded to give two or three instances of animadversions made upon him in the House of Lords, referring particularly to what had been said there about his recent statement on the law of conspiracy :—

'It is the province of the judges of the land to declare the law, but to declare the law in their Courts, after argument, upon a judicial occasion, and after grave deliberation. It is most deeply to be deplored if there should happen to be in any country a judge of the greatest eminence and authority, who must know well that in a particular conjuncture of circumstances he might be called upon to sit in judgment upon a particular case, and who yet, with reference to that case, before it came before him, gratuitously and unnecessarily rushed into public, and declared that the law which governed the case was so and so, and that all who held a different opinion committed such grievous errors that it gave him the utmost pain to observe the blunders into which they had fallen. Well, Sir, if there is a man who should have done such a thing, and if such a man should be clothed with the ermine of the highest station, I think this House will agree with me that he would disqualify himself from sitting as a judge to hear and determine that question, if the case on which he had thus given an opinion and decision should arise. There is nothing more to be deprecated in the judges of the land than that they should be "incontinent of tongue."'

He went on to say that he had felt it due to the House while he held office to give any opinion which he might be called upon to give, faithfully, conscientiously, and with the sincere belief that it was correct and well grounded. When, therefore, he was charged with having made to the House a statement so erroneous that no man of common understanding could have made it, it was

important to him that he should justify himself. He brought to the recollection of the House the opinion he had expressed in the recent debate, founded on the argument that an alien stood upon a different footing from that of a British-born subject, with reference to particular cases. No one could have supposed that he had ever affirmed that an alien coming to this country could rob, or murder, or commit any species of violence without being amenable to law. Yet that particular proposition, disconnected from the sentence which followed it, and from the rest of his speech, was put forward as representing the whole of his argument. He restated the argument which had been so garbled, and declared that his statement had been confirmed by the opinions of many members of the profession who had tendered him their assistance on the question, and who had searched in vain every decision relating to the law of conspiracy with a view of discovering therein the doctrine laid down by Lord Campbell.

The Attorney-General's explanation had the effect he desired. On the plea that his character as a judge had been assailed, Lord Campbell made a further statement in the House of Lords. His position, he said, had made it incumbent on him to give an opinion upon an abstract question of law, but he accepted Sir Richard Bethell's explanation of what he had intended to be understood as his statement of the law. With this half-apology the

matter dropped; but it was the general opinion that the Lord Chief Justice was hoist with his own petard.

Sir Richard had been in official harness for upwards of five years, and he was heartily glad of the comparative rest which a spell of Opposition afforded. During the remainder of the Session he spoke seldom in the House of Commons. But, true to the course which he had persistently followed since he entered Parliament, he took a leading part in the proceedings by which political liberty was at length gained for Jewish subjects.

Lord John Russell again brought in a Bill of relief which provided for a simple form of oath, in which the closing words of the existing Oath of Abjuration, 'on the true faith of a Christian,' were retained, but proposed that in the case of a Jew those words should be omitted. Once more, and happily for the last time, Sir Richard Bethell urged with his customary force and clearness that no grounds for the exclusion existed in law, and that as the Jew was not within the intendment of the Act of James I., which was merely directed against Roman Catholics, he was excluded from his birthright by the fraudulent misuse of the words of the statute. He solemnly pledged himself, if the Bill were rejected, to move a resolution to substitute a declaration for the oath as being the only constitutional course by which his object could be accomplished.

The Bill easily passed through the House of

Commons, but the treatment it received from the Peers practically defeated its object, and very nearly brought the two Houses into serious conflict. Lord Chelmsford, who as Sir F. Thesiger had on previous occasions so ably led the Opposition in the Commons, now delivered a speech of great fervour and eloquence from the woolsack against the clause for admitting the Jews. On the other side, Lord Lyndhurst, referring to Sir Richard Bethell's declaration, deprecated a collision with the Lower House on a question affecting its constitution and popular rights, and urged with remarkable power the cause of religious liberty. Nevertheless, by 119 to 80 the clause was negatived.

On the return of the Bill to the Commons, Lord John Russell moved that the House disagree to the principal amendment made by the Lords. Thereupon Sir Richard Bethell, in tones of impressive warning, declared that the question involved the rights not only of the Jews but of the constituencies, and that if appeals to the Peers were unavailing, he should without hesitation adopt the independent course he had suggested. The motion having been carried, the Bill went up again to the Lords with the reasons assigned for disagreeing to their amendments, and a conference took place between the two Houses. On the report of the conference being considered, it was proposed, by way of a short cut through the difficulty, that both Houses should be authorised to modify by resolu-

tion the form of oath to be administered to persons of the Jewish persuasion. Sir Richard Bethell's declaration produced its desired effect; the struggle had become embarrassing, and the proposal was hailed as a mode of judicious compromise.

The Bill brought in to give effect to it passed through the House of Lords and was sent to the Commons, while at the same time the Peers, to save as far as possible the dignity of their Chamber, insisted on their amendments to Lord John Russell's Bill. As the new Bill effected all that the majority in the Lower House desired, it was unnecessary to complain of want of grace in the concession. Both Bills became law, the Commons no longer persevering in their disagreement with the Lords' amendments, nor, as they took care to inform the Upper House, considering it necessary to examine the reasons offered in support of them. The joint effect of the two measures was to enable either House, upon resolution, to receive any person professing the Jewish religion, upon his taking the new prescribed oath, omitting the words to which he conscientiously objected. Such a resolution was immediately adopted by the House of Commons, and Baron Rothschild took his seat after several years of exclusion. In five Parliaments and on ten previous occasions the Lower House had passed Bills to remove the Jewish disabilities, and the question had been in agitation for more than a quarter of a century. But for Sir Richard Bethell's ingeni-

ous suggestion, it might, despite Lord John Russell's persistent advocacy, have much longer remained a subject of controversy.

The Government were in a small minority in the House of Commons. It was obvious that they could exist only by tolerance of the independent members, and that, as soon as the discordant sections of the Liberal party had acquired the combination which a short tenure of the Opposition benches was certain to produce, they would again place themselves in power. In other respects the posture of affairs was not at the outset unfavourable to the Government. The differences with France had been adjusted by friendly explanations of the expressions in Count Walewski's despatch, which were so seriously misunderstood; the Chinese War had terminated with the capture of Canton; and the revolt in India showed signs of having spent its most dangerous energy. The embarrassing question of parliamentary reform did not press for the introduction of a measure during the current year.

The stability of the Administration was, however, put to a severe test in the discussions which arose on Lord Ellenborough's Despatch condemning with unsparing severity the Proclamation which Lord Canning, the Governor-General, had addressed to the people of Oudh after the fall of Lucknow. The Proclamation decreed the wholesale confiscation of the proprietary rights of the landowners, and its harshness was not calculated to soothe the rebellious

feeling of subdued subjects. But the despotic character of the Proclamation was scarcely more condemned than the tone and temper of Lord Ellenborough's rebuke. Resolutions were proposed in both Houses condemning the publication of the Despatch as calculated to weaken the Governor-General's authority and encourage the resistance of the natives.

The Government had approved the Despatch and censured the Proclamation, and though Lord Ellenborough, taking upon himself the sole responsibility, resigned, the existence of the Government was placed in considerable peril in the House of Commons, for it was at first supposed that Mr. Cardwell's motion of censure would be carried. The prospects of the Ministry improved as the debate proceeded; and as it was evident from the speeches in support of the motion that its real object was to displace the Ministry, the more independent members declined to support it. Sir Hugh Cairns argued the case for the Government in a brilliant speech which raised him *per saltum* to the first rank of parliamentary debaters, while Sir Richard Bethell joined in the attack with an impetuosity and vigour which proved his thorough appreciation of the proper functions of a leading member of the Opposition. On the fourth night the fight collapsed with the withdrawal of the motion, and the Ministers, thus reprieved, got to the end of the Session without any serious reverse.

Reference has already been made to the Shrewsbury Peerage case, in which Earl Talbot, claiming

as heir-male of the first Earl of Shrewsbury, made out his right before a Committee of Privileges of the House of Lords to the Earldom of Shrewsbury. Having established his claim to the title, the Earl of Shrewsbury brought ejectment to recover possession of Alton Towers and other estates which were annexed to it.[1] This involved the question whether the late Earl, who was tenant in tail of the estates, was competent to cut off the entail and thereby defeat the claims of his lineal descendants.

The estates had been annexed to the title by a private Act of 1719, by which a settlement made in 1718 by Gilbert, Earl of Shrewsbury, was confirmed. Under a prior settlement of 1700 Earl Gilbert had an estate tail without any restriction on the right to alien his estate. This prior settlement was not expressly repealed by the Act of 1719, but was irreconcilable with the settlement of 1718, which prohibited alienation by any tenant in tail, the object being to make the annexation of the estates to the earldom effectual, which it would not have been if the successive tenants in tail had the power to alien. The private Act confirmed the prohibition, but with the proviso that any tenant in tail might alien on making the declaration and taking the oaths which in those days were the test of adherence to the Protestant faith within six months after attaining the age of eighteen. At the date of

[1] *Earl of Shrewsbury* v. *Hope-Scott*, 6 Common Bench Reports, New Series, i. 221.

the Act there was no general law to prevent Roman Catholics from disposing of their estates, and the Legislature probably thought it right to sacrifice so far the intention to annex the estates to the title for the sake of holding out an inducement which might lead to reclaiming the great house of Talbot from Popery.

So matters stood at the passing of the Relief Act of 1829, commonly called the Catholic Emancipation Act. This removed the disabilities which had been imposed on Papists by the general law of the land—disabilities intolerably harsh and galling. A Catholic was prohibited from sitting in Parliament and from exercising any electoral franchise. He was excluded from civil and military offices, and made incapable of acquiring real property; and though the penal laws which created these disabilities were not very strictly enforced, their retention on the Statute Book was felt to be an insufferable grievance. After the passing of the Relief Act the late Earl of Shrewsbury executed a deed purporting to disentail the estates, and it was contended by Sir Richard Bethell, Serjeant Shee, Mr. Charles Hall, and Mr. Archibald, that the Relief Act, by taking away the disabilities of Catholics, had destroyed the prohibition against alienation contained in the private Act. They further urged that the settlement of 1700, which permitted alienation, was not superseded by that of 1718. For the plaintiff Sir Fitzroy Kelly and Mr.

Rolt, with Mr. Manisty and Mr. Hannen, both now members of the judicial bench, relied principally on the private Act.

The arguments occupied eight days, and displayed extraordinary research and ingenuity. Chief Justice Cockburn, and the other judges in the Common Pleas, having decided in favour of the Earl of Shrewsbury, the defendants appealed to the Exchequer Chamber. Sir Richard Bethell argued the appellant's case in a speech which lasted nearly three days, with even greater elaboration than in the Court below; but Chief Baron Pollock and five other judges, of whom Lords Bramwell and Blackburn are the only present survivors, affirmed the decision. The result was that the grandfather of the present Earl obtained possession of the estates, which remain inseparably annexed to the title.

The greater part of the long vacation of this year was spent by Sir Richard Bethell with some of his family in Italy. At Lugano they met several friends, and Sir Richard writes: 'I could hardly talk enough to satisfy everybody.' After visiting the Lakes the party proceeded to Milan, and then to Verona and Venice. These vacation tours were invariably planned and discussed for several months beforehand.

About this time Sir Richard met with a curious accident which might easily have had a more serious termination. Mounted on a favourite white Arab cob, he was galloping through the park at Hackwood,

when, being very short-sighted, he rode against a rope hung between two trees, and was hurled backwards from his horse, getting a very severe shaking. Hardly any one else could ride this animal; but Sir Richard delighted in cantering him round and round a tree to show his paces.

Remembering the credit gained by Lord Derby's former Administration through the law reforms completed in a short term of office, the Government directed their attention at the commencement of 1859 to measures of legal improvement. As soon as Parliament met, a Bankruptcy Bill was brought in by Lord Chelmsford, and Sir Hugh Cairns introduced measures to simplify the titles to landed estates and establish a registry. The Solicitor-General's speech on that occasion was perhaps one of the most lucid explanations of a very technical subject ever listened to in Parliament, and procured a very favourable reception for his Bills. He proposed to establish a Landed Estates Court for examining and declaring titles, and a registry in which the titles declared to be good were to be recorded, with a system of *caveats* by which notice of claims affecting the property would be preserved.[1]

Sir Richard Bethell, who had the greatest

[1] The Bills provided that any one entitled to an estate in fee-simple, or to convey such an estate, might apply to the Court for a declaration that he had established his title. The Court might then make a provisional declaration, which, after the lapse of a certain time without objection, was to become final, except in case of an appeal to the Court of Chancery.

admiration for Sir Hugh Cairns, gave generous expression to his satisfaction that the Government had appreciated the value of the measure and secured so excellent an exponent of it. The more intimate connection of the Government with the landed interest would, he thought, make the Bill more generally acceptable than if he (Sir Richard) had been so fortunate as to prevail upon the late Government to introduce it. Both Bills got into Committee with little opposition, except from Mr. (afterwards Vice-Chancellor) Malins, and but for the sudden dissolution of Parliament would almost certainly have become law.

The weakness of the Ministry was shown early in the Session by the defeat of their Bill for the abolition of Church Rates—a question on which the public mind had long been exercised. The Bill was a compromise between total abolition and compulsory payment, and did not go far enough to satisfy the dissenters. Sir Richard Bethell offered strong opposition to it, demanding the absolute removal of the impost which he described as 'the legitimate offspring, the direct progeny of that old wicked principle of intolerance which compelled men in ancient times to adopt one mode of faith, one belief, one form of worship.'

The difficulties experienced by the Government soon after culminated in their defeat on Lord John Russell's Amendment to Mr. Disraeli's Reform Bill. The vote was substantially one of want of confidence,

and a dissolution followed, to enable the constituencies to pronounce on the claims of the rival parties.

Parties were evenly balanced at Aylesbury, and it had been arranged that the sitting members should be returned unopposed. Mr. T. V. Wentworth, son-in-law of the Marquis of Clanricarde, however, announced his intention of standing in the Liberal interest, whereupon the other side repudiated the arrangement and brought forward a second candidate. Sir Richard Bethell saw that his seat would be jeopardised by coalition with Mr. Wentworth, and having had the offer of the second seat at Wolverhampton, he withdrew from Aylesbury. He had been returned six times — thrice unopposed — in eight years; but with a second Conservative in the field, his re-election would not have been absolutely certain.[1] At Wolverhampton, which was a much more important constituency, he was not likely to find any opposition, for the influence and popularity of Mr. C. P. Villiers, the veteran free-trader, made both seats impregnable. In his speeches to the electors Sir Richard Bethell again strongly advocated the ballot and a wide extension of the franchise. Writing to his wife he described his reception by the electors :—

'I left Wolverhampton this morning at half-past six. Yesterday we had an immense meeting in the theatre at Bilston.

[1] At the election Mr. Bernard again headed the poll, and the other two candidates polled an equal number of votes.

Nothing could be better. I was most warmly received—the cheering more tremendous than I ever heard when I sat down. So also at Sedgley the evening before; but I am sorry to say I have a bad cold. I have a most heavy case to argue, which will occupy all to-day and to-morrow, but I hope we shall not sit on Saturday. . . . There seems no sign of any opposition at Wolverhampton, though the Tories have been soliciting some persons to stand, but one of them called on me and told me they were so much pleased at my coming down that they would not oppose me. One or two discontented persons have published squibs, but all they can say against me is that I am an ill-tempered man. Altogether it is very good, so far as any electioneering can be good. . . .'

His biting wit exposed him, as we have seen, to the imputation of ill-temper—a loose and general charge, which serves as well as any other for electioneering purposes. 'Certain it is,' says an old writer, 'that, amongst all the contrivances of malice, there is not a surer engine to pull men down in the good opinion of the world—and that in spite of the greatest worth and innocence—than this imputation of ill-nature.'

His temper was hot, without being sour, and its outbursts were quickly appeased. The following instance illustrates his placability:—A coachman in his service, named Paice, was ordered to take a colt which his master had bred to a neighbouring fair and sell it for not less than £40. The man returned, having disposed of the animal for £38. Sir Richard was very angry at this. 'Paice,' he said, 'you have disobeyed my distinct instructions. You are dismissed.' To this Paice rejoined, 'Well, Sir Richard,

that is very hard. I took £38 for the colt, for if I'd brought it back the cost of its keep for the next three months would have been more than the difference in the price. I shan't take my dismissal for such a cause.' Sir Richard eyed him for a moment, and then, struck with the equity of the plea, said slowly: 'Very well, Paice; so be it.' The man remained in his master's service for the rest of his life.

Though his tongue had a sharp edge, he had in reality great kindness of disposition. His valuable services were often cheerfully given to those who could not afford to secure them in the regular way. A striking instance of this may be mentioned. One day when, greatly harassed by work, he was about to pass a Sunday quietly at Hackwood Park, he heard that a poor gentleman with whom he had some slight acquaintance was threatened by overwhelming ruin through the involved state of his affairs. Then and there Sir Richard Bethell drove round on his way to the station, and took the unhappy man with him into the country, promising to give all possible consideration to the case until his duties claimed him again on Monday. Hope and peace came back to the mind of his guest as the tangled skeins of his affairs were patiently and skilfully unravelled by the Attorney-General, the result being that the anticipated ruin was averted and comparative prosperity restored.

During the two years of his representing Wol-

verhampton Sir Richard Bethell enjoyed the reputation of a popular member. On one occasion, at a large meeting of working men in the theatre, he gained immense applause by a speech, in the course of which he said that probably most of those he was addressing had begun life in the same way as he had—as a 'charity boy,' in allusion to his having held the scholarship at Wadham which enabled him to obtain a University education. As the late Mark Pattison tell us in his *Memoirs*, scholars were commonly called 'charity boys' in those days. The scholar's gown was not the coveted distinction which it afterwards became.

CHAPTER X

1859–1860

Fall of Lord Derby's Government—Lord Palmerston again becomes Premier—Bethell's claims to the Great Seal—Lord Campbell appointed Chancellor—Bethell's disappointment—Resumes office as Attorney-General—Lord Campbell's ideas on law reform—Thellusson Case—Lord Justice Knight Bruce and Bethell—Instance of self-possession—Address at Wolverhampton—Introduces Bankrupcy Bill—Tribute to Lord Palmerston's leadership—Receives honorary degree at Oxford—Road murder case.

THE Government gained only a slight accession of strength by the elections of 1859. The long threatened war between Austria and France, as the ally of Sardinia, had broken out, and though the neutrality of England had been strictly preserved, the Liberals were able to make some political capital out of the popular sympathy with Italian independence by representing that the Government were disposed to side with Austria in the struggle. There was also a general feeling that the Reform question could not be satisfactorily dealt with by the Conservatives. The Liberals were in a small majority in the House of Commons, and their rival leaders, after much negotiation, agreed to co-operate in displacing the Ministry. Lord Hartington was

put up to move a direct vote of want of confidence by way of amendment to the address, and the Government were beaten by thirteen, on a division in which every member was accounted for. Lord Derby immediately resigned, and on Lord Granville, who was first sent for by the Queen, failing to obtain Lord John Russell's co-operation, Lord Palmerston formed a remarkably strong Administration.

Sir Richard Bethell had forcible claims, personal and prescriptive, to the Chancellorship in the new Ministry. Not only had his political services entitled him to the promotion, but his unrivalled position at the Equity bar marked him out as the proper head of the Court of Chancery. Lord Cranworth had shown no great political capacity during the Administrations of Lord Aberdeen and Lord Palmerston, and it was understood that he would not be restored on the return of his party to office. But the Master of the Rolls, Sir John Romilly, was supported by the Whig members of the Cabinet, who considered Bethell's opinions too advanced; while Sir W. Page Wood and Sir A. Cockburn each had their pretensions. The greatest difficulty, however, in making the choice arose from the impossibility of finding any one fit to occupy the post of Attorney-General and carry on the law reforms by which Sir Richard Bethell had gained so much renown. The problem, as Lord Campbell wrote, was how to keep Sir Richard under the new Government in his former office.

On the advice of Lord Lyndhurst, the problem was solved by giving the Great Seal to Lord Campbell. 'Campbell,' he said, 'had always belonged to the Liberal party; he had claims upon the office by seniority which made it impossible that either Bethell or Romilly should object to his appointment; he was a sound lawyer, and would do no discredit to the woolsack.'[1] It is probable that Lord Palmerston was also influenced by the desire to relieve his Administration from the criticism of the candid friend, which on several occasions had proved very inconvenient to the last Liberal Government. At the age of seventy-nine, Lord Campbell, still in the fulness of his remarkable vigour, became Chancellor.

It cannot be denied that Sir Richard Bethell was greatly disappointed. He might reasonably feel that the waiver of his right would prejudice the claims, not only of future law officers, but also of the Equity bar. Of the six preceding Chancellors two only had been promoted from the Equity side, and though Sir Richard might have been willing to put aside personal considerations, his position as head of the bar compelled him to make a protest against the violation of an almost prescriptive precedent. The following is a note of the account he himself gave to a friend,[2] when conversing on the subject three years later, of what happened on the occasion :—

[1] *Life of Lord Lyndhurst*, p. 480.

[2] Mr. W. Scrope Ayrton.

'I should wish the circumstances relative to my appointment as Chancellor to be known. Pam. came to me to talk about the Chancellorship. He never looked me direct in the face all the time he was talking to me. He said, "We cannot do without you in the House of Commons. Campbell is your senior both in years and at the bar. Considering his advanced age, it is not likely that he will continue Chancellor long, after which you would succeed as a matter of course." I said, "I am, personally, utterly indifferent about the Great Seal; but I am bound to support the claims of the Equity bar. No Equity barrister has been Chancellor for a long time, and if I waive this occasion, there is no saying when the Equity bar may have another opportunity, so that if I give way now the rights of the Equity bar might suffer." But Pam. pressed the matter. At length I said, "This not being a personal matter with me, I will agree to submit to four law lords the point whether, if I allow Campbell to be Chancellor, the rights of the Equity bar will suffer." Pam. agreed to that. Suggested Brougham, Kingsdown, Wensleydale, and Cranworth.

'Pam. said something about Chelmsford, but he might have had a personal interest in the matter. Well, I went to the House of Lords, got out the four, and they agreed decidedly that the appointment of Campbell would not in any way be injurious to the rights of the Equity bar; so I waived my personal right, but made it clearly understood and admitted that I had the right and waived it. It is a singular thing that as I came out from seeing the law lords I met Campbell, and saluted him with "How do you do, my Lord Chancellor?"

'Pam. offered to give me a note saying that I was to have a right to succeed after Campbell. I do not say it was quite correct to promise such a note. I never got it, however. When sitting by Pam. in the House of Commons, I more than once twitted him with not giving the note; he bore it quite well, but I could see he did not like it. I once said, there is a medical maxim, "Accipe pecuniam dum dolet, post mortem medicus olet," which I translate, "Take your note when it is offered; afterwards to ask for it will be odious."'[1]

[1] *Athenæum*, 13th August 1881.

To his youngest son he wrote on the same subject:—

'You know it was said of a Roman Emperor, Galba, that it would have been better for him never to have been Emperor, for he would have been accounted by all *dignus imperio, nisi imperasset.* It is no doubt very gratifying to me to have so many proofs of the estimation in which I am held, but I am not at all sorry to find myself Attorney-General. It appears, however, that if I had been obstinate, the Government would have given way and cancelled Lord Campbell's appointment.'

It was generally understood that the appointment was merely a temporary arrangement to be maintained until Sir Richard Bethell could be spared from the House of Commons. Cordial relations were, however, quickly established between them, and continued during the remainder of Lord Campbell's life.

An amusing story is told of a meeting of the two in Westminster Hall, when the first rumour of the appointment was current. The day being cold for the time of the year, Lord Campbell had gone down to the House of Lords in a fur coat, and Bethell, observing this, pretended not to recognise him. Thereupon Campbell came up to him and said: 'Mr. Attorney, don't you know me?'—'I beg your pardon, my Lord,' was the reply; 'I mistook you for the *Great Seal.*'

Sir Richard Bethell was elected again for Wolverhampton, without opposition, on his reappointment. But Mr. Gladstone's re-election at Oxford was contested by the Marquis of Chandos (now Duke of

Buckingham), who was put forward by the ultra-Conservative section of the constituency.[1] The Attorney-General writes to Mr. Gladstone while the election is pending :—

'*June* 28, 1859.

'"Viro excellentissimo, cujus ingenium doctrinam eloquentiam et diligentiam suspicio et valde admiror."

'My dear Chancellor of the Exchequer—I will not fail to attend to the request contained in your note.

'I went yesterday to Oxford and spent some time in the committee-room and saw different persons of influence. We must not relax our exertions for a moment. Great use is made by Lord Chandos's Committee of their entire control over the North-Western Line. They advertise passes and have men at the stations inquiring of all passengers for Oxford if they are going to vote for Lord Chandos and offering tickets. This advantage is not met by any similar proceeding on our part. I begged the committee to attend to this, and on arriving in town I saw Mr. S——, who told me he would send into South Wales and everywhere on their branch lines hand-bills to be posted at the stations (if we desired it), stating that passes would be given to any members desirous of availing themselves of them.

'The Chandos people talk of making a great effort on Wednesday.

'Perhaps I am more anxious than necessary. If any misfortune should happen, I should suggest that Denman vacate Tiverton, for no one would call that a nomination borough, and I suppose with Heathcote's aid it would be safe.'

It was not to be expected that the new Lord Chancellor would exhibit much ardour in law reform. His object was to gain time. 'By prudence and discreet reticence and dealing in generalities,' he

[1] The election resulted in Mr. Gladstone's return by a majority of nearly 200. His parliamentary connection with the University was not terminated till 1865.

wrote, 'I hope to tide over the session.'[1] The subjoined letter shows how he proposed to accomplish this object.

'*July* 3, 1859.

'My dear Attorney-General—I am glad to think that we are likely to make a respectable start in law reform.

'I have repeatedly tried, both in public and in private, to persuade Liberal prime ministers that the only way efficiently to bring forward measures of law reform, is that before they are proposed in either House in the shape of Bills, they should be submitted to all the members of the Government likely to take a part in carrying them through; so that the lamentable collisions we have witnessed might be avoided.

'I stated this yesterday to the Cabinet, and they readily agreed that there shall be a Committee of the Cabinet with this view; and being desired to name the members of the Committee, I named Lord Granville, George Grey, Cornwall-Lewis, Cardwell, Gladstone. The Duke of Argyll afterwards volunteered his services, or rather asked that he might attend to learn, being only Privy Seal without any department.

'We expect to be met by the Attorney and Solicitor-General, and Waddington the Under-Secretary for the Home Department —a capital hand. . . .

'The Registration of Titles is a very serious matter. Considering the multifarious and complicated interests which may be and constantly are carved out of the fee-simple, I cannot be so sanguine as to hope that land (that is, all these interests) may be as easily transferred, as simply, as expeditiously, and as economically, as 3 per cents at the bank. But I am convinced that a great deal may be done for simplifying and rendering more expeditious and economical the transfer of real property—and I shall most heartily concur with you in any scheme which is likely to produce this effect.

'Cairns's (suggested by the commissioners) was immensely popular (except with the attorneys), but as yet I do not see how

[1] *Life of Lord Campbell*, vol. ii. p. 374.

it can provide for particular estates and all equitable interests, without machinery which would greatly impede its beneficial working. I do not think that anything can be attempted on the subject during the present session.

'Bankruptcy likewise must stand over. I hope we may consider both subjects during the Long Vacation. . . .

'The subject most difficult to deal with is "the Consolidation of the Statutes." Our statute law is so unscientific and fragmentary that I doubt whether the whole can be consolidated as a systematic code. But very great benefit must arise from consolidating all the statutes on any particular subject. The attempt to do this by the Statute Law Commission is a failure—and none of their consolidations as they now stand can be properly recommended to Parliament.

'Competent lawyers regularly salaried for their labour must be employed.

'The difficulty is, what to say about it for the present. Lord Cranworth has given me notice that he means very soon in the House of Lords to draw attention to what the Statute Law Commission have done, and what further ought to be done, to make their labours available. . . .'

This excessive caution was not likely to commend itself to the Attorney-General. But he seems to have exercised some self-restraint, for Lord Campbell wrote in his diary a few weeks later: 'Strange to say, I get on more harmoniously with Bethell than with other members of the Government.'

The following letter to the Prime Minister explains itself. The contrast between this grave official communication and the subsequent humorous letter to the Chancellor of the Exchequer is delightful:—

'*Lincoln's Inn, Aug.* 10, 1859.

'My Lord—It is my duty to call your serious attention to the fact of the loss sustained by the revenue in consequence of certain

patents of appointment to the office of Secretary of State not having been completed, as they ought to have been, by members of the Cabinet.

'Under the provisions of two Statutes (55 Geo. III. c. 184, s. 2, and 14 & 15 Vic. c. 82, ss. 2 & 5) a sum of £200 becomes due for stamp duty upon any appointment by the Crown to an office, the annual salary of which exceeds £3000, and the course of procedure is as follows: Upon the conferring and acceptance of the office of Secretary of State, it is the duty of the Prime Minister to notify the appointment to the Home Secretary, who sends an official letter to the Attorney-General directing him to prepare a warrant setting forth the proposed patent of appointment to be submitted to the Queen for Her Majesty's signature. This warrant having been prepared and signed by the Attorney-General, is sent by him to the Home Office, whence it is transmitted to Her Majesty and receives the Royal signature. The instrument having received the Royal Sign Manual, is countersigned by the Home Secretary and transmitted to the office of the Lord Privy Seal. Having been sealed with the Privy Seal, the instrument is transmitted to the office of that department to which the Secretary of State in question is appointed, and it is the duty of the last-mentioned office to forward the warrant to the Great Seal Office of the Lord Chancellor in order that the letters patent may be made out. To these letters patent, when made out, the stamp of £200 is affixed, and the letters patent sealed with the Great Seal are delivered to the Secretary of State appointed, and all the charges, including the stamp duty, are paid by him.

'You will observe two things in this narrative: First, that the Lord Chancellor cannot make out and seal the letters patent to which the stamp is affixed until he receives the warrant so signed by the Attorney-General, the Queen, and the Home Secretary, and sealed with the Privy Seal; secondly, that the course of procedure trusts the Secretary of State who is appointed with the duty of forwarding the warrant to the Lord Chancellor.

'To forward the warrant, get his patent completed, and pay the duty, is at once a legal and an honourable obligation.

'But in 1853 it seems to have occurred to some person that payment of the duty might be evaded if the warrant was kept and withheld by the newly-appointed Secretary of State in his own office and not forwarded to the Lord Chancellor.

[After stating no less than five instances in which this plan had been adopted, with a loss to the revenue in each of £1000, and giving the names of the delinquents, the letter proceeded]:—

'Of the law of the case I entertain no doubt, nor did my predecessor in office. The thing done is, in my opinion, a fraud upon the revenue law, rendered worse by the advantage taken of the confidence reposed by the law in the persons appointed, that they would transmit the Queen's warrant so entrusted to them, and complete their appointments in the usual manner. I need not say that it is ridiculous to suppose the noblemen and gentlemen named would wilfully incur any such imputation. But I have given that legal description which would attach to the acts committed by ordinary persons.

'No doubt if any part of this has been done deliberately, it has been done under advice that the Secretary of State was not intended to be included under the Act of 55 Geo. III., that it does not require letters patent, and that all the uniform antecedent usage has been founded in error. If this is maintained, it is right that the question should be tried in a court of justice.

'I feel it therefore to be my duty, as Her Majesty's Attorney-General, and I beg leave to state to your Lordship, and through you to the parties concerned, that I shall proceed to file informations in the Court of Exchequer at the end of one week from this date against all such of the parties above mentioned as shall not by that time have paid the stamp duties which according to the foregoing statement they ought to have paid.

'If it be desired to try the question whether these duties ought to be paid by Secretaries of State I will give every facility for that purpose, but if penalties have been incurred, the informations will seek the payment of those penalties.

'It is my bounden duty not to allow the matter to remain in its present state, and therefore, if I am questioned in the House of Commons on this subject, I must reserve the right of stating

that I have written this letter to your Lordship.—I have the honour to remain your Lordship's faithful servant,

'RICHARD BETHELL.'

'*House of Commons, Aug.* 12 [1859].

'My dear Chancellor of the Exchequer—Should my letter to Lord P. be adverted to at the Cabinet to-morrow, I wish you would beg the best scholar of the five delinquents to construe aloud for the edification of all the following passage :—"*ἴσθι εὐνοῶν τῷ αντιδίκῳ σου ταχὺ, ἕως ὅτου εἶ ἐν τῇ ὁδῷ μετ' αὐτοῦ· μήποτέ σε παραδῷ ὁ ἀντίδικος τῷ κριτῇ, καὶ ὁ κριτής σε παραδῷ τῷ ὑπηρέτῃ, καὶ εἰς φυλακὴν βληθήσῃ. ἀμὴν λέγω σοι, οὐ μὴ ἐξέλθῃς ἐκεῖθεν, ἕως ἂν ἀποδῷς τὸν ἔσχατον κοδράντην.*"

'I am sure this will come home to the minds of all who hear it as a "word in season," which you will not fail to "apply." And if their minds are touched, as they doubtless will be, with a sense of their grievous backslidings, then, Chancellor of the Exchequer, whilst repentance is strong upon them, remember the maxim of the physicians, "accipe dum dolent," present each with a pen, and bid him pay that which he owes, and promise him in my name a complete "absolvitur" from the transgression. I will add a note or two by way of commentary on the passage cited to divert your attention from the painful thoughts of the consequences of their (possible) obstinacy.

'Attorney-General may be accepted as a fair translation of *ἀντίδικος*.

'*Ἐν τῇ ὁδῷ*. The commentators say that this is an expression borrowed from Roman law, in which plaintiff (*actor*) and defendant (*reus*) were, before the cause was at issue, said to be "in the way"; but it is a far-fetched interpretation and one that would not have been apprehended by the hearers of the passage. The aptest illustration is furnished by my son-in-law, Mansfield Parkyns's *Travels in Abyssinia.*

'In that country (and the usage no doubt is Oriental), when two persons want to submit a dispute to the judge, the officer of the Court comes and ties the left arm of the plaintiff to the right arm of the defendant. A light sheet is thrown over their heads, and thus hooded they are led by the officer to the judge. But

as it often happened that they settled their dispute whilst on the way (ἐν τῇ ὁδῷ), by which the judge was deprived of his fee or fine for pronouncing judgment (*these* a great source of emolument), the officer closely muffles up or gags the mouth of each of the litigants, so that neither can (ἐν τῇ ὁδῷ) speak to the other; but this improved tyrannical extortion does not seem to have been known at the time when the verse quoted was delivered.

'In addition to all my labours during the vacation, Consolidation of Statutes, Code of Bankruptcy Law, Registration of Title, Consolidation of Criminal Law (labours of Hercules), I have promised my youngest son, who goes to Balliol next term, to read with him the Odyssey, the orations Περι στεφάνου and the Georgics of Virgil, with the Prometheus and Agamemnon of Æschylus. Mind you have promised to come and see Hackwood.—Ever yours sincerely, RICHARD BETHELL.'

'*P.S.*—I forgot to point out, what doubtless those I desire to admonish know, that Papists regard the verse cited as, in its secondary sense, indicative of Purgatory, and that ἀντίδικος means the great enemy of mankind. Here too there is, as they will find, a great analogy, for the Exchequer is no bad image of Purgatory, and as to myself they will draw the comparison; but certainly Σατάνας will not be more implacable.'

The result of the Attorney-General's action in the matter was that the offending parties promptly paid the duties demanded.

The classical readings referred to in the letter took place every morning at five o'clock during several months. Sir Richard Bethell used to occupy himself with a brief or other work while his pupil went on to translate aloud, and now and then he would stop the translation in order to explain a difficult passage or some theory in philosophy. Except under pressure of parliamentary duties he never worked at night.

In the summer mornings he would open the window overlooking the lawn, and place a loaded 20-bore gun near it. As the mist yielded to the sun's rays, a stray rabbit was often seen feeding, or leisurely returning to its burrow. Sir Richard, presenting a peculiar and comical aspect in his scarlet dressing-gown and white nightcap with a red tassel, walked slowly up and down, with a very solemn face and an eye on the lawn. Presently a belated rabbit appeared, whereupon, his expression changing to one of intense excitement, down went the brief or book, and seizing the gun, he would shoot at the rabbit from the window. Then exclaiming, 'I've got him!' or 'Missed him!' as the case might be, he resumed his dictation, as if nothing had happened.

His correspondence at this time gives evidence of his dislike of an official position and his constant desire to escape from it. To one of his daughters he writes: 'We are all half dead in Town; the heat and stench from the Thames intolerable. Yesterday in the House of Commons it was intolerable, and I was kept in the House until twenty minutes after two o'clock. No office can compensate for it. I long to see you, but know not when I shall be released from Town.'

The most notable case in which Sir Richard Bethell was engaged at this period was the famous Thellusson suit.[1] Peter Thellusson died in 1797, having

[1] *Thellusson* v. *Rendlesham*, 7 House of Lords Cases, 429.

made such a remarkable disposition of his immense property that for upwards of half a century the litigation which arose from it engaged the attention of the Courts, and was a gold mine to the Chancery bar. The case in its various phases was invested with more interest than generally attaches to cases falling within the practice of the equity practitioner, and it became a very general subject of discussion.

Thellusson, the descendant of a Huguenot refugee, came to London from Geneva, where his ancestor had fled, and having amassed a large fortune as a merchant, purchased extensive estates near Doncaster. His expressed object was to create by accumulation enormous fortunes for the ultimate endowment of three branches of his family to the exclusion of his immediate descendants. In pursuance of this eccentric design he devised real estates of considerable value with other estates to be purchased with the residue of his personal estate, amounting to above £600,000, upon trust to accumulate the income during the lives of his three sons, Peter Isaac, George, and Charles, and his grandson John, Peter Isaac's son, and all his other grandchildren and great-grandchildren living at his death. On the death of the survivor of all those persons the estates were to be divided into three lots, one lot to be conveyed to the eldest male lineal descendant then living of Peter Isaac in tail male, and the other two lots to the male descendants of George and Charles, in the same manner.

Having expressed his wish that his sons would 'avoid ostentation, vanity, and pompous show, as that will be the best fortune they can possess,' he added an entreaty that, as he had earned his fortune with honesty and industry, the Legislature would not alter his will, but permit his property to go as he had disposed of it.

On the death of the testator the will caused a great sensation in legal circles. It was calculated that before the division could take place the accumulated property would amount to twenty or thirty millions sterling, which, it was considered, would place in the hands of its possessors an undue, and indeed dangerous, influence in the State. This led to the passing in 1800 of what is called the Thellusson Act, prohibiting such an accumulation for a longer period than twenty-one years from the death of the testator, or during the minority of any person living at his death or who would be entitled, if of age, to the income.

Great litigation ensued upon the testator's death. Cross suits were instituted—by the widow and children to have the will set aside; by the trustees to have it established. Eventually, on appeal to the House of Lords, the decree of various judges affirming the validity of the trusts was upheld. The will, indeed, was framed with such extraordinary technical ingenuity that it withstood all the attacks which could be made upon it. No will, according to Lord St. Leonards, ever came before the Courts

upon which so much learning and thought had been bestowed for the purpose of endeavouring to tear it to pieces and to counteract, and properly, the ambitious views of the testator. The skill of the draftsman, with his perfect knowledge of real property law, frustrated every such attempt.

There were nine persons in existence at the testator's death during whose lives the accumulation was to continue: the three sons named in the will, and six grandsons, John, George, and Henry, William and Frederick (the twin children of the eldest son, Peter Isaac), and Charles, child of the youngest son Charles. Of these nine, Charles, the grandson, was the survivor, and on his death in 1856 the long period for accumulation ceased, and the estate came to be allotted in moieties, the testator's second son, George, having died without male issue. The eldest son, Peter Isaac, was created Baron Rendlesham, and died in 1808; his eldest son, John, became the second baron, and died without male issue; William succeeded to the peerage, and also died without male issue; but Frederick, the fourth baron, left a son, the present Lord Rendlesham, who was the respondent in the suit. Mr. Arthur Thellusson, the appellant, was the son of Peter Isaac's youngest son, and the 'eldest' in point of years, though his nephew, Lord Rendlesham, who represented the senior branch, was 'eldest' in line and the testator's male heir. The *cardo causæ* was whether the uncle, who was elder in years, or the nephew, who was

elder in blood (being the son of the uncle's elder brother), was entitled to a moiety as the 'eldest male lineal descendant then living' of Peter Isaac Thellusson. Both claimants were male lineal descendants; was 'eldest' to be taken in a literal or technical sense?

The appeal was from the Master of the Rolls, Sir John Romilly, who had decided in favour of Lord Rendlesham. The Lords received it with all the respect due to a case invested with such remarkable peculiarities. It was twice argued before the House, and eight of the Common Law judges attended, in obedience to their Lordships' summons, to hear the arguments and give their opinions. Sir Richard Bethell was leading counsel for the appellant; Mr. Rolt and Mr. Roundell Palmer represented Lord Rendlesham; and Sir H. Cairns appeared for the next of kin, who insisted that the will was void for uncertainty, now that the accumulation was at an end. At the close of most elaborate arguments the judges, in reply to the questions put to them, expressed their unanimous opinion that the will was not void for uncertainty, and the majority of them (Barons Martin and Bramwell dissenting) were of opinion that in the expression 'eldest male lineal descendant,' the word 'eldest' had reference not to seniority of birth, but to priority of line. The Lords decided accordingly that Lord Rendlesham, as the grandson of an elder son, was entitled in preference to his uncle, whose parent was a younger son.

Sir Richard Bethell's argument, though unsuccessful, was remarkable for its force and ingenuity, which received due recognition in the judgments. The costs of all parties, as in all the previous suits, were ordered to come out of the estate. This decision put an end to a litigation which in duration and magnitude has probably never been equalled. Such vast sums had been expended during its progress that the estate was not much larger at its division than at the testator's death. The name of Thellusson will always be connected with the history of a clever scheme of tontine and an Act passed to prevent the bare possibility of its recurrence.

While the Thellusson case was proceeding one of the counsel proposed deferring the consideration of some minor point till the day of judgment, meaning, of course, the day on which the final decision was to be pronounced. 'But,' objected Sir Richard Bethell, with a quiet look of mischief in his eyes, 'will not that day, Mr. ——, be a very *busy* day?'

Another case may be mentioned as a striking example of the way in which the construction of wills is sometimes influenced by conjecture of the testator's intention, when a rigid adherence to his plain language would produce a hardship which obviously he never intended or foresaw. In such cases Judges seem occasionally to act on the lawless, though generous principle, 'to do a great right, do a little wrong.'

General Carpenter, a distinguished Indian officer,

had an only son, Colonel George Carpenter, and by his will he had made provision for his son for life, and afterwards for the son's children, but in case of the son 'dying' before his mother there was a gift over. Colonel Carpenter fell at Inkermann, when leading the outlying pickets of one of the Brigades of the Second Division, leaving both his father and mother, then of very advanced age, surviving; he left also an only child, Captain Carpenter of the 7th Royal Fusiliers, who was himself seriously wounded at the battle of Alma. Sir Richard Bethell knew Colonel Carpenter's widow, who had accompanied her husband and son to the Crimea, and he took the greatest interest in the case. By his advice it was contended on behalf of Captain Carpenter that the words 'without issue' must be inserted after 'dying' to make the will consistent, and that, therefore, the gift over had not taken effect. Lords Chelmsford, Brougham, and St. Leonards (Lords Cranworth and Wensleydale dissenting) adopted this construction, which enabled Captain Carpenter to retain the fortune, amounting to nearly half a million, which his grandfather had no doubt intended for him.[1]

Sir Richard Bethell, as head of the bar, was very jealous of any judicial invasion of the rights of counsel. Lord Justice Knight Bruce had acquired notoriety for his constant interruptions of counsel and the levity and want of temper he displayed on the bench. The bar had for some

[1] *Ricketts* v. *Carpenter*, 7 House of Lords Cases, 68.

time complained of these practices, but no one had the courage to beard the offending judge in open Court. At last the opportunity came to the Attorney-General on the hearing of an appeal from the Master of the Rolls, and he took advantage of it.

The case related to a deed of assignment executed by a lady in favour of her solicitor for costs and money advanced, and the Master of the Rolls held that the assignment must be set aside. Against this decision the defendant appealed, and during the opening speech of the plaintiff's counsel in support of the decree, Lord Justice Knight Bruce interposed the remark, that, assuming the transaction to be perfectly honourable and beneficial, he was surprised that an experienced professional gentleman should have been so imprudent. This drew from Sir Richard Bethell, who appeared for the solicitor, the remonstrance: 'Your Lordship will hear his case first, and if your Lordship thinks it right, you can express surprise afterwards.' At this the Lord Justice grew very angry and repeated his observation, whereupon the Attorney-General calmly expressed his regret at hearing any censure of a party whose case had not been heard. Again the Lord Justice reiterated his opinion as to the imprudent conduct of the solicitor, adding petulantly, 'I shall say it whenever it suits me to say it, without the slightest reference to your opinion.' In opening the respondent's case Sir Richard referred to what had occurred, and said, 'I

deprecate any observations until the case has been fully heard and the proper time for the discharge of judicial duties begins. How must this professional gentleman feel when observations so incautious fall from a high judicial authority?'

For this timely rebuke of habitual indiscretion the Attorney-General received the thanks of the inner bar who were in the habit of appearing in the Court of Appeal; and the *Times*, in a leading article next day, condemned in severe terms the conduct of the Lord Justice, and applauded the resolute determination of the advocate that his client's case should not be prejudged.[1] After this incident, as might be supposed, the relations between the two became rather strained. The other Lord Justice, Sir George Turner, revelled in the intricacies of the law, of which he had a profounder knowledge than any other judge of his day, and Bethell's calm assurance made less impression on him than on other members of the Bench. At a consultation held to decide whether an appeal should be put down before the Lords Justices, or an application made for a hearing by the full Court, which would include the Lord Chancellor, Sir Richard observed: 'Lord

[1] In some amusing verses entitled 'The Battle of the Big-Wigs,' *Punch* sang in Homeric fashion—

'The hot anger of Bruce at the cool encounter of Bethell;
Bethell, the feared of the Bench, the Rarey, the tamer of horsehair,
Tamer of legal big-wigs, subduer of Lords and Vice-Chanc'llors,
Twister of Courts round his thumb with his silvery voice of persuasion.'

Chelmsford has absolutely no knowledge of an intricate question like this of real property law. But as for the Lords Justices, the prurient loquacity of the one and the pertinacious technicality of the other render an appeal to such a tribunal so unsatisfactory that it will be better to go to the full Court.'

The following story of Sir Richard's self-possession was current at the time in legal circles. On glancing at the pleadings in consultation, he observed that he could not conceive how any one could have advised the unfortunate plaintiff to adopt the course which had been adopted in that case. The country solicitor rejoined that he was surprised to hear Sir Richard say this, for he had himself some years before advised that very course to be taken in a certain event which had since actually occurred. The Attorney-General asked to see the opinion, and it was duly produced from the solicitor's bag. He read it slowly, and then said, as if soliloquising: 'Well, it is a mystery to me how any one capable of penning such an opinion could have risen to the eminence I have the honour to enjoy.'

Sir Richard Bethell had become very fond of yachting, and in the long vacation of 1859 he spent some time at Torquay with his second son and his family cruising round the coast. He writes to his son-in-law, Captain Cardew:—

'Sim has a nice boat, not quite as big as the "Cat," and we went out a good deal, but the weather was unfavourable—dead calms with sea-fogs. How has the "Cat" fared in the bad

weather? I should like a boat built on the same principle, but about six or seven tons larger. If my guardian genius enables me to retire from public life in August 1861, I should much enjoy such a vessel, with a residence on the coast somewhere between Southsea and Christchurch.

'So you have succeeded in proving again how superior your genius in horse-dealing is to mine. L—— tells me that you have sold my old horse you had for nothing for a fabulous price, whilst your mare that I gave so much for is lame and likely to be of no use, not even as a cab-horse.

'Certainly you are superior in ability to Her Majesty's Attorney-General. I have been "done" too by that old button-maker who bought my house in Westbourne Terrace, and refuses to complete his purchase. Altogether my conceit has been sadly lessened. . . .'

He was a capital sailor, and thoroughly enjoyed rough weather. Once, when trying to cross to Ireland, the gale drove him up to Tenby, and his yacht, of about 150 tons, lay weatherbound in the Tenby roads—one of the worst anchorages round the coast,—with a couple of anchors down and a rocky shore astern. Sir Richard refused to go on shore with the rest of the party, but stuck to the vessel for three days, though she was rolling yards under most of the time, and must have gone ashore if she had dragged or parted her anchors.

In the autumn of this year Sir Richard Bethell was present at a meeting of the Christian Young Men's Institute at Wolverhampton, and being called on for an address, he uttered 'a few unpremeditated thoughts and unprepared observations,' in the course of which, leaving, as he said, higher views for other occasions and other advocates, he pointed

out the great wisdom of denominating the Society a Christian institution, since education based on the principle of mutual benevolence was peculiarly fitted to ensure success in after-life.

'If,' he said, 'I were to look back on my own life, to derive from it anything like a lesson for the guidance or instruction of others, I should say that of all the success that individually I have met with in my career I should ascribe the greater part not to the possession of any particular ability, but, in the great variety of instances, more to the benefit I have found resulting from a feeling in one's favour produced whenever I have been fortunate enough to have it in my power to confer any advantage or any kindness on others. I am perfectly confident that the principle of mutual benevolence, of an universal desire to do good, derived from Christianity, and which is the first lesson inculcated when you are taught to read the New Testament, is one of the best and most sure modes of securing even temporary success in life.'

This lecture on Christianity, as it was termed, made the Attorney-General the target of a great deal of witty banter. It was declared by his critics that he had held forth the grace of universal benevolence as a profitable speculation in which he had himself invested with remarkable success. The leading journal in an amusing article hailed his appearance in the new character of a Christian advocate and in a strain of delicate raillery commented on his theory of the worldly advantages resulting from the observance of Christian principles.

'There is a danger,' it said, 'in resting the merits of Christianity so much upon this ground, because as ninety-nine people out of a hundred cannot "get on in life," but are tied by birth, education, and circumstances to a lower position, where they

must stay, if the great merit of Christianity consists in "getting men on in life," the only conclusion will be that Christianity signally fails in its object. It may, indeed, from time to time, produce an Attorney-General, and it will not be denied that that is a great achievement and does credit to our dispensation. But what are we to say to the great mass of the human race who cannot by hook or crook, whether they are as malignant as demons, or whether they shine with the benignity of a patriarch, an angel, or Sir Richard Bethell, rise above the level in which nature has placed them, and reach a brilliant and distinguished position?'

Questions of wider importance than those of legal improvement claimed the attention of Parliament in the early months of 1860. The policy of the Government with respect to Italian Unity and Independence, the Expedition undertaken in concert with the French against the Chinese to enforce Treaty obligations, the ratification of the Commercial Treaty lately entered into with France, and the important financial changes introduced by Mr. Gladstone's famous budget, thrust into the background matters of minor interest. Even the production of Lord John Russell's long delayed proposals of electoral reform excited only a languid interest, and the Bill was eventually stifled by the mass of amendments which it provoked. Sir Richard Bethell writes: 'I am not satisfied with the state of the Ministry. There is but little, if any, cordiality among its members. Everything has been sacrificed to the Commercial Treaty and the Reform Bill. We shall waste half the remaining Session over the Reform Bill, and then have to abandon it. But we have no antagonists. And, in fact, I find such

evidences of incapacity in the members of the late Government (particularly Lord ——) that I cannot think they can ever be reconstituted.'

The discussion of questions with which the Attorney-General had little concern gave him leisure to devote attention to the troublesome and thankless task of amending the bankruptcy law. He writes to one of his daughters early in the Session :—

'I wish I could run down to see you, but I am chained like a galley slave to the oar, and I fret and pull at my chain very much and very ungratefully; but, in truth, I long for quiet and rest, and, as we have enough for all reasonable wants, I long for some peace and time for contemplation and rational enjoyment of the close of life, "before I go hence." As soon as the present Ministry quits office I retire, but at present there seems no probability of that event; but we may get over-confident and presumptuous, and fall from our own pride and conceit. I told Lord John Russell (who has suddenly become wonderfully attached to me), after one of our great majorities, that our only care should now be "to walk humbly and circumspectly." I earnestly hope and pray we may do some good, or may be replaced by others who will.

'All my measures are postponed through the desire to pass the resolution, that the trade with France may commence at once.'

He was, as we have seen, liable to these recurring attacks of discontent with public life and office. Mere party politics had little charm for him, and he was not sufficiently imbued with the spirit of faction to become a successful political leader. Ordinary social topics do not appeal with enough force to the intellect to interest the scientific mind. Problems of juris-

prudence or philosophy, esoteric speculations, which stimulated the critical faculty and called for scientific exposition, more naturally engaged the subtle mind of the eminent lawyer.

His ready attention to the interests of the University of which he had been the legal adviser led to much friendly intercourse with Dr. Jeune, the Master of Pembroke, then Vice-Chancellor of the University, and afterwards Bishop of Peterborough.

'*March* 12 [1860].

'My dear Vice-Chancellor—I am happy to say that I have received and completed the grant of license to the University of Oxford to purchase and hold lands in mortmain to the extent of £10,000 per annum. It is, I am satisfied, a wise step on the part of the University. There is going on insensibly a depreciation in the value of gold, and therefore in the value of money generally, although perhaps to a less extent than might be supposed, by reason of there not being a proportionate augmentation of the quantity of silver; but I fully expect that the drain of silver to China will be completely put an end to by the greater extent of our imports, if the Chinese expedition is successful.

'I have had great satisfaction, therefore, in getting this grant made, though it somewhat exceeds ordinary limits. The value of land is certainly very high, and probably will not decrease, for I expect that this commercial treaty will augment the fortunes of the Lancashire, Yorkshire, and North manufacturers to such an extent that they will buy up all the land in the market.

'We have had immense success in the House, thanks to Gladstone, whose irresistible charges scattered the ranks of the Opposition. They have not ventured lately to show fight on the legal objections to the treaty, and I have therefore had little to do with the debates. Upon the whole the treaty is a wonderful production, and, extemporised as it was, I am astonished that it has not more flaws. It has rendered the world still more careless than ever of the Reform Bill, which every one would gladly get rid of except

Lord John. However I trust the rate-paying clause will prevent its doing much harm. Without that clause it would add in Wolverhampton 14,000 to the existing constituency! . . .

'I am obliged to postpone my great legal reforms, but I shall bring on the New Bankruptcy Code on Thursday next. We shall have much better talk still on the subject of Savoy.—Believe me, yours very sincerely, RICHARD BETHELL.'

The law of bankruptcy and insolvency had for thirty years been the subject of incessant denunciation, but all attempts to find a satisfactory remedy for its evils proved ineffectual. In 1831, 1842, and 1849 extensive changes, amounting on each occasion almost to a new code on the subject, were introduced, only to lead to new and stronger complaints, until the last state of the law was admittedly worse than the first. In introducing his Bill Sir Richard Bethell observed:—

'The difficulty arising from this state of things is that he who now addresses himself to the subject finds the whole ground encumbered with the remains of previous alterations of the law; he is not at liberty to sweep away that which is done with, and erect a new and simple edifice; he is obliged to adopt the building that exists, and construct entirely out of old materials. . . .

'In principle nothing ought to be more simple than a law of bankruptcy. Bankruptcy is nothing in the world more than taking the whole of the debtor's property by one universal execution, or by one universal surrender, for the benefit of his creditors; and all that should be required would be a tribunal simply for the purpose of ascertaining the extent of the rights of those who are interested in the distribution, and some simple machinery for realising the property and dividing it among the parties entitled.'

As the result of the successive alterations a host of official persons had been introduced into the

Administration, and the cost of winding-up an estate in bankruptcy amounted to 33 per cent upon the property realised, so that a third part of every creditor's debt was deducted for the cost of collection and distribution. That alone was enough to demonstrate the utter impropriety of the existing law. There was further the monstrous anomaly of having two separate systems for bankruptcy and insolvency. The insolvent debtor, if not a trader, was thrown into prison as the only means of wringing from him a full discovery and surrender of his property; and if he chose to defy his creditors he might lie there for an indefinite period. Moreover, through the difficulty of showing that his estate would yield £150, the prescribed amount, many a trader was debarred from recourse to the Court of Bankruptcy, and was driven into the Insolvent Debtors Court and submitted to imprisonment in order to obtain his discharge. Even after an insolvent's discharge his future property remained liable to his creditors, paralysing his fresh exertions and destroying the strongest motive for industry and providence.

The Bill proposed to abolish the distinction between bankruptcy and insolvency, and to apply one uniform system of distribution to the estates of insolvent debtors, whether traders or non-traders; to give facilities for composition by voluntary arrangement with creditors; to appoint a Chief Judge in place of the existing Commissioners; and generally to simplify the procedure and establish a uniform, expeditious,

and economical system. Before 1831 the creditors had practically the uncontrolled management of the estate. Lord Brougham's Act of that year was founded on the system of administration by official assignees, and the codes of continental nations, under every one of which larger assets were obtainable than in England, provided for an official control.

The Bill of 1860 was to a great extent a return to the voluntary system. Unfriendly critics professed to find strong traces in it of the influence of the Attorney-General's connection with a great mercantile constituency, and declared that the interests of the smaller estates were sacrificed to the larger. The difficulties which surrounded the question appear from the following letter to Lord Palmerston :—

'*Hackwood Park, April* 8, 1860.

'Allow me now to call your attention to our legal measures brought and to be brought before Parliament, and to beg you to tell me what you think best to be done. You will recollect three subjects were mentioned in the speech from the Throne. The consolidation and reform of the laws of bankruptcy and insolvency; the introduction of measures to simplify the title and facilitate the transfer of landed estates; thirdly, that which in the speech (the passage being, I presume, contributed by the Lord Chancellor) is called "the fusion of law and equity," by which was meant, measures to remove the reproach under which we labour that suitors in our courts of justice are bandied from one court to another. What has been done to fulfil these promises? I will report to you.

'The Bankruptcy and Insolvency Bill has been introduced by me. On my personal request to them, the Opposition permitted it to be read a second time without discussion. It stands for Committee on the 23d inst. It is very long, nearly 600 clauses,

and of course, in a measure making such a radical change, there will be very many subjects of discussion. It has been very well received by the mercantile world, but as it is adverse to the interests of many lawyers, who profit by existing abuses, a strong party is being formed against it. In the House of Lords it will have the opposition of Lord Brougham, who for the last twenty-eight years has been the author of all the legislation in bankruptcy with unfortunate results, and whose measures are subverted by the present Bill. To pass this Bill through the Commons I shall want four nights, and perhaps two morning sittings. But to ensure success in the Lords, it should be sent up there by, at the latest, the first week of June. Together with this Bill stands another very important measure—a Bill for the consolidation of all the laws relating to joint-stock companies. What I wish to ask you is whether you think it possible to do more this session than pass these two Bills?

'The Bills relating to landed estates will cost me at least a month's labour to render them fit to present. I have had them prepared, but they are not at all to my mind.

'The Bankruptcy Bill has half-ruined me in my practice, but I will incur still greater sacrifices and bring in the Landed Estates Bill by the beginning of May, if you think there is a chance of doing so to any purpose.[1] I entirely despair of it, unless the Reform Bill could be sent to a better world or, as its enemies would say, consigned to "that limbo vast and large,"

> '"Where entity and quiddity,
> The ghosts of defunct bodies fly."

Cito in cœlum redeat, whence no doubt it came. Let me know your wish therefore as to the Landed Estates Bills, and if it be to bring them in, I will do so.

'The third measure, "fusion of law and equity," has come to grief. The Lord Chancellor brought in a Bill into the House of Lords without telling me of his intention or showing me the Bill.

[1] He wrote to a friend: 'I calculate that the professional business I have been obliged to refuse, whilst preparing the Bankruptcy Bill, has exceeded £3000. The labour has been immense.'

It is unfortunate. The Bill has been prepared by persons not conversant with the subject, and all the Judges in Equity, the Master of the Rolls, Lords Justices, and Vice-Chancellors, have sent to the Lord Chancellor an earnest remonstrance against the measure. I am sorry this should have happened, but the Bill deserved it, and this part of our promised measures will therefore have to be abandoned. Such, my dear Lord, is the state of your legal crops—they are not very flourishing, but I think if we save the Bankruptcy Bill that we may look the landlord in the face.'

The Law and Equity Bill, which was drawn by Mr. Justice Willes, was approved by all the Common Law judges, who hastened to answer the memorial presented against it by their Equity brethren. It proposed to give the Courts of Common Law additional jurisdiction of the kind hitherto exercised only by the Court of Chancery, and was therefore regarded with hostility by Equity lawyers as an unjustifiable encroachment on their domain.

In the event, however, the Attorney-General's sweeping measure of bankruptcy reform shared the fate of Lord Campbell's Bill. The extraordinary pressure of Government business delayed its introduction; and when, after much consideration had been given to a third of the clauses, it was menaced by an amendment which struck at the most valuable provision of the Bill, little hope remained of passing it in that Session. The Attorney-General was naturally much disappointed. He writes to Lord Palmerston:—

'*July* 19 [1860].

'My dear Lord—I have been anxiously thinking what is to be done with the Bankruptcy Bill, if the House of Commons shall

adopt Henley's amendment this evening, and I am reluctantly compelled to say that I cannot go on, not from vexation or opposition, but simply because so great a change in the principle and extent of the Bill would require it to be entirely recast, and its provisions quite altered to meet its reduced sphere of operation. In that event, viz. of the Bill being confined to tradesmen, we must continue the Insolvent Debtors Court, and I shall not want the staff, either judicial or ministerial, which the Bill provides. All the arrangements touching the County Courts will become inappropriate and unnecessary, and in fact the plan of the Bill must be altered. It would require at least ten days' hard work to do this, and then it must be recommitted and the new scheme reconsidered. If therefore we have a majority against us, I think we must be prepared to pass on to the next order of the day. If we do get a majority, you will give me, I suppose, until twelve o'clock to-night, and I shall then want Tuesday morning, Thursday morning, and Friday morning, in order to get through next week. If not got through next week, it would be utterly hopeless to knock at the door of the House of Lords. Do not trouble to send any answer.'

The courageous attempt to consolidate the entire law, instead of dealing merely with the proposed changes in it, after the piecemeal fashion in which our legislation is usually attempted, deserved a better fate. Sir Richard Bethell as a law reformer was somewhat in advance of his time, and he chafed under the opposition raised by the fears of some and the prejudices of others to the amendments of the law on which he was intent. 'I have been very much occupied,' he wrote in the course of the Session, 'by parliamentary business, which is an ungrateful task and a very foolish thing for any sensible and non-ambitious man to trouble about.' A little later he wrote again :—

'I have been a great sufferer from various causes, and am still very weak and with a bad cough; but at present I see very little hope of peace or rest.

'The House of Commons has become thoroughly demoralised, and it is a mere talking club, so that it is impossible to get any real business done. . . . I wish I was the owner of a boat and had nothing to do but, like C——, to enjoy myself. It would be much wiser than to do as I do now, toil and labour for other people, only to be abused and suspected of some interested motive.'

The session was unusually long and laborious, the greater part of it being consumed by discussions arising out of the financial arrangements proposed by Mr. Gladstone. Of these the repeal of the paper duty excited a lively conflict between the Houses of Parliament over the right of the Lords to reject Bills relating to taxation sent up from the Commons. Finance, the French Treaty, and Parliamentary Reform were subjects each one of which might have sufficed to occupy the attention of the Commons during the whole session. But though the full legal programme sketched out in the speech from the Throne could not be carried out, the session was not unfruitful of amendments of the law. Writing to Lord Palmerston on 23d August, Sir Richard Bethell enumerated and explained them in his usual luminous manner, and went on to pay a striking tribute to the Premier's leadership:—

'I believe these are the principal legal achievements of the session—*Utinam plura et meliora essent.* But they are by no means despicable or unworthy of your Government, particularly as they were accomplished under great difficulties.

'I cannot close this note without expressing to you, with the most unfeigned sincerity, my admiration of your masterly leadership during this most difficult session. Great knowledge, great judgment, great temper and forbearance, infinite skill and tact, matchless courtesy, and great oratorical talent, rising with each important occasion, have in a most eminent degree marked your conduct of the Government and your leadership of the House of Commons. And those who know the secrets of the Cabinet must feel that none but you could have kept it together. But what I esteem most is that happy quality you possess, by which, whilst you receive the admiration, you at the same time win the affections of all around you. I did not intend to write this, but it has been forced from me by a retrospect of the session.'[1]

What Mr. Evelyn Ashley has termed Lord Palmerston's 'peculiar talent for reconciling, cementing, and commanding diverse idiosyncrasies' invariably excited Sir Richard Bethell's strongest admiration. The rare combination of good temper, tact, and courage which characterised the great leader's public life won the heart of his law officer. 'Pam is such a gentleman!' he used to declare with an enthusiasm which he seldom exhibited; 'he always says and does the right thing.'

At the Commemoration at Oxford in the summer of 1860 Sir Richard Bethell, in company with Lord Brougham and Mr. Motley, the historian, received the honorary degree of D.C.L. Soon after he was elected a member of the Athenæum Club, under the special rule empowering the Committee to select

[1] The latter part of this letter has been published in the Hon. E. Ashley's *Life of Lord Palmerston*, vol. ii. p. 400.

persons eminent in science, literature, or the arts, or for public services. Sir Richard was described on the roll as 'highly distinguished, especially for his exertions in the promotion of law reform and the improvement of legal education.' He was the first instance of an Attorney-General being elected under this special rule, and there has been but one since—Sir Roundell Palmer, now Lord Selborne.

In November 1860, the Attorney-General in person moved the Court of Queen's Bench that a rule might be granted to issue a special inquisition by a writ *ad melius inquirendum* with respect to the notorious Road Murder. The case was without exact precedent, and excited much public discussion. At the inquest thus sought to be reopened, the Coroner, as it was alleged, directed the jury that it was no part of their duty to find out who had murdered the child. There was a very strong presumption that the crime had been committed by one of the inmates of the house, and he held that, having obtained sufficient evidence of the cause of death, it was contrary to the course of justice to examine all the suspected persons. The jury, accordingly, after some protest, returned an open verdict.

There was a very general feeling that the inquest had resulted in a miscarriage of justice, and that the public interests required that a further inquiry should take place. It happened that the written statement of the finding of the jury had been returned on paper, instead of on parchment, and the Attorney-General

also took advantage of this informality to impeach the validity of the proceedings before the Coroner. After very elaborate argument a rule was granted, calling on the Coroner to show cause why the inquisition should not be quashed, and the writ for a fresh inquiry issued. But on cause being shown the rule was discharged, and the crime remained a profound mystery until 1865, when the guilty party, who at the date of the murder was only sixteen years of age, voluntarily confessed the deed. Sir Richard Bethell gave a great deal of attention to the case, and used to say that nothing in the course of his life had puzzled him so much.

His suspicions never once rested on the actual perpetrator of the crime. One evening, after discussing the case for a long time with his youngest daughter, he ended by saying, 'How thankful I should be if that poor little child's spirit would appear to me to-night!' He did not deride the idea of spiritual manifestations to the living, being of Hamlet's opinion, 'There are more things in heaven and earth, Horatio, than are dreamt of in your philosophy.'

END OF VOL. I

Printed by R. & R. Clark, *Edinburgh.*

ERRATA

P. 11, line 18, *for* 'Weaver,' *read* 'Sayer.'
P. 16, *for* 'Philpotts,' *read* 'Phillpotts.'

At end of Vol. I.]