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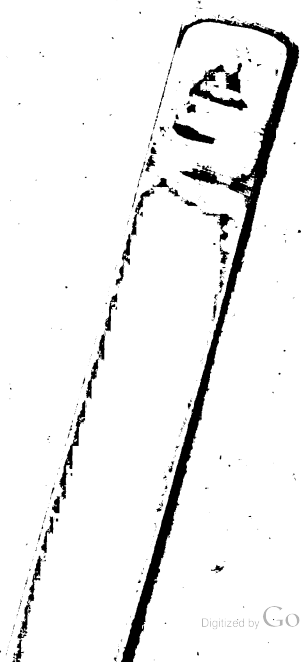


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THE *Marcus Gaye*
BARRISTER,

OR,

STRICTURES

ON THE

EDUCATION PROPER FOR THE BAR.

Most of these PAPERS appeared occasionally in the
WORLD, during the Year 1791.—Some others
are now added, with

AN INTRODUCTION by the AUTHOR.

D U B L I N :

PRINTED FOR MESSRS. E. LYNCH, R. M'ALLISTER,
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THE
BARRISTER.

training for the Bar, or are intrusted with the care of youth whom they intend to educate for the profession.

While in the pursuit of his education, especially during that part of it which passed at the Temple; the writer experienced the want of a Monitor, to teach him the best method of employing his time; to point out to him the shoals and quick-sands, which he should endeavour to avoid; and shew him the fair passage to honourable success in
the

the profession; the consequence was; he did that last, which ought to have been done first; and neglected attendance on many things which, he did not then know, were material to his pursuits; and now, like an unfortunate General, gathering discretion from defeat, he conceives that he has so well profited by his own errors, that he can teach others to be victorious.

Another object, also, pressed on his mind; when the life of the Barrister was exchanged for that
of

THE
INTRODUCTION.

MOST of the following Papers on the Education proper for the Bar, first appeared, at intervals, in the **WORLD**; a
b daily

daily print remarkable for having introduced to the notice of the Public several volumes of elegant poetry, besides some tracts in prose which have been well received; the BARRISTER also, during its publication, attracted some attention, and applause; the first effect the writer principally aimed at, knowing that *attention* must be excited, before *instruction* will be received; and his great object was, to impress some hints respecting this subject, on the minds of that class of readers who are themselves in training

who feel themselves in a predicament which may subject them in any degree to the scourge of the laws ; feel no great affection for those who hold the *rod*. This is natural, and the consequence is inevitable ; hence, the municipal laws of the nation, however justly administered, must create many enemies ; as well among the unfortunate, as among the vicious and depraved.

Innumerable are the litigations which arise from the rights of persons and things ; this is a
source

source from whence copious streams of riches flow to the profession; but they flow not unpolluted with some stain of undeserved reproach: The man who is unfortunate in his legal contests, thinks he bears a sufficient load, in bearing his misfortune; he does not willingly charge himself with *blame* also; he scatters *that* among the profession; but the bulk of mankind employed in the various avocations of life; which, their attention to their interest, the spur of ambition, or the thirst
of

of the Country Gentleman, and the animated bustle of a town life stood contrasted with the stillness of retirement; habits of convivial conversation were also changed; ideas and sentiments, widely different from those which had engaged the attention of professional friends, whose conversation he had been accustomed to be equally delighted with, as instructed by, took place at the social board; many topics, affording as much amusement and instruction, as those which the habits of a Barrister had
made

made him acquainted with; but when the Laws, or the profession of the Law, became the subject of conversation, he found to his regret, the estimation either the one or the other was held in, not to be such as accorded with those sentiments of respect, he had always entertained for the profession.

Much of this arises from the vindicatory function of the Laws; and much of it from the nature of legal contests in an opulent and expensive nation: Those
who

short-sighted spirit of falsehood, predominating in the mind of the Client, induce him to conceal the truth, to repress facts, which he feels are against him, or to give a colouring, which is something more than the truth, to those facts which are with him? deceiving his Attorney, deceiving his Counsel, deceiving himself; he receives, on such a case, a fair and just opinion, he commences his suit, or defends his cause, and at length finds himself wrong; not from any
injustice

injustice in the laws of his country, or in the administration of them; not from any error or carelessness of his Attorney, or in his Counsel; but because he has deceived them; he finds he has also deceived himself; and suffers both in property and reputation, because the truth was not in him; numbers of such suitors will raise their voice loudly against the Law, and Lawyers.

These sources of reproach and calumny, which are *extrinsic* to the profession, and arise from the
natural

of riches, points out to them; are not able to form a just judgment of that infinity of cases, where their own rights clash with *the rights* of others engaged in the same pursuits; hence arises the necessity of application to those who are learned in the laws of their country, for that knowledge in which most people find themselves deficient: Here also, is the source of those profits which the profession receives from cases and opinions; and from hence, in a great measure may be traced, much of that

x INTRODUCTION.

that calumny under which the profession suffers.

An opinion must be given according to the case; the facts stated, are the solid basis on which an opinion should be founded; plain truth, therefore, should state those facts; and the case should follow the line pointed out to a witness, by his oath, in a Court of Justice; it should contain the truth, the whole truth, and nothing but the truth—but how often does a selfish, short-

As the excellence of a human system of laws, lies as much in the administration or practice of the laws, as in the theory itself; how necessary is it in a country, so renowned for its justice and constitution, as is this great and opulent nation; that the education of those who may be called to the high office of a Judge, should be the best the country can give, to form the Scholar, the Lawyer, the Man of honourable Character, the po-
lite

lite and accomplished Gentleman; the Laws of this Nation, administered by such Judges, are an inestimable blessing to all ranks of men, living subject to a constitution, which is deservedly the admiration of the World.

Let us therefore preserve the sources of Justice as pure as possible; let it be known to the whole world, that our Judges are not only mere Lawyers, but Men of Honour; not astute only in black-letter intricacies of law,

natural depravity, or imbecillity of mankind, no care or attention of the Lawyers can purify ; but if any of the imputation rests with the profession itself ; and can be removed by the conduct of any of its branches ; it is a duty the individuals of that branch owe to themselves, to the profession, and to society at large, to attempt a removal of such reproach ; and it is more particularly the duty of the Gentlemen at the Bar ; they not only owe it to themselves, to the profession,

sion,

sion, to society at large; but they owe this duty to *the sacred source of all justice*; because all those who administer the laws of this country, in the superior Courts of Judicature, are selected from among *the Bar* to that high office; a function something approaching in resemblance, although not in awful extremity of consequence, to the final office of the Deity; when those who have judged temporally, will then be judged eternally.

As

and the Practisers; it is hoped may be conducive to this honourable effect; they were suggested solely with that view; and without the least idea of throwing any imputation on that numerous class of men who are the immediate clients of the Bar; while practising with reputation, in that situation for which they were educated.

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The first part of the book is devoted to a
general introduction to the subject of
the history of the world. The author
discusses the various theories of the
origin of life and the development of
the human race. He also touches upon
the different stages of civilization and
the progress of science and art. The
second part of the book is a detailed
account of the history of the world
from the beginning of time to the
present day. It covers the various
civilizations and empires that have
flourished on the earth, and the
events that have shaped the course of
human history. The author's style is
clear and concise, and his treatment
of the subject is both comprehensive
and interesting. This book is a
valuable addition to the library of
any student of history.

law, but men of literature, learned in the lore of philosophy; men, not raised solely by intrigue, or for their *own* interests to the conspicuous seats of judicial office; but raised also above the common herd of men, by the integrity of their minds; bearing high erected thoughts, seated in hearts of courtesy: the laws of this country administered by such men, will preserve through the world, a deep-rooted respect in the opinion of *man-kind*; for that constitution which
is

is our palladium, whatever freedom of government the present spirit of liberty, that diffuses itself so far and wide throughout the globe, may obtain for the many millions of fellow-creatures, who have hitherto been the slaves of despotism.

Those strictures in the following Numbers, which call the attention to a blameable degree of intermixture in habits of interest, among two separate orders of the profession, the Barristers and

For the WORLD.



THE
BARRISTER.

NUMBER I.

MR. PRINTER,

DURING this dearth of food for public curiosity: while the recess of PARLIAMENT, and consequently the absence of many ample topics of conversation, drains the METROPOLIS of its best informed inhabitants; and the impenetrable secrecy of the MINISTER, keeps all sources of political information closed; it is possible you may not think a corner of your valuable and universal Paper will be badly filled with a few strictures on the STUDY of the LAW;
B and

and some hints to those who are STUDENTS; with a view to the successful practice of that lucrative and honourable profession.

It is confessed that many pages of the WORLD have been often filled with subjects calculated to give a greater scope to the imagination, and more flattering to the restless curiosity of mankind: The ELEGY on the PLAINS of FONTENOY; the ANSTEYAN* account of the Siege of Mr. HASTINGS's property and character, to which the siege of TROY, for vain bombast, and its usual concomitant futility, is but a flea-bite; the SKETCH of BIOGRAPHY, which made your Paper a harbinger to seven numerous editions in less than a year; all these, and many more subjects of instruction and entertainment with which you have treated the WORLD, argue self-sufficiency in the Writer of these strictures to expect a corner of a Paper which has so often been so well filled: But as DELLA CRUSCA is dead, or what is to the public, and them only, much the same, not audible; as the close of the last Sessions of Parliament has closed, it is to be hoped for ever, a subject which, as it has been treated by your Correspondent, has often made your Readers smile, when perhaps they ought

Mr. ANSTEY, author of the Bath Guide, &c.

ought to have had other feelings, for the unexampled persecution of a worthy and enlightened member of the community; and as Mr. ELWES does not die every day, possibly you may admit your Correspondent to this honourable corner; he first assuring you, that although he is not a poet, he would wish, not only to instruct, but to amuse your readers.

EDUCATED with a view to the PROFESSION, and practising it for a short time with some earnest of success; the same accidents removed your Correspondent many years ago from the law, which have often spoiled many a lawyer; loss of friends, and acquisition of property; together with a mind not well disposed to bear patiently those rubs to which a life dedicated to ambitious views is heir; and feelings too keen to pass through a phalanx of competitors without sentiments of irritation; determined him to relinquish his splendid, and probably unsubstantial, visions of future greatness, and to quit the lucrative field of contention bearing strongly in his mind the fate of the Viscount of ST. ALBANS, together with the elegantly expressed sentiment of SENECA:

Stet, quicumque volet potens

Aulæ culmine lubrico:—

ME dulcis faturet *quies*,

B 2

But

But although all contention for the riches and honours of the law has long ceased in his mind, and ambition has given way to quiet; he still retains a predilection for the profession, and its professors; he venerates the sages, and feels affection for the students, to whom he particularly addresses himself; and conceives, vainly perhaps, that while the eye, eager for novelty, courses through the columns of your Paper; the attention of some young and candid minds may be caught, which will not turn with disgust from that page, where EXPERIENCE presumes to give some useful hints to candour.

Perhaps no truth is fixed on a firmer base, and no assertion needs fear investigation less than this; *that a good constitution is necessary to insure success at the BAR*; in the other professions no such necessity is essential; the DIVINE, or the PHYSICIAN may rise to fame, riches, and honours, with a weakly, tottering frame; strength of mind, strength of lungs, strength of nerves, equability of temper, are not absolutely necessary to them; the one may deliver with dignity and pathos the service of his office; and the other may prescribe with skill and success, without possessing either of these qualities, arising from a sound constitution, in any eminent

eminent degree; but they are all of them essential to the LAWYER: And if the parents of the young intended Chancellor, or himself, are conscious that he fails constitutionally in any one of these points, let him turn his attention to another object, and rise to fame and dignity in some other class of Society; this profession does not offer him a shadow of success.

But great abilities and great parts, by which are intended those abilities which have been proved in the course of education, by quick scholastic attainments, elegant classical taste, witty replication, strong and poetical imagination, quickness in composition; all which have at times been crowned with academic, or literary honours, *are NOT essential to the LAW STUDENT*; they rather argue, if we place any belief in the old proverb, deficiency in a much more material point, “great wits have short memories;” and in this profession a most retentive memory is necessary, which cannot be supplied by any succedaneum; the Note Book, the Common-place Book, or *memoria technica*, may be of service in the LIBRARY, but not at the BAR; which is a *Sparing School of mental acumen*, where a strong memory and quick recollection are as necessary as muscular strength and activity with the professors of modern gymnastics: and these scholastic attainments
are

are rather proofs of an elegance, than a strength of mind; they are the wreaths, the flowery festoons, which adorned the eloquence of Lord MANSFIELD; not the basis on which he has erected, in the memory of many, who with equal profit and delight attended to him; that high column of wealth, honours, and reputation, which held him up to the admiration of an applauding World.

A BARRISTER.



THE
BARRISTER.

NUMBER II.

BUT as it is supposed that the STUDENT attempts the character, so elaborately described by CICERO, of the perfect orator, "*Omni laude cumulatus Orator,*"—these elegant accomplishments, this finishing *tournure*, should be prominent to his view and imitation; although the language, and oratorical attainments of the present CHANCELLOR, may convince us that this high polish is not absolutely essential: his eloquence is, indeed, manly and convincing; his auditors are hurried along by a strong and copious stream of persuasion; but no flowers float with them: nor do they, while fascinated by his nervous periods, run a risk, like VOLTAIRE in his dotage, *of being smothered with Roses.*

WITH

WITH a good sound hereditary constitution, the blossom as yet not injured in the bud; with the *mens sana in corpore sano*, let us suppose our FUTURE CANDIDATE for fame and riches; in a profession from which much the greatest part of our NOBILITY have derived the origin of their present wealth and honours; to leave a public school, more expert in Greek and Latin; than in those vices, which, if permitted to increase in our SEMINARIES of EDUCATION, in the same proportion they have hitherto gained ground; will disgrace the country which encourages them, and poison the source of its future fame and prosperity: let us also suppose him bold, but not overbearing, not obvious, not obtrusive, uniting real magnanimity with apparent diffidence.

Until the COMMENTARY of the late JUDGE BLACKSTONE brought darkness to light, and reduced to system and method a farrago of legal knowledge, scattered over immense volumes of black-lettered lore; whose Gothic character and bulkiness had, as Mr. GRAY humorously expresses himself, in a letter to his young friend WEST, a bad effect on the eye, and was calculated to frighten the STUDENT with the distant prospective; the approach to a systematic knowledge of the profession, was involved in darkness and perplexity; and success was more likely to
be

be the offspring of luck, than merit. It is not possible to suggest what were *all* the means pursued by the STUDENTS of those days, to catch a probability of business; very great abilities, indeed, may almost command victory in our most arduous undertakings—such is the amazing power, and almost godlike force of the human mind; but even these men of first-rate abilities, whose fame stands high in the page of Biography; even Sir EDWARD COKE, and Lord VERULAM, made use of means not always correspondent with dignity of character; for, while we are held in admiration at the strong and universal genius of the latter, we are disgusted at the many degrading and dirty steps he took in his road to the first honours of his profession; and lament that such lowliness should have been the necessary ladder of young ambition.

Much otherwise was it in those brilliant days of ROMAN GREATNESS, when CICERO wrote his dialogues on the Qualifications, natural and acquired, of a ROMAN ORATOR—every thing that is great, every thing that is worthy the character of a man of letters, and a gentleman, are assembled in that book, to constitute the pleader; exclusive of the vast fund of technical advice contained in that excellent treatise, it is impossible but that the STUDENT, who daily

turns over his pages, will be struck with the love of his profession; because he will read in periods of the highest classical polish, that every qualification which humanizes and dignifies man, ought to be comprised in *his* character, who expects to command success, and to appear in the first ranks of his profession.

But in this Country, in times which are now passed, before MANUFACTURES and COMMERCE had enriched us, the change of property was proportionably trifling; and wealth, the attack and defence of whose muniments, and fortifications, form an important and lucrative part of a lawyer's business, was confined in a narrower channel than at present; consequently the road to the riches and honours of the profession was less beaten, and with greater difficulty travelled: the rising lawyers of those days being conceived in a good train, who had sufficient interest to be appointed stewards, or retainers, to men of family and property; and a recommendation to the protection of the great, was absolutely essential to success: the trifling harvest the cultivation of the law afforded, may be judged of from the small number of practisers, or Attorneys, which is restrained by an Act of Parliament, passed in the 26th year of HENRY the SIXTH, to six in each of the counties of NORFOLK and

and SUFFOLK; the habits and manners of those times may, therefore, form some apology for that conduct of the then rising luminaries of the profession, which has been alluded to.

Thanks to the protecting GENIUS of this flourishing and happy island; no such apology can now be admitted; a certain and honourable road is now open to abilities, and merit finds its sure reward, early in life enjoying those fruits, to which, in former days, the lucubration of twenty years scarce gave a distant probability of access. It is still in the memory of some in the profession, how many years the late Lord GRANTLEY toiled through the routine of circuits, and a daily habit of attendance in WESTMINSTER HALL, without a brief, and at a period of life when ERSKINE and SCOT, and many other risen names, are receiving their annual thousands, to their own honour, and advantage of their clients; many who afterwards rose to the apex of the profession, were planning, and would have pursued, had they but possessed the means, a life of retirement, and obscurity. One gentleman, now most deservedly high in the opinion of his clients, may remember the time when a LIVING from KING'S COLLEGE would have sequestered from the world an able and eloquent advocate. Many meritorious characters,

raçters, endued with great abilities, have, in former days, sunk, after a long apprenticeship in the profession, to retirement, if not to poverty; their patience exhausted by hope too long deferred.—

*Ploravêre suis non respondere favorem
Speratum meritis.*



T H E
B A R R I S T E R.

N U M B E R I I I .

BUT it was not entirely from a scarcity of briefs in the Courts of Justice, that the **BARRISTER** of merit was obliged to arm himself with the panoply of patience, while he waited for business; the different parts of the profession were then preserved totally distinct of each other; the Barrister kept the Attorney at a distance; and the first thought himself degraded by an intimacy or connection with the other; the consequence of this habit was; that abilities alone, and not the predilection or friendship of the practiser, were the only recommendation to business; these abilities were obliged to wait for time and opportunity, to become known to the world: hence the twenty years lucubrations which my Lord **COKE** mentions, without any repayment from

from the profession of the expences of education ; those habits, though now out of date ; and to which, probably, a too general and close connection between the Barrister and the Practiser has succeeded : yet are still in the memory of some gentlemen now at the Bar. But while such was the conduct of the Candidate, that he disdained to hold any acquaintance with the source from whence the daily practice of the Courts is principally derived, it is no wonder that fees did not follow the first years of attendance ; more especially ; as until, in the instance of the first Earl HARDWICK, it was unusual to see a Chancellor proceed from an Attorney's Office.

How many years a kind of apprenticeship to a Special Pleader, has often finished the education of the Student, cannot with precision be ascertained ; but it is believed, that the late Judge YATES was one of the first *great characters*, who brought this mode of completing the Lawyer's education into fashion ; and it is a tribute due to his memory ; if strict integrity, uncorrupted faith, deep knowledge of his profession, and suavity of manners constitute a *great character*. to assert that he was such ; and that mode extended itself still farther ; for the Student who means to apply for business to the Courts of Equity, is now expected, after his

his imagination and taste have been improved, regulated, and received a polish from the University; to sit down in a Draftsman's office, and amuse himself with the porplicity of bills and answers—a dull, but sure road to business; and when it first became the subject of conversation at the Bar, was observed to have been, according to the assertion of a gentleman, then much attended to for the liveliness of his conversation, the practice of the ancients, proved by the authority of HORACE—*Optat arare caballus.*

It becomes the parents, or guardians of those who are intended for the Bar; to consider well the best mode of education to compleat the Orator, and the Gentleman, when the young men, in whose future fortune and fame, they take an interest, leave a public school; for next to a good constitution in mind and body, is an education at a public school, peculiarly essential; it is impossible that in any private house, whether that of his father, his guardian, or of any person who takes only a few pupils, a young man should so assimilate himself to the world at large, become in manners and address all things to all men, and be so likely to bear with the rubs, all competitors for fame and riches must expect; without having his temper soured, or his spirits depressed in the general scramble;

as when he has, during the season of youth, passed the ordeal of a public school; besides it is an undoubted fact, that such an education produces the best scholars; the memory, which, in this profession, requires every cultivation, is more constantly kept in practice, by exercises *memoriter*; and with those who are intended to mix with the busy world, some risk of the moral sentiment must be run. With every advantage Lord CHESTERFIELD could give his natural son, Mr. STANHOPE, and he could, and did procure for him, all that high rank, a large fortune, and an habitual intimacy with the world of science and fortune could command; and by maxims, gilded with all the brilliancy of wit, though, shamefully destructive of the moral sentiment, attempted to fix him high among the circles of fashion; but failed; the splendid talents of the noble Peer, great as they were, being unable to unravel that aukward coarseness of tissue, which a private education in early life had woven; it surely, therefore, must be good advice to one who intends to run the race of competition for so splendid a prize, as the law holds out, that he should be in early habits of training; and at the same time, it should be remembered, that some of the most respectable names the Biography of this Country can boast; were, in
early

early life, trained to goodness, as well as greatness, at Eton and Westminster.

There are but few leading tracts to follow, when the school discipline is terminated; the seals may be arrived at, as has been experienced, by a road leading through an attorney's office; a road which has, it must be confessed, but few enlightened travellers to recommend it; yet it has been trod, and with success, by some. While such names as the late Chancellor HARDWICK can be mentioned as having travelled it, the recommendation is such, as from the survey in detail, one should not have expected; it stands, indeed, to the eye of reason and common sense, negatived to every recommendation; one might as soon expect to arrive at a PRINCELY MANSION, *through an avenue of narrow lanes*, or to sail by a navigation of ditches, to the METROPOLIS of a POWERFUL COUNTRY, as to arrive at the seals by an education in an attorney's office.

It is difficult to conceive, what can be said in recommendation of such a plan; the fact, that success has attended a few great names, being out of the question. Does a clerk gain any fundamental knowledge of the law at the desk of an attorney? No. The practisers have it not themselves; and they, in this respect, resemble HARRY PERCY'S

PERCY'S wife—"they will not utter that they do not know:" the assertion is general, where a few instances to the contrary stand forth as shining exceptions to the rule. What does he pick up there, that is useful to the liberal profession of the Bar? Nothing; unless it is asserted, that a knowledge of the mode of attendance at Judges' Chambers, Masters of Chancery, Prothonotaries, Filazers, and the different offices of the law, together with those multifarious manipulations of the profession, which concern not the Barrister, are of consequence; these, and some other equally important points of practice, he will obtain the knowledge of; he will also scrape, it is true, some acquaintance with his cotemporary clerks, and will be personally known to most of the practisers, which, perhaps, may be asserted, *is not nothing*; although, for the honour of the Bar, it were to be wished that *it were nothing*; and what is the price which must be paid for these acquisitions? An expensive fee—an expensive mode of life, passed in bad company—a consequential acquisition of bad habits—a probable loss of every sentiment of decency, morality and religion, together with health: by being open to every vicious temptation a dissolute metropolis abounds with, at a season of life when the brain is tender, and fibrillous,

fibrillous, the reason consequently weak, passion strong, and all authority of controul removed.

The office of a *country* attorney is not replete with so many objections; the temptations to vice are not so numerous, or so obvious; concealment of a loose conduct not so easy. The moral habit, in such a situation, is consequently in less danger, and the constitution is less likely to become a prey to the violent passions of youth; but where there is but little business, there cannot be much experience; and country business in the law is, in general, much decreased, or else conducted by agents in the Inns of Court. Indolence will creep into habit at the desk, where the master has no urgency for haste. A five years clerkship to learn *nothing*, is time very badly spent; and from the facility with which cases are sent, and opinions returned from the Metropolis, the Practiser in the Country stands in but little need of more deep founded knowledge of his profession, than him in London; it is only necessary to add the expence of postage to his bill, and he will be able to obtain for his client every advantage which fees can command in this profession, from great abilities united with great experience.

There was a time when the country Attorney was nearly as much to be depended on

on for advice, especially in titles and conveyances, as the Barrister; when COKE LIT'FLETON was at their finger's ends; and wise axioms, together with black lettered lore, distilled from their lips, as honey from those of the Mæonian bard; but that race of men is nearly extinct; a kind of Lawfactor has succeeded in their stead; and the London Agent has superceded all necessity of an intimate knowledge of the Law among the country practisers; and has left them but little skill, and less profit.



THE
BARRISTER.

NUMBER IV.

NOTWITHSTANDING the voice of reason, as well as strength of argument, proves, beyond a power of doubt that the education of any man, whose great view through life is to fill with decorum one of the higher offices of MAGISTRACY, and to take a respectable station among the most elevated ranks of society, should be grounded in every acquisition of liberal science, and polished by easy and gentlemanly deportment, which nothing but long habitual intercourse with men of literature and fashion can effect.—Yet such, and so seducing, are the sweets of early profit at the BAR—so difficult is it for the BARRISTER, who has received that education which alone becomes the dignity of his profession, to attain, in the first years of his

his calling, those early profits, which are, in some respect, an earnest of future fame and riches, unless his abilities are eminently superior to those of his competitors, and his luck keeps pace with his abilities, that modern habits run counter to reason; and we find many candidates successful to a certain degree, proceed from the desks of ATTORNEYS and SOLICITORS, qualified, possibly, to wrangle on points of practice, but sinking underneath the weight of a special argument; a kind of *light Troops*, skirmishing to the right and left, preluding and closing, with advantage to themselves, the day of battle; but falling into the rear of the determined COLUMN, during the shock of carnage.

So great an influx of men, who have not received the education of a scholar and a gentleman, must give a real concern to all who have a regard for the profession; the credit and honour of the BAR require that some regulation should be instituted, and adhered to, by those societies which enjoy the privilege of calling to the BAR; least the distinction between the Council's fee and the Attorney's bill, the *quiddam honorarium*, and the *locatio vel conductio* should be lost, and the eminent BARRISTER be reduced to bring an action, grounded on *quantum meruit*, and leave a Country Jury to determine, whether the plaintiff deserved three

three hundred guineas, for attending a Court of Justice a few miles from the metropolis? Besides it may be doubted; the mode by which a Council's fee is too often obtained being considered, whether it be *quiddam honorarium*; an honourable reward for a learned and polished education, obtained at great expense, and by long study, and applied to the best of purposes—the defence of innocence or protection of right.—Does it not at present too often appear to be the earnings of vulgar conviviality or interested friendship?

Those gentlemen who have thus proceeded to business, will, it is hoped, excuse the warmth of these expressions; they flow from a heart conscious that the *English Bar* should emulate the dignity of the *Roman*; from a mind candid enough to acknowledge, with at least equal truth, what Lord MANSFIELD, in open Court quoted, to soften the feelings of the late Mr. DE GREY, then Member for Norfolk, who, being convicted of sending a challenge, appeared in the Court of KING'S BENCH to receive sentence, and professing his dread of returning among his Constituents, while suffering under the lash of the Court for such a breach of the peace, was comforted by the eloquent Chief, with this extenuating observation—“*Multi et boni homines idem fecerunt.*”

The

The fact once was, as WILLIAM of MALMSBURY tells us—*Nullus Clericus nisi causidicus*—we shall soon, if we continue in the same tract, too many of us now take to business, compleatly reverse the maxim, and the fact will stand thus—*nullus causidicus nisi clericus*, which being interpreted, is, *no Barristers but Attorney's Clerks*; alas! what a falling off. What would the LITTLETONS, the BACONS, the COKES, of the profession, say to this fashionable inlet to business? What do the CAMDENS, the MANSFIELDS, the THURLOWS, of the present day, say to it?—Do they, can they give their approbation? If they do, the Ignoramuses of the present age may, with impunity, describe those who proceed from the Universities, as their predecessors did, in the days of James the First:

IGNOR.—Sunt magnæ idiotæ et clerici nihilorum isti universitantes, miror quomodo splendisti tempus inter eos.

MUSÆUS.—Ut plurimum versatus sum in logica.

IGNOR.—Logica! quæ villa, quod Burgum est logica.

MUSÆUS.—Est una artium liberalium.

IGNOR.—Liberalium! ita putabam, in nomine Dei stude artes parcas et lucrosas, non est mundus pro artibus liberalibus jam.

One argument not yet touched on, must be added, with a seriousness deserving the importance of it: the higher offices of the profession, require a decent attention to the duties of religion;

religion; the attendance at church, at the opening of the Courts of Assize and Gaol Delivery on the Circuit; and the Sermon then preached form a becoming and solemn prologue to the business the Judge is intrusted to execute; he must consider himself, at that time, in some respect, as the mediate Minister of the Almighty, to declare the judgment of the Law, and the *temporal* punishment of offences committed against the principles of morality, those of society, and of the state. My LORD COKE thought, that as preparatory to this high office, a habit of religious duty was a necessary part of the œconomy of the student's day.

Sex horas somno, totidem des legibus æquis,
Quatuor orabis.

In more modern days, Sir MATHEW HALE, whose memory is justly revered; recommended strongly, by example connected with precept, a regular attendance at church on Sundays. I think it is that excellent man, who says, he never found his mind so well adapted to the professional business of the week, as when he had begun that week by an attendance at his parish church. Many of the respectable characters on the bench, seem to be of the same opinion at this day; for they are in the same practice. This habit should be obtained early in life

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—the tree is inclined as the twig is bent— a *School Education* may, and ought to give the first bias; the UNIVERSITIES do every thing to strengthen it:—But what is the habit an Attorney's Office gives?—It is to be feared the reverse; a kind of apathy, if nothing worse, to all religious duties. There may be, and undoubtedly are, many worthy and sensible men among the practisers—but religious men, or such as are regular in the public discharge of religious duties, there are very few:—Here then is a source, from whence a stream may flow polluted with irreligion, if not with Atheism; of which our Chief Magistrates, executing a sacred office, may have drank in large draughts during the thirsty season of hot and unprincipled youth; but the appearance of religion loosely hung over the principles of an Atheist, is the worst kind of hypocrisy; and the appearance of religion our Judges must put on; God forbid that any of them should be obliged to hang broad phylacteries on their garments to cover Atheistical principles; it cannot, must not be supposed.

By DUGDALE'S *Origines Judiciales*, it appears among the orders for good Government and advancement of learning, in the Inner Temple, the third of PHILIP and MARY, that thenceforth no Attorney, or common

common Solicitor, should be admitted into that house without consent of their Parliament; and among the orders for the better government of the Society of the Middle Temple, the eleventh of CHARLES *the first*, that no common Attorney, nor Solicitor, thereafter, be admitted of any of the *four Inns of Court*; and among the orders for the government of LINCOLN'S INN, reciting, that, "because they found that some Attorneys, and common Solicitors, had obtained admittance into the Society, which they deemed to be *no small disparagement thereto*," it was in Council ordered, in the eleventh of CHARLES *the first*, that none such from thenceforth be admitted; and, the better to prevent the like abuse, they further ordered, that if any Gentleman, after admittance should become an Attorney or common Solicitor, his admittance should be *ipso facto* void. These instances are not produced as rules by which those Societies are governed at this day, although, possibly, if enforced, they might have their use; but as proofs of the care our predecessors took to keep the different orders of the profession clear, unmixed, and distinct from each other. GRAY'S INN seems not so attentive in this respect; that Society appears, in those days, more solicitous to guard

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against

against a loss of property from those whom they admit, than a loss of reputation.

No other resolutions, with respect to calling to the Bar the Students of the different Inns of Court, affected the Attorneys, and Solicitors of those days, except those which, by consequence, made it a matter of difficulty to them, they being in three of the Societies refused admittance; for unless it be supposed, that the regulation of the Middle Temple, which declares, that no Attorney or Solicitor be admitted of any of the *four* Inns of Court, binds all the Inns, as well as that which institutes the rule, *GRAY'S INN* was always open to them. At present, although they are admitted at some of the Inns to keep their Commons, yet all four have judged a state of purgation necessary, and have determined not to call any person who has been an Attorney or Solicitor until his name has been erased from the Roll three years. As the Societies have taken this proper, although, it is to be feared, not quite sufficient care, that no Attorney, *flagrante calamo*, should mix with the BAR, why not proceed a step further? and resolve that the three years purgatory, which they are doomed to suffer,

"Till their foul crimes, done in their days of practice,
Are burnt and purged away,

should

should be passed in the ordeal of the UNIVERSITY, and the proof of their regeneration should be a regular degree, taken there; thence it is probable a good conversion might ensue; and the bad scholar, bad moralist, and illiberal mannerist, might turn out a rational, moral, and enlightened Member of Society.

But this necessary caution does not particularly respect Attorneys and Solicitors, who, being a branch of the same family, may claim, by the law of HOTCHPOT, something like a right to the Bar, *per capita*, by their abilities. Still greater care should be taken to keep the profession clear of persons emerging from inferior situations, whatever their abilities may be; it is a degrading idea, that Gentlemen, whose education has been the best their country can give; whose views, laudably ambitious, look up to the respectable situation of a British Senator, or Judge, should mix in equal rank, and while wielding the polished shafts of eloquence, *stare tela aspera contra*, with one who has lately waited behind their chair, or swept the Pleader's office the Student has attended; this is surely wrong, not because the birth of the man is unequal, for, as it is energetically expressed in a beautiful and animated Poem, lately addressed to the

NATIONAL ASSEMBLY OF FRANCE—

Born a Man, is to be nobly born.—

But because the education and the habits are different, not all the fees in WESTMINSTER HALL can convert the low bred man into the Scholar or the Gentleman; from these vulgar habits, arise all those imperfections of language, the bad English, the false quantity, which so frequently disgrace our *ore tenus* pleadings, and disgust the polished ear: before such men should be admitted to *croak* their harsh epithets in the COURTS of JUSTICE, they should be obliged to make some attempt to rectify the want of education; something may always be done; and although the Universities do not send out men shining with the last *tournure* of education, it may yet be no improper hint to the Inns of Court, that they should require a regular batchelor's degree, either in arts or law, at one of the English Universities, as a necessary qualification *for the English Barrister.*

THE
BARRISTER.

NUMBER V.

TO turn a young man loose at the age of leaving school, in any of the INNS of COURT; to expect he will sequester himself from pleasure in the midst of her most inducing haunts, surrounded by an overgrown METROPOLIS, abounding with every species of dissipation—to conceive that he will shut himself up in a PLEADER'S, DRAFTSMAN'S, or CONVEYANCER'S office, during the hours of business, and in his chambers the remainder of his time, to read and digest what he may have written, or observed, is to expect a miracle, and none have lately been worked: the Student who would propose, or even second his Parents

or

or Guardians, were they weak enough to recommend the plan, is to be suspected; such a young man has other views than laudable ambition; such a commencement of his journey, leads more probably to an early and unfortunate close of life, than to the early rewards and well deserved honours of his profession.

The UNIVERSITIES alone offer the only proper continuation of that education, which has been well founded in a public school; in them alone is the ACADEMIA, the LYCEUM, the PORTICO of modern days, and probably, in the opinion of many also, the gardens of EPICURUS—*Hinc nostri Licurgi, binc Pittaci, binc Solones.* Here our ecclesiastical establishment educates its candidates for the Mitre; it is from these seats of learning, a LOWTH, a HURD, a WATSON, proceeded to enlighten and instruct the world. Hence also ÆSCULAPIUS derives his most skilful and favoured votaries; to these retreats the infirm and the diseased, are indebted for a HEBERDEN, a WARREN, a PEPYS. The College of Civil Law also receives from hence those who are so honourably exercent in it; and hence in former times, were derived all the lights of English Jurisprudence, and we are still indebted for much the greatest and most respectable proportion. The Chancery has received the noble

noble and learned Lord who presides there, and his able and worthy COADJUTOR, from hence. The KING'S BENCH, and the COMMON PLEAS, are each of them obliged to the same source for three of those highly respectable characters, who from those courts administer, with strict impartiality, justice to his Majesty's subjects. The EXCHEQUER boasts its CHANCELLOR! lately a pupil of the same school; and two, if not more, of its much respected Barons. If ALMA MATER should view the two Houses of Parliament, she will recognize a great proportion of the brightest characters, and the most eloquent speakers in those honourable assemblies, who derived from her their education; the retirement of private life, also receives many of its most amiable and ornamental characters from thence; it was there that taste was fashioned, and those principles formed which have since adorned their rural domains, diffused ease, content, and happiness throughout their neighbourhood, and

" Scatter'd plenty o'er a smiling land."

These ancient and famous seats of learning, where philosophy and liberal science flourish, where in the language of CICERO—
" Omnem doctrinam harum ingenuarum et humanarum

manarum artium uno quodam societatis vinculo conteneri." These certainly should be held out as the only proper *Asyla* to the Student, until his judgment is more ripened, and reason has become more a match for the passions; nor is it an asylum alone that youth will find here; that taste for classic elegance, and that foundation of critical acumen, which were first formed at school, will be here matured and compleated; composition in the ancient and vernacular languages, which first appeared during their scholastic discipline, in rude and unpolished attempts, will be here refined; and the periods of their declamations will be taught to flow with CICERONIAN mellifluence. MATHESIS will here also lend her aid, to strengthen and render accurate the reasoning faculties. LOGIC will give precision and method; in the mean time, during the years which pass between boyism and manhood, habits of intimacy may be formed with men of science; and those who in the rising age, will shine at the head of the three professions, and in the confidential departments of the state.

OXFORD and CAMBRIDGE are the sole competitors in England, for the care of our pupil's morals, and the furtherance of his literary attainments during this dangerous season of life; and probably in the most material

material circumstances merit equal praise; but there are some regulations of their academic discipline, in which a similarity is not preserved; and in respect to these, it must be allowed by the most impartial judgment, that, in these instances, the palm of competition must be given to CAMBRIDGE, as a seminary affording more eminently the proper discipline for the BAR; the instances alluded to, are, the first Degree of Bachelor of Arts, and the necessary qualifications; at CAMBRIDGE it is an arduous task, crowned with honourable distinctions. At OXFORD it is *no* task, crowned with *no* distinctions. The road to a degree at CAMBRIDGE, lies through Logic, Mathematics, and Philosophy. What fields of science the road lies through to an OXFORD Degree, are left to the description of the Oxford Bachelor. This preference is given to Cambridge, after due consideration, and allowance of every merit to that exalted institution of Mr. VINER, which has had the credit of producing to the world, one of the best legacies ever given by a Professor to his Pupils, or by a Lawyer to his country, the *Commentaries of the late Judge BLACKSTONE*; which have left to the present worthy Professor, but little new matter in a field, although so wide, yet so fully beat over; the obligation

obligation also which he is under in compliance with the directions of his founder, to read a certain number of Lectures, and that number partaking somewhat of the voluminous nature of the founder's Abridgment of Law and Equity, in *twenty-four volumes folio*, must subject the learned Professor to an appearance of tediousness, and his Pupils to a neglect of attendance and assiduity: whereas in the other University, the assiduity and merits of a Gentleman, have occasioned the foundation of a Professorship of Common Law, by the sanction of the University itself, to which his MAJESTY has, with that attention to every thing which can serve the cause of science and literature, so conspicuous throughout his reign, annexed a salary; and the Professor is left entirely at liberty as to the number of Lectures in each Course; consequently he is likely to be better attended than his learned Brother of Oxford, as he has it in his power to avoid prolixity; a fault scarce possible for Mr. WOODSON to escape, with all his abilities, while he so conscientiously discharges the full duties of Mr. VINER's Institution.

The first Degree at CAMBRIDGE, is a cause of competition, from the first term the *Freshman* keeps, until he has completed his

his **BACHELOR'S** degree; the compliments paid to the *Sophs* in the schools, where the disputations are in Latin, for performing with elegance of diction and logical acumen, their acts and opponencies, are well calculated to foster the young and emulous spark of ambition; the academic honours distributed among those who excel, in proportion to their merits from the *Junior optimis* to the *Senior wrangler*, when they have compleated their degree, after a very strict, long continued, and impartial examination, is a proper encouraging palm for rising eminence; but the particular branch of science in which the under-graduate is expected to excel, more eminently trains the mind to that accurate gradual investigation, that solid and logical mode of reasoning which carries conviction with it; it is impossible that the **BARRISTER** should receive assistance, either in his technical special pleadings, his solemn arguments, in any of the Courts of **WESTMINSTER HALL**, or at the Bar of either of the **HOUSES OF PARLIAMENT**, from any other collateral science with such firm assurance of profit, as from the **MATHEMATICS**; **EUCLID**, most assuredly, is the closest of all reasoners; conceive therefore, the benefit which the strengthening faculties of the mind will receive from three

three years discipline in such a school; where the highest honours are given to the deepest investigator, and most elegant demonstrator of the sublime philosophy of Sir ISAAC NEWTON.

It is possible that many gentlemen, as well those who are eminent in the profession of the law; as others of great name, and deserved reputation in the other branches of science and polite literature, from a natural predilection for the education which they have received at the Sister University, may hesitate to give full credence to this assertion; but they are intreated to recollect, that the observation extends to a *legal* education only; and it is presumed they will allow, that those only who have experienced, and *derived advantage* from the philosophic discipline of a Cambridge education can be fully competent to judge of the question: that mind which has not been well exercised in mathematical demonstration, can reason but superficially on this subject; the truth therefore of the opinion alluded to, which it is feared may have the appearance of being delivered, in a manner too much as it were *ex cathedra*, might, with great propriety, be referred to the higher and more experienced judgment of the Master of the Rolls, Sir JOHN WILSON, one of the Judges
of

of the Common Pleas; (who both stood very high in the Cambridge Tripus) or Mr. GRAHAM, who, with equal ability and politeness, presided, in an early period of his life, as MODERATOR in the *Sophs Schools* at CAMBRIDGE, and to whom we have been very lately obliged for a most able argument on the LAW of LIBELS, delivered with that eloquence which would not discredit the School of CICERO.



THE
BARRISTER.

NUMBER VI.

TO pursue the plan of a public education, already recommended; a large Society or College is preferable to a small one; and among the larger foundations, those in particular, stand foremost to our choice, where the declamations and other College exercises are performed with the greater solemnity, or celebrity: Palms also to reward the victor in literary contentions, add another inducement to select that College where they are most in fashion. The moral and literary eminence of the present heads or tutors, in either of the Universities,

fities, needs not be mentioned, as any lasting recommendation of the College where they now preside, because the probability of their continuing any length of time in their respective situations, is in an inverse ratio with their merits; they do not in this respect, resemble SANCHO PANZA—their *heads* may soon be honourably fitted, although it does not *rain mitres*.

In the Universities of Scotland, the moral and scholastic discipline is, undoubtedly, excellent; economy also, may hold a strong argument in *their favour* to the pocket; besides, where such names as STUART, BEATIE, ROBERTSON, ADAM SMITH, have presided, or do still preside, *Moral Philosophy, Poetry, History, and Political Economy* have all received, or will receive, every elucidation which abilities with industry can give; yet the Municipal Laws of this country will find the Scotch seminaries of learning by no means favourable, either to its principles or its practice. The Common Law of England is not the *Lex Loci*, north of the Tweed—on the contrary, the Feudal and Civil Law interweave their heterogeneous principles, which although not directly opposite to, yet certainly are not much explanatory of those which now regulate the determination of our Courts in Westminster Hall; the *Regiam Majestatem*, although

although in some points, similar to GLANVILLE'S *Treatise of the Laws and Customs of England*, in the reign of Henry II. does not well accord with the liberal principles which in these days influence our Courts of Law and Equity. These Universities, therefore, whatever excellence they may justly claim in the other professions, cannot be recommended to the Student of the Law of this part of the Island, as he may possibly, in future life, wish to forget principles of Law he may there have imbibed, and he will but have few opportunities of acquiring familiar habits in these Universities, with those, who, in maturer age, may be candidates for honours in the same profession—an agreeable, if not an essential advantage, in our introduction to, and journey through a life of honourable ambition.

Although, in fact, the Civil Law has been long rejected, both as a rule of Government and of Property, in this part of the Kingdom, as was adjudged, in an Appeal to Parliament by THOMAS Duke of GLOUCESTER against the Archbishop of YORK in the reign of Richard II.—“*Que le Roialme d' Engleterre n'estoit devant ces heures, ne al intent de Roy nostre dit Seignior & Seigniors de Parliament, unque ne ferra rule, ne governa, par la leg civil,*”—which may
be

be seen in FORTESCUE *de Laudibus Legum Angliæ*, Chap. 33. Yet so much sound good sense, and such sound maxims of jurisprudence are conspicuous in the Institutes of JUSTINIAN, and such a fund of Science in the Roman Law, renders valuable the Commentary of VINNIUS; at the same time, we are instructed by history, that such were the rules by which all judicial contests, respecting the vast property of the Roman world were adjudged; and they still are the principles by which the greatest part of Europe now actually regulate their legal decisions; that it would be the height of absurdity to suppose the education of an English BARRISTER can be complete, without some knowledge of the Civil Law; to which JUSTINIAN'S Institutes, with VINNIUS'S Notes, will serve as a vestibule. These, indeed, will be found connected with the other parts of the building, the Pandects, the Collection of Imperial Constitutions, and the Novels; how far these should be entered upon, or an accurate knowledge of every member of the Civil Law may be essential, shall not now be insisted on, but it is worth observation, that many of those causes, which made it essential to the Roman Patron, recommend it also to the English Pleader; and CICERO strongly expresses
himself

himself on this subject—“ *Quid, si ne parvæ
 “ Causæ sint, sed sæpe maximæ, in quibus
 “ certatur de Jure Civili, quod tandem os est
 “ illius patroni, qui ad eas Causas, sine ulla
 “ scientia Juris, audet accedere?*”—These
 causes, or many of them, exist at present;
 the BARRISTER finding it necessary, in the
 exercise of his profession, often to meet,
 and possibly to contend with the Civilian,
 in the *Military* and *Maritime* Courts, those
 also of *Appeal*, the Delegates, the Commis-
 sion of Review, and the Privy Council.
 Both our Universities boast their Professors
 of Civil Law; to whose syllabus of Lectures,
 the Student may be referred for that outline
 of investigation, which it may be necessary
 to fill up, in compleating the education of
 our Lawyer.

In fact, it is the intention of these stric-
 tures to recommend, *not that superficial or
 confined plan of education*, which may just
 enable the Student, when he clothes him-
 self in the garb of the profession, to appear
 among the rank and file only, to be a *Jus-
 tifier of Bail*, or a *Mover for Time*, and to
 go through the trifling daily business of the
 Bar, in a manner that will merely pass
 current with his client, while he puts a
 paltry fee into his pocket, at the risk of
 professional reputation; but a *superior, a
 more*

more elevated Character, is attempted to be formed; it is the design of this tract, to point out the vantage ground of science; it is in view to describe that education which will give him *reputation with his fee*, to shew him that road which may lead to the *summit* of every wish laudable ambition can look up to; to give him, *not astuteness only, but humanity*; not *words* merely, but *eloquence*; not a *brazen front*, but *modest confidence*; to make him, in truth, not a *Lawyer* only, but an *Orator*; to the perfection of which character, our great light on this important topic, CICERO, has conceived every polish of wit, accomplishment of learning, and urbanity of manners absolutely necessary—“*Accedat eadem oportet lepos quidem*
“*facetiæque, et eruditio libero digna, celeritasque et respondendi et laceffendi, subtili*
“*venustate atque urbanitate conjuncta.*”

It must be to the purpose, therefore, having removed our Student from school to the University, to put into his hands such Books as may amuse his *lighter* hours, and train his mind gradually to the more polished literary acquirements, which may equally form the scholar and the man, as the lawyer; taking it for granted that the daily lectures of his College will lead his *severer* studies in the tract most likely to insure academic honours,

honours, and an accurate method of reasoning. Whatever of the Greek language he may have attained at school, should *by no means*, be neglected; but, *by all means*, be improved; by unanimous consent of the learned, no one is esteemed a good scholar who is not a good Grecian; a critical knowledge of this language, is, as it ought to be, the touchstone of scholarship; for it is, in fact, not only the vernacular language of the first writers, both in time and in fame, which do honour to the libraries of the learned; but it is also the fountain from whence the Poets, the Historians, and Moralists of the Augustan age, derived their most polished ideas, sentiments, and expressions; never let this scholastic accomplishment be permitted to decay, for want of use; but if through *indolence or neglect*, a little rust should be contracted, treat it with the attention the MARQUIS at *Rennes*, did *that* on his sword—"I shall find some *other way*, said he, to get it off."—

Declaim therefore, frequently with ISO-CRATES, DEMOSTHENES, and his artful rival ÆSCHYNES, in whose speech against CRESIPHON, connected with the defence of DEMOSTHENES, in his *περὶ τοῦ ἀσέβειου λόγου*, every art, and power of eloquence, popular as well as argumentative, are made use of;

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form your ideas of the true sublime, from LONGINUS; and the Stoic's philosophy, from EPICURETUS; whose strictures on the power which man ought to have over his passions, may give no useless lesson in the future scenes of life.

It is with no superficial or frivolous intent, that these few Greek Authors are recommended to our Student; nor is it in idea, that because *these only* are mentioned, *these only* should be accurately perused; a pompous enumeration of all the Authors in the learned languages, worthy the attention of the Scholar, or the Gentleman, would put on the appearance of presumptuous pedantry, which, throughout these strictures, is our wish, but in this particular part of them, it is not easy to avoid; while copious draughts from the fountain of the learned languages are recommended, it is scarce possible to avoid the appearance of having taken a sip from the same source; and while the flowing periods of CICERO are replete with the best hints on this part of the subject, it is not easy to avoid quotation, because to give his ideas in a more elegant dress is utterly impossible.



T H E

B A R R I S T E R .

NUMBER VII.

AMONG the Roman Classics, the mellifluent periods of CICERO demand your first attention; his *de Oratore*, his Oration, should be as it were at the tip of the tongue; and his Letters, particularly those to ATTICUS, are on no account to be passed over; translate him, re-translate him, write him as well as read him; there is an amazing

ing power of imitation acquired by writing those passages, which must strike the imagination; remember his own maxim, so well and so frequently repeated; "*Stylus, optimus et præstantissimus dicendi effector et magister.*" The sentences replete with peculiar beauty, throughout the different subjects which employed the mind of this admirable Writer and Orator, are too numerous to be particularly alluded to; but it may be worth while to observe, that whenever apt and short quotations, from such a classic, can be introduced to a polished audience, they point a period with captivating grace and urbanity; those who attended to their effect, when they fell from the lips of our late eloquent Chief Justice of the King's Bench, have strongly *felt* their persuasive energy. QUINCTILIAN'S Oratorical Institutes, should also meet with their share of attention; which in many passages, but particularly where he so feelingly laments the death of his children, proves how forcibly he could put in practice those rules of eloquent composition, which he so ably dictates; the mention of HORACE'S *Epistola ad Pisones*, in strictures on the study of the Law; the recommendation of his Art of Poetry to a Law Student, may provoke a smile on the countenances of many Gentlemen who crowd

crowd the benches of the last rows in our Courts of Law and Equity; but those, who with a dignified ambition, look up to better things, than *motions of course*, will admit the propriety of a hint, which ignorance does not comprehend the use of. "*Ut Pictura Poësis*," says HORACE; the comparison may be continued, and the Barrister may inform his pupil, that a good speech, should in some respect resemble a good poem;

Denique sit quidvis, simplex dum taxat et unum.

But at the same time that these elegant Classics are recommended to the attention of our Student, he should also bear in mind, the use to be made of them; not that an English jury, the Courts at Westminster, or the Houses of Parliament, are to be addressed in speeches formed on the model of the Greek or Roman Schools of eloquence; but that many valuable hints may from these sources be collected, which will give method, matter, and ornament, so essential to captivate and preserve the attention of a sensible or polite audience.

A critical knowledge of the French language is also necessary; a great part of the black-lettered law of past centuries is

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written

written in *old French*. All Pleas formerly were entered in that language, until the 36th year of EDWARD the Third, when an Act passed to enforce the practice of pleading in English, and in recording those pleas in Latin. The knowledge of French therefore should not be superficial, but critical; not only as it is necessary to the profession, but to every Gentleman also; it being in a manner, the only current language of Europe. Lord CHESTERFIELD'S maxim *aprofondissez*, may therefore be applied with great propriety to the knowledge of this fashionable language, as it may also, to every point of the Barrister's education; and probably no better opportunity will offer to attack it grammatically than at the University. Future habits of conversation with the natives, will give that fluency of pronunciation and accuracy of idiom, so essentially requisite to the education of a Gentleman; in the mean time, the strong traits of good sense expressed in polished phrases with which their Philosophers and Historians abound; the urbanity, the sprightliness, the *jeu d'esprit* of their comic drama; the warm imagination, the fine turned periods of their Poets, are the flowers, and the fruit, which may be gathered in his progress; and will cause the attainment of this fashionable language

language to be equally pleasurable, as a profitable acquisition.

The other modern languages are not so necessary a part of our education; but the Italian and Spanish will amply repay in the pleasure of the pursuit, the trouble of the chase; to these may be added, without any great share of attention, the Portuguese; it being somewhat of a dialect of the Spanish; and as CAMOENS has, by his *Lusiad*, rendered that language immortal, it is more than the price of *his* labour, *who* is at home with the Spaniards, to be also domesticated with the Portuguese. The knowledge of these, or of the remaining languages now in use through Europe, is not absolutely essential; although to form the Orator, "*omni laude cumulatus*," much to be recommended, as opening to his view, and presenting to his memory, an ampler field, from which a large stock of ideas may be collected, and many beauties culled; which being transplanted by a mind pregnant with good taste, will with elegance enliven, and embellish periods, which otherwise might flag on the ears of his auditors. Our great light of oratory on this head, particularly, offers one of his elegant hints, "*Libandus etiam ex omni genere urbanitatis, facetiorum quidem*"

quidem Lepos, quo tanquam sale perspigitur omnis oratio." There is also such an intimate connection between languages, all being derived from the same common stock, that they soon appear in habits of intimacy with him who is well domesticated with one or two leading branches of the family.

It has been doubted, whether the Law itself should form, during this stage of education, any object of the under-graduate's attention; whether he should not be supposed, while his studies are applied in pursuit of an honourable degree, to be so fully occupied in sharpening, tempering, and learning the use of the tools, he is in future life to work with, as to preclude any attempt, during this state of pupilhood, at laying the foundation of the building itself; taking it for granted, that such is the better opinion, and that if he finds any time on his hands, the professors of Common and Civil Law will by their lectures instruct him to apply that time to the best advantage; no hints shall at present be offered to him on this topic: but although it may be prudent to restrain from laying the corner-stone, the principle by no means prohibits his collecting the materials of the building; among which history, especially that of his own country,

country, so intimately connected with its constitution, is the most material; and on this head, it is not easy to offer better advice than that of Lord BOLINGBROKE, in his Letters on History; who, although he intimates that men in general have occasion only to *read* history down to the end of the 15th century, and from that period to our own time they should *study* it; yet his advice to the *Lawyer* is widely different; and so apt is the passage to the purpose, and so elegantly is it pressed, that its extreme propriety will apologise for the length of quotation.

“ I might instance (says this elegant writer) in other professions, the obligation men lie under of applying themselves to certain parts of history; and I can hardly forbear doing it in that of the *Law*; in its nature *the noblest and most beneficial* to mankind; in its abuse and debasement, the *most sordid and pernicious*. A Lawyer now is nothing more, (I speak of ninety-nine in a hundred at least) to use some of TULLY's words—“ *Nisi leguleius quidem cautus, et acutus præco actionum, cantor formularum, auceps syllabarum.*” But there have been *Lawyers* that were *Orators, Philosophers, Historians*, there have been BACONS and CLARENDONS. There will be none such
ever

ever more, till, in some better age, true ambition, or the love of fame, prevails over avarice; and till men find leisure and encouragement to prepare themselves for the exercise of this profession by climbing up to the "vantage ground, (so my Lord BACON calls it) of science; instead of grovelling all their lives below in a mean, but gainful application to all the little arts of chicanery. Till this happens, the profession of the Law, will scarce deserve to be ranked among the learned professions: and whenever it happens, one of the vantage grounds to which men must climb, is metaphysical, and the other *historical knowledge*. They must pry into the secret recesses of the human heart, and become well acquainted with the whole moral world, that they may discover the abstract reasoning of all laws; and they must trace the laws of particular states, especially of their own, from the first rough sketches, to the more perfect draughts; from the first causes or occasions which produced them, through all the effects, good and bad, that they produced."



THE
BARRISTER.

NUMBER VIII.

IS not this advice from a NOBLEMAN, *“ whose penetration was almost intuition, and who adorned whatever subject he either spoke or wrote upon, with the most splendid eloquence,”* truly important? Is it not somewhat in the spirit of prophesy? Let us then profit by his ideas; let us no longer grovel all our lives below, in a mean, though gainful

ful application, to all the little arts of chicanery; but let us climb the vantage ground of science, and reach by the means of *history*, the fountain-head of recorded time. Let us learn from CÆSAR, what was the rude state of our ancestors, when *he* visited them; and from the nervous and laconic sentences of TACITUS, in his *Agricola*, and *De Moribus Germanorum*, what was the actual state of society in this country, when we could not boast a degree of civilization superior to the NEW ZEALANDERS; and what were the manners of that great *Northern Hive* of Nations, from whence we derive our ancestry, and where we may trace the archetype of various parts of our excellent Constitution; where also, according to TACITUS, speaking of them in their earliest days of society—" *Plus boni mores valent; quam alibi bonæ leges.*"

The more early writers of the HISTORY of BRITAIN—the *Anglica, Normannica, Scripta*, BEDE, and the *Scriptores post BEDAM*, cannot be supposed to be very agreeable companions for the idle hour of our classical Student, however entertaining they may be to the Antiquary who bends "a keener eye on vacancy," than is necessary to the LAWYER. It will therefore only be proper to mention, that there are such writers, into which, if
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some time or another he may chuse to look, they will identify the ideas of the times, their manners and principles, in which these writers lived, and of which they wrote, with more precision than the crowd of Historians which refer to them: and it is worthy observation, that in general those writers who relate the history of their own times, such as BACON'S *Henry the Seventh*, CAMDEN'S *Elizabeth*; and those also who have taken to themselves some particular period of history; such as CLARENDON'S *History of the Rebellion*, and Lord LITTLETON'S *Life of Henry the Second*, are more calculated for the attentive perusal of the Law Student, as to the particular portions of history treated of, than the modern compilers of the general history of their country, whatever of philosophy, liberality, or elegant composition, their annals may possess.

And now, the minutia, the elegancies, the last polish of education must be considered; or in other words, the *Graces*; to whom a late eloquent NOBLEMAN, an admirable writer, is, by general consent, allowed to have paid in his Letters to his natural son, which have appeared since his death, too much attention; but his favourite maxim, with respect to these fictitious Ladies, is

but

but too true; "*Senza noi, ogni fatica è vana.*"

It is by no means the intention of this fugitive tract, to enter into a defence of his Lordship's general plan of education, to form a Member of the *Corps Diplomatique*, yet it should be recollected, that for *such a situation* in life, he certainly educated his son; and to such a station he adapted his advice: His Lordship's fame needs not this attempt; his natural affection, his urbane, and friendly sollicitude for the welfare of Mr. STANHOPE, require no such defender; but nevertheless, to speak my opinion, his whole plan of education, except that it is too private, and favours somewhat too much of the *hot-bed*, forcing the mind, rather than waiting its natural time of receiving the impression, is admirably calculated for the situation he aims at for his son—a FOREIGN MINISTER, a CHARGE DES AFFAIRS, a man who is to have Commerce with the higher ranks of society in the world, and must take them as he finds them; must "*se rebus,*" and cannot say, "*rem mihi subjicere conar.*" His hints with regard to *simulation*, and *disimulation*, both much the same in the end, which is *deception*; his recommendation of intrigue; and his ideas on the unsubstantial fabric of modern friendship, are, it must be

be confessed, grating to the purer sentiments of the MORALIST, and require serious reproofs from *the Closet*; but, nevertheless, form in fact, the topics of fashionable conversation *in the WORLD*, and are at this instant among the first principles of the *Seavoir vivre*. Our Student must, therefore, imbibe some of the more unexceptionable maxims, from the school of Lord CHESTERFIELD.

MUSIC is one subject of the many his Letters treat of; when Mr. STANHOPE was on the Continent, and his affectionate Adviser watched every inlet to real improvement, or elegant accomplishments; among which, it is confessed, that Music did not *then* hold the high rank it *now* does; nor was it so material a step in the road of preferment. This was his advice to Mr. STANHOPE, when at *Venice*—"as you are now in a musical country, where singing, fiddling, and piping, are not only the common topics of conversation, but almost the principal objects of attention, I cannot help cautioning you against giving into those (I will call them illiberal) pleasures, to the degree that most of your countrymen do, when they travel in ITALY. If you love music, hear it—go to OPERAS, CONCERTS, and *pay fiddlers to play for you*; but I insist upon your

your neither piping or fiddling yourself. It puts a gentleman in a very frivolous, contemptible light, brings him into a great deal of bad company, and takes up a great deal of time, which might be better employed. Few things would mortify me more, than to see you bearing a part in a concert, with a fiddle under your chin, or a pipe in your mouth."

QUINCTILIAN seems also to have thought on this subject, with our polished Nobleman; for although he agrees with the Greeks, that those who know nothing of music were ἀναστων ἀχρηστος, an idea so well elucidated by our SHAKESPEARE.—

The man that hath no music in himself,
And is not mov'd by concord of sweet sounds,
Is fit for treasons, stratagems, and spoils.

Yet he adds, "*apertius tamen profitendum puto, non hanc a me præcepi qua nunc in scenis effeminata excidit; sed quâ laudes fortium celebrantur, quâque et ipsi fortes canebant.*" Our pupil, therefore, although he should possess an elegant ear, should not boast a brilliant finger; he may feel music, but not fiddle it.

Nothing more shall be added to these sentiments than this observation; that if it takes

takes up a great deal of his time unprofitably, who is educated a Gentleman; *à fortiori* it should be prohibited to the LAWYER; who must not conceive himself at liberty to food away any considerable portion of his time in early life; let him therefore be satisfied with hearing it, and paying fidlers to play for him.

As to *dancing*—the *riding schools*—and *modern gymnastics*, the *sparring schools*; a few words (and the fewer the better on such subjects) will dispatch them all: The first qualification requires not for a Chancellor; either a *Marcel* or a *Slingby*; although, to the education of a foreign Minister, Lord CHESTERFIELD thought a Dancing Master of more consequence to his son, than all the *Bureaus* in EUROPE. Since the days of Sir *Christopher Hatton*, (who

When he had fifty winters o'er him,
My grave Lord Keeper led the brawls,
The Seals and Maces danced before him)—

But few dancing LORD KEEPERS can be enumerated. It is presumed that a *Drill Serjeant* will not inelegantly give the foundation, which will be strong, manly, and not void of grace; add the superstructure, and ornament it as your inclination dictates; but do not clap the composite capital on the
Tuscan

Tuscan shaft. From whatever motive of humanity, or conception of dignity, a young NOBLEMAN was lately induced to display his dancing accomplishments on a public Theatre, there can be no occasion that our LAW STUDENT should be induced to dance a figure with DELPINI.

It is difficult to recollect any office in the state, to which a BARRISTER, as such, can aspire, where lessons in the *Riding Schools* can be of use; neither the CHANCELLOR, or any of the JUDGES, now parade on horseback to COURT, or to WESTMINSTER HALL, although they all ride to their country houses; and there, it is supposed, they more commonly use the *hunting seat* than the *managed*; in this respect, therefore, consult nothing but inclination.

The *Sparring Schools* give no other polish to education, as far as any gentlemanly qualification is concerned, than what arises from the absurd fashion of the day. It has been lamented in a former part of this tract, the degrading situation, which Gentlemen of education experience in their practice at the Bar, when obliged to spar *even in words*, with men of illiberal manners, who have proceeded from the lower classes of society; it would, therefore, be among the greatest of contradictions, to recommend

mend *fisty-cuffs*, with blackguards; and such will, in general, be in these schools their competitors, companions, and fellow practisers; nor can all the tinsel or seducing example of a few young men of family and fortune, keep, for any length of time, these absurd exhibitions in fashion; and it is to be hoped, that the Barrister will never find an opportunity of bringing this skill into use; his Client, the Attorney will, unless he also is an Adept, be cautious how he brings a BRIEF into his Chambers; lest either the magnitude of the BRIEF, or the smallness of the FEE, should displease his counsel, and instead of a *bow*, he should meet with a *black eye*, and find himself with a *Boxer*, when he conceives himself attending a BARRISTER; besides, the profession does not encourage knock-down arguments, and prefers *refreshers* to *rounds*.



THE
BARRISTER.

NUMBER IX.

THE MASTERS of *Affault* have cause to regret, that no guard in their art will parry a *pistol-ball*; therefore the Fencing Schools, it is presumed, may not now abound with pupils; although the foil is, undoubtedly, an agile, manly, and graceful exercise; with respect to this accomplishment, consult, therefore, your own inclination,

tion, since the fashion of the modern point of honour has introduced a different mode, than that of the small sword, of settling those disputes, which are either too *important* or too *trifling* to fall under the determination of the *Municipal Laws*; and although it becomes the MORALIST to declaim, *à Gorge déployée*, against the horrid practice of Duelling; yet the *World* will persist, and as a BARRISTER is a man of the *World*, he must accommodate himself to those customs, which he cannot change. And it is worth consideration—Whether fashion has not chosen, by the present mode of settling affairs of honour, the least evil of the two, if the sword must be the other unavoidable alternative?

It has been asserted that the invention of *gunpowder* is favourable to the cause of humanity; it has certainly in a great degree removed all the animosity of personal contention; of which, the frequent truly heroic acts of humanity, interchanged of late, in war, between two great rival Nations and their Allies, are god-like proofs. Consider the danger Sir ROGER CURTIS and his undaunted followers braved, to save their enemy!—to rescue from the fire and the waves, those who had, by every hardship and horror
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of war, belcaguered the brave garrison of GIBRALTAR, during a siege, in length of time only, second to that of TROY—in importance of military preparation, and circumstance of war, infinitely superior to it.— Surely such strong traits of humanity speak feelingly to the senses, and almost confound the distinction between *Honourable Enemies* and *Tender Friends*.

But was it thus in days of yore—when every taunt of words was used to excite enmity and kindle resentment? when, having no words, their voice being in their swords, they fiercely, with deadly animosity, contended for life.—What were then the horrors of defeat—the fate of the conquered—the miseries of the prisoner? Surely some of the merits of this contrast, so glorious to the cause of humanity, are derived from the mode of making war.

A similar cause produces similar effects, in those private meetings which originate from the point of honour; and it must surely be confessed, that where the matters in dispute cannot, with reputation to the parties, be otherwise settled, the last appeal, if absolutely necessary, had better be to the pistol than the sword—personal contention
is

is avoided—the honour of each party is confidentially reposed with their seconds; the principals meeting only to discharge that debt which is due to public opinion—and no scenes so disgraceful to humanity have been presented to the notice of mankind, since the present mode of duelling took place, as that savage combat which terminated the affair of honour between Lord BRUCE and Sir EDWARD SACKVILLE.

Since the pistol is now, by the fashion of the *World*, the honourable weapon, a recommendation to the man who must live with the *World*, that he should not be wholly unpractised in the use of it, cannot be unseasonable; lest, if he unfortunately be engaged in any affair of honour, the ball from his own pistol should, from his unskilfulness of handling, *hit himself*, and give his antagonist ample satisfaction—or, may find occasion, like a late *learned Gentleman*, to experience the honourable politeness of his antagonist, who on the *Serjeant's* pistol discharging itself, before it was brought to its level, did not conceive himself at liberty to take advantage of his adversary's awkwardness:—such accidents are not pleasant, and the risk of them may, by a little practice be avoided; but let the *hint* be received with

the *caution* it is given—and be it remembered, that *adroitness* is not necessary, and that the reputation of a *marksman* is *absolutely prohibited*.

The *Art of Design, drawing, or painting*, is more proper for the LADIES' *dressing-room*, than the STUDENT'S writing-table; however agreeable, elegant, and fascinating, the accomplishment may be, it must be prohibited to *him*, because *he* has not time for such avocations. He should be skilled in *Drawing*, it is true, and it will be to his advantage, if he has a name, as a *good Draftsman* of pleadings and conveyances; but these are not resemblances of things animate or inanimate:—The beginning of the second decalogue might, with no impropriety, save the indecorum of the application, form an excellent rule for his conduct, in this respect—“*Thou shalt not make to thyself any graven image, or the likeness of any thing that is in Heaven above, or in the earth beneath, or in the waters under the earth.*” To this, *Prudence* might add—Neither shalt thou buy them; and avoid, as you value your time or your money, the character of an *Auction Virtuoso*.

A quickness in writing *short-hand* ought certainly to be acquired, as well as a general ease

ease and celerity in the common running-hand; the first is absolutely essential to take a good note in either the COURTS of WESTMINSTER-HALL, at NISI PRIUS, or the CROWN BAR—indeed, it is impossible to attempt the detail of a Special Argument, or *viva voce evidence*, without it; the other is also necessary, that you may *quickly write*, and your clients *easily read* what you have written. Where, or by what means these accomplishments may be best acquired, is left to the Student to discover; as it is apprehended that the METROPOLIS will produce many good Brachygraphie instructors, and some good Treatises have been published on the art. Quick and plain writing is attained by frequency of practice—He that writes most, generally writes fastest.

As to the lesser frivolities of education, those many nothings, which, in the idea of Lord CHESTERFIELD, were each of them, and altogether necessary to form that rare *unit*, a complete Gentleman, and which he has been much censured for dwelling on, in the Letters already alluded to, and it must be confessed with some reason, unless the fact, that they were the private instructions of a parent to a beloved child, and by no means intended for the public eye,

formas

forms an excuse. Such *minutissima minutarum*, shall in these strictures be passed over, dwelling for an instant only on this observation, that if they are necessary to form the Gentleman, our BARRISTER should not be ignorant of them, or any of them; one in particular, of much more consequence than transient modes, he should be uniform in his attention to; that is, personal neatness, which is ever fashionable, and always decorous; and which no dignity, or elevation of rank and situation, will apologise for the neglect of; but, on the contrary, care in this respect, should be in a *ratio* with conspicuousness. A late worthy BARON of the EXCHEQUER, who cloathed an excellent head, and honest heart, rather too negligently, met with no ill-timed sarcasm from a learned SERJEANT, who had made the Court wait one morning on the circuit. On his taking his place, the *Baron*, who sat as Judge, observed rather sharply :

BARON.—Brother, you are late, the Court has waited considerably.

SERJEANT.—I beg their pardon; I knew not that your Lordship intended sitting so early, the instant I heard your *Trumpets*, I dressed myself.

BARON.—You was a long while about it!

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SERJEANT.—I think, my Lord, (looking at his watch) not twenty minutes.

BARON.—Twenty minutes! I was ready in five after I left my bed.

SERJEANT.—In that respect, *my dog Shock* distances your Lordship hollow; he only shakes his coat, and fancies himself sufficiently dressed for any company.



THE
BARRISTER.

NUMBER X.

MANY other hints of importance, to the studies and employment of an *academic life*, might be added to those which have already been glanced at; many maxims relative to moral conduct, as well as to economic habits, remain still to be inculcated; the sentences of EPICURETUS, which have been recommended to attention, would

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form no imperfect coalition with Lectures on Prudence; nor would it be in vain, that strict attention to preserve, by an union of philosophy with economy, the estate, or pecuniary circumstances of the STUDENT, superior to derangement, (too frequently followed by a similar effect on the mind) should be most strongly recommended: but this Province rather becomes the *Father*, the *Guardian*, or the confidential friend, than a PUBLIC ADVISER. One topic, however, must not remain without a comment—the lure of fashion, and the enticing force which the tinsel of high life has on a young unexperienced mind, call aloud for the caution, and demands that, as an act of duty, which would not be matter of choice; it, therefore, becomes the BARRISTER, most seriously to advise the STUDENTS, in the INNS of COURT, to take no part in the fashionable rage for *acting*; but on the contrary, to keep constantly in mind the material difference between *esse* and *videri*.

This *fashionable exuberance* to a modern education—this new invented *turning-lath*, by which our young people of fashion are rounded, until they seem “all things to all men,” and acquire a habit of putting on and off the characters of life, with as much ease

ease as they dress for their various parts, deserves the animated censure of an able satyrift, rather than the style of a didactic writer, to

Probe its foul wounds, and lay its bosom bare
To the keen question of the searching air.

But plain sense may *advise* those examples to be *avoided*, which the lash of satire would *intimidate* from being *set*; and although on a thorough investigation of the fashion, the good cannot be discovered, the evil arising from it may stand confessed, as clear as the noon-day sun.

From what quarter of the civilized world did this rage break in upon us? Did it arise from *Gallic Pollish*, or *Spanish Pride*? from the etiquette of *German Courts*, or the phlegm of *Dutch Republics*? Does antiquity claim the invention, or modern History produce precedents in point.

A *Roman Satyrift* gives us a singular instance of it, not in ROME the *virtuous*, the *Patriotic*; but when ROME was *corrupt*, and its CITIZENS abandoned: JUVENAL, to hold the Grecian character forth to greater detestation, says of their Country—

Natio concœda est:

and exclaims, that the debauched, the dissolute ROMANS of those unprincipled times, were, in this respect, no match for them—

“ Non sumus ergo pares: melior qui semper, et omni
 “ Nocte dieque potest alienum fumere vultum.”

If the practice, therefore, comes originally from GREECE, it comes from thence when the Roman character, abandoned as it might be, was still conceived to be superior to the more unprincipled character of the GRECIANS: this may be an ancient, but, certainly, is no honourable pedigree.

Foreign ancestors in more modern times cannot be found, as parents of that fashion, which throws aside the veil of modest reserve, occasions beauty to become obtrusive, and, should scenic excellence not deserve a plaudit, may still provoke the critic to exclaim—

Ab unguiculo ad capillum summum, est festivissima!

Such a sacrifice, for such applause, by no means becomes the HALLS of *British Patricians*.

The example of VOLTAIRE may be quoted; yet the *Dramatis Personæ* of the stage,
 at

at FERNEY, resembles not, in dignity of situation, or respectability of private character, the THEATRICALS of *Privy Garden* or *BLLENHEIM*. If the niece of VOLTAIRE, and two or three friends, amused themselves, while they flattered the Poet, by acting some of those excellent Dramas which fell from his pen, it is not to be supposed, that this was an example worthy to be imitated by the LENOXES, or SPENCERS.

Has the fashion an ancient English descent? has it quartered itself among the houses of our OWN BARONS.

Some dignity of ancestry may here be claimed, and a corresponding dignity of character; but modern fashion has rejected what it possessed of grace and decorum, and preserved all the folly and indelicacy of the practice; it has omitted the *Dialogue* of COMUS, and retained the *Songs*.

This *Mask* and *Arcades* were written by MILTON for the amusement of two respectable houses, and were performed, the one by the Earl of BRIDGEWATER'S *Sons* and *Daughter*, the other by some noble persons of the family of the Countess Dowager of DERBY, at HAREFIELD; but it should be remembered, that the looser songs were not then written.

written. Dr. JOHNSON, in his Lives of the Poets, says, "Comus exhibits power of description, and vigour of sentiment, employed in the cause of virtue." ARCADES he does not honour with his notice; it appears, indeed, to be by no means compleat; but what remains of it, deserves similar applause; the object is the same, a recommendation of virtue and honour, and to use the words of Sir PHILIP SIDNEY, "an exhibition of characters, possessing high erected thoughts, seated in a heart of courtesy."

PRIVATE DRAMAS, of the present age, differ widely from all this, as well in the spirit of the entertainment, as in the selection of the Pieces.

MR. GARRICK, whose name alone recalls ideas of excellence in the scenic art, never before his time excited in this kingdom, lived on terms of familiarity with many great and good men, was often an auditor in the Gallery of that House, where, too frequently, as in DRURY LANE, *men are NOT what they SEEM to be*; but shrunk from the desire of some of his great friends, to see him there as a SENATOR; he then felt that scenic excellence could not be brought into use in the BRITISH SENATE; possibly he felt, also, the impropriety of such
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an intrusion: the THEATRE was not then a prelude to a *senatorical Character*, nor did those, whom ambition prompts to fill the higher offices of Administration, receive the last polish of education behind the scenes. Were Mr. GARRICK now alive, and in the HOUSE; who can say, he might not be among the first on the TREASURY BENCH, or a LEADER of OPPOSITION? possibly, if he had forgot what was due to the dictates of truth and humanity, he might have made his *Coup d'Essai* of eloquence, as a MANAGER in WESTMINSTER HALL, on the Impeachment of Mr. HASTINGS.



T H E
B A R R I S T E R.

N U M B E R X I.

WHAT our SHAKESPEARE wrote metaphorically two hundred years ago,

All the World's a stage,
And all the Men and Women merely players,

may in these days be repeated with a literal regard to truth; our *Boys* at school, are taught to lisp in Comic tones, or to strut, and fret, in all the pomp of Tragedy; we have MACBETHS, RICHARDS, IAGOS, SCRUBS, SURFACES, and *Mother COLES*, by lads of fifteen;

fifteen; what they may *be* at fifty, if at so early an age they *seem* these parts well, is left to their absurd masters, and absurder parents to conceive; the duty of these *Pedagogues* is to attend their moral habits, and Classic acquirements; and if they must enact a play once a year, **TERENCE**, although an early dramatic writer, is not obsolete; or what is still more in the line of our Lawyer's education, if *he* must act, let it be the part of **ÆSCHYNES**, **DEMOSTHENES**, or **CICERO**; in *their* oratorical characters he may find speeches worthy of recital; but this early rage for *theatrical amusements*, these vain and futile attempts at the fame and reputation of scenic abilities, constitute no trifling evil; and it is an encreasing one, leading to serious consequences as life advances—

Hæ nugæ seria ducent
In mala.

We have now players among the highest ranks of society; every cast of the *Drama*, in the two HOUSES of PARLIAMENT, and we have lately witnessed, at a private theatre in our Metropolis—

PRINCES to act,
And MONARCHS to behold the swelling scene:

Where

Where this rage will end, it is impossible exactly to foretel; fashion, great rank, high characters encourage it; nay, to repeat the expression made use of by an elegant essayist; “it has Princes and Princesses, Kings and Queens for its nursing fathers and its nursing mothers;” yet, although nursed in this *splendid lap of fashion*, it requires no deep spirit of Prophecy, to prognosticate, that the bantling will be ricketty and cannot thrive.

The young NOBILITY do not personate their own characters well; not a Gentleman, or a Lady can act *Sir Charles Easy*, or *Lady Betty Modish*; to fill these elegantly fashionable parts, with graceful ease, they must send to the Theatres; to conceive rightly of them, they should take some lessons there; in the mean time, they must condescend to the third parts, if they are ambitious of having their *private drama* strongly cast; but after all their utmost efforts, *Le jeu ne vaut pas la chandelle*; the spectator when dismissed from these family dramas, will too often have occasion to exclaim in macaronick strains—

Quis videndo non dolerit,
Private acting qui viderit.

And

And to *him* who studies the Law, we will only add these additional dissuasions; *you* have not time, if you have inclination; if you possess abilities, put them to better use; bear in mind the reviling epithets applied by DEMOSTHENES to *his Rival*, who, it seems, had formerly acted; recollect this Orator and Politician, thus tops his climax of *opprobria*; thus contrasts his own character with that of his Rival; “*Compare, Oh! ÆSCHYNES, your past life with mine; fairly and not maliciously; then ask this assembly, which of us has lived to the best purpose? Did not YOU dance in Chorus, when I paid the expence? Did not you act an inferior part in the Drama? Was you not hissed off the Stage, when I was a spectator?*”

It is true, that the *dénouement* of modern Comedy, leads to no disagreeable crisis; the successful lover, the accepted husband, are enviable situations, in this act, the *videri* may be profitably and pleasurable exchanged for the *esse*; such events may happen; but recollect the meanness that mind must be tainted with, which can court such means for the sake of the end; if rank and opulence, will thus lay themselves open, let no man of character take the advantage; *that situation in life may often be honourably obtained,*

obtained, which should *never* be surreptitiously attempted.

The PUBLIC THEATRES deserve every encouragement that a rich and populous capital can give; the great expence of SCENERY, DECORATIONS, DRESSES; the large salaries paid to the ACTORS and ACTRESSRS, require ample retributions from the public, that the proprietors may be indemnified, that rising merit may be encouraged, and well rewarded when mature. There was a time when this encouragement from the fashionable world was great; when the BOXES at our THEATRES were filled with company of the finest taste, and first rank; not as now, with dissolute *Rabble*, *Prostitutes*, and *Loungers*; in those days a man who respects decency, was not afraid to attend his wife and daughters to a play; and when he had seated them in the Boxes, conceived them and himself secure from impertinence and indecency; NOW, he is certain that their ears will be wounded with *obscenity*, their persons treated with *rudeness*, and that he shall meet with insult, not protection; it is possible somewhat of this may have arisen from our inattention to DRESS; JOHN BULL, while he has a coat to his back, will go where money can carry him; but while distinction of dress, as adapted to particular situations

situations in our THEATRES was preserved, the *etiquette* had its use; the five shillings alone would not do; the dressed habit of a man of fashion was necessary; and this was not JOHN's *customary suit*.

But more of this much-to-be-lamented indecorum has arisen from PRIVATE THEATRES: people of rank and fashion are of a *gregarious* nature, they love to go in *flocks*; the *Private Theatres* humour this caprice; while DRURY LANE and COVENT GARDEN pick up only a few stragglers; surely if the language of flattery was for a time silent, if the voice of plain truth was heard, when it informed the world of fashion that their *Private Theatres* are mere *Cock-pits*, and *wooden Os*, compared with the THEATRES ROYAL; that their companies as to their scenic abilities, resemble that of DESTIN depicted by SCARRON, rather than HARRIS's; that if they wish to imitate BAYES in the Rehearsal, and would elevate and surprize; those who have instituted *their Theatres*, in or near the METROPOLIS, have mistaken time, place, and means; their rural mansions in the Christmas and Summer recesses are the place and time; the means are *Masques*, *Masquerades*, *mixed Entertainments*, where *Music*, *Pomp*, and *Pageantry* preside. If plays be attempted, let them

them be of three or two acts only, the shorter the better; or rather *Interludes*, dividing the Masks into convenient parts; in the meantime, the THEATRES in the Metropolis, will, during the winter, give them excellent lectures; the performers there may be their tutors, and may claim reward congenial to their situations in life; not such as the Reverend tutors of the great frequently receive, *Crosiers* and *Mitres*; but after they have fretted their hour upon the stage, that they may have it in their power to retire to scenes of quiet, ease, and competence; a situation far above the wants of life, although not crowned with its honours; except *that* which is of more real consequence to their happiness than any in the power of KINGS, to bestow—the *honour of having so acted through life, as to have received the plaudit of a good conscience.*

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THE
BARRISTER.

NUMBER XII.

PRUDENT *Tradesmen* settle their books, balance their accounts, and make an estimate of their stock in trade, once a year—the practice is excellent, and it is necessary; their debts and their credits, their losses or their gains, stand by this proceeding confessed to their knowledge, and they can see with greater certainty on what to build

build their future confidence of success, and how to avoid, for the time to come, losses hitherto incurred; or if their trade exhibits prospects of *adverse balances* only; they, by this circumspection, are enabled to retreat in time from their unpropitious business, before repeated errors have drawn a long ruin on them, their friends, and confiding creditors.

The plan is laudable: let us then, once in our lives, follow so prudent an example—let us examine, before he goes to an INN of COURT, the stock in trade of our young Pupil. He has now spent three years at the University. Is his capital improved, or is it diminished? If improved—to what amount? If diminished—from what cause? When he first enrolled himself among the sons of *Alma Mater*, he possessed a good constitution, had given proofs of abilities in passing through a public school, had acquired some reputation for scholarship; was a good classick; was ingenuous, liberal, manly, no man's enemy, *not even his own*, and conducted himself by HOTSPUR's maxim—“*Tell truth, and shame the Devil.*” Such, when he left school, were his principles, virtues, and accomplishments. What is now his character?—What he now is, he will
most

most probably remain; it is not so easy to incline the tree as to bend the twig.

Does he continue liberal, ingenuous, and frank? Does he revere truth? Are the native powers of memory fully improved by habit? Has he advanced his classic acquirements? Does he declaim with grace, or speak with fluency? Is he an honourable graduate? Has he associated with young men of ability and industry? Does he feel within himself a spark of ambition, a desire to distinguish himself among the most distinguished of society? If the answer is generally affirmative, his future prospects in the Law are fair.

If the answer is negative; if by keeping bad company, by indulging the habit of indolence, or other wretched means, he is become illiberal, disingenuous, reserved, oblivious of the sacred line of truth; if he hath neglected his studies, avoided his exercises, taken a dishonourable degree, and

Hunts the throng'd valleys,
Having lofty hills to climb.

It is not asserted that he will succeed in the Church, or in *Physic*; it is believed he will

will succeed in no *liberal Profession*—the vallies of life may be trod by him with the less risk of disgrace; the conspicuous summits of honest ambition he can never obtain; he cannot, therefore, prosper in the honourable line of the Law.

Having made this estimate, it is proper to exhibit to him whom the University has honoured with its applause, and dismissed from its tuition with credit, somewhat of the field in which he is to be engaged; its plains and its defiles, its heights and its vallies, that he may form some judgment of his reasonable hopes and expectations, and may be prepared for the unavoidable rubs and disappointments he may meet with in his career.

The ENGLISH BAR (much to the reputation of our clean and unspotted manner of administering the laws) is far more honourable than the similar Profession in other Countries. If to the ADVOCATES of the FRENCH or ITALIAN STATES, may be objected the disgraceful principle on which justice is administered by those who there fill the seats of JUDICATURE, and something of the ignominy of the *Bribe*, which the Judge accepts, sticks to the *fee of the Pleader,*

Pleader, the contrast here is strong, and highly flattering. The administration of our Laws, by the impartiality of those whose high office it is to interpret them, preserves the source of justice pure; the Laws themselves are held sacred, and the Profession is respected: no comparison, therefore, can exist between the modern Courts of Judicature on the Continent, and those in this Country; the distance, in point of purity and integrity, being so great; neither can any useful information be derived by developing their practice, proceedings, or principles.

The situation, therefore, of FOREIGN ADVOCATES in society, needs not to be exposed; and the lapse of above two thousand years, has left but few sources of information with respect to the interior regulations, domestic habits, and legal practice of that age and state, which produced such a master of rhetoric as ISOCRATES, and such lights of eloquence as ÆSCHYNES and DEMOSTHENES. Whether these Orators may with greater propriety be classed among the Advocates of the Athenian Bar, although they sometimes pleaded the cause of individuals, may be disputed; and possibly, if we form our judgment from the history

history of the times, as well as from their compositions which we now read, we shall be more inclined to enrol them among those revered names of antiquity, whose eloquence supported the cause of their country, more frequently than the interests of private individuals: And indeed no bad parallel may be run with these Athenian Orators, and two Leaders on the opposite Benches of our House of Commons, as well in their declarations, as in their political conduct, excepting always those reviling epithets so frequent in the orations of antiquity, which *now* would absolutely disgrace, and *never* ought to be admitted into rhetorical compositions. That *Learned Divine*, who hath indulged the public with such an astonishing farago of Latinity, in his Introduction to BELLENDENUS, may probably have discovered, by his critical knowledge in the Classics, some strong traits of similitude, which he has not *publicly* noticed, between the eloquence and political conduct of ÆSCHYNES, the partizan and pensioner of PHILIP of MACEDON, and the present very able assailant of Gallic Liberty; between DEMOSTHENES, whose eloquence, and integrity were the bulwark of Athenian freedom, and a Minister of State, whose elocution is only surpassed by his integrity

integrity and love of his country. This learned Prefacer of BELLENDENUS, if he will again take up his Latin pen, could favour the Literati with a comparison of their respective merits, in the *same style* he has lately written, and with *equal impartiality and politeness*.

ROME also boasted its Lawyers, its Orators, and Patriots. The Bar was in that great Metropolis of the World, an introduction to offices of the highest importance, and to dignities of the greatest trust. Among the anecdotes of Roman Jurisprudence, which have escaped the ravages of time, we find that a congruity with the profession in this country prevailed, at least as far as is compatible with the different principles of the Roman and English law, with the customs and habits of antiquity and modern days. The education of the *Patrons* was the best the country could give: they rose to riches and honours by means of the *Profession*, which was highly respected. It is true, we know of no such rewards as the *Roman Advocates* received; immense legacies, large estates, bequeathed to them by the testaments of their grateful *Clients*. These do not lie within the most distant prospect of our BARRISTERS expectations: But abilities and

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industry

industry will, in this kingdom, render a man useful in his profession. The repute of having been serviceable to some *Clients*, gives him the opportunity of extending his sphere of action to *others*; the circle increases; the knot of clients conglomerates, like the rolling snow-ball; the Lawyer of the English Bar, is seen in the Courts of Justice, in the Houses of Parliament, full of business: he is heard with attention; his manner and his matter, strike the men of business in the State: the Minister of the day conceives his abilities may be of service: the Leaders of Opposition wish to enrol him among the Patriots of their discontented band, and he becomes a Senator: his fees increase, in the mean time, from the Half Guinea for the motion of course, to that enormous one of Three hundred Guineas for attending a trial of a matter of fact in the country. It is true, the acquisitions at the Roman Bar were, in some instances, superior even to this; but then they were more uncertain, and depended on the *gratitude* of the Client, more than on *fixed custom*: the great wealth of CICERO and ATTICUS, arose principally from the legacies of deceased friends, who had been their Clients;—CICERO in particular,

ticular, declared, he had received above *Two Hundred Thousand Pounds*, from the free and voluntary gifts of his dying friends. And it is presumed, some of that property which enabled DEMOSTHENES to repair, at his own expence, the walls of Athens, devolved to him by similar means.

This source of riches is not totally unknown *here*. It has been said, that a certain eloquent Light of the Law, now filling a very high and respectable situation in Westminster Hall, once possessed a handsome estate near the Metropolis, the grateful and voluntary gift of his opulent friend, as a reward for a master-piece of persuasive eloquence, delivered in his place as a member of the House of Commons. And the bequest of Sir WILLIAM PYNSENT to the late Lord CHATHAM, proves that the spirit of patriotism, animating the breast of a private individual, can liberally reward those important obligations, which are due from this country to that Minister who is a true Patriot.

But omitting all accidental acquisitions, the certain and honourable profits of the English Bar, are such as will enable the

BARRISTER, who is in good business, to live in habits of ease and conviviality with those who reflect a splendor on the most respectable ranks of life; and realize at the same time, a very considerable property.

T H E

B A R R I S T E R .

NUMBER XIII.

EXPRESSIONS, or Phrases, borrowed from foreign languages, are often used in writing and conversation, by men of the first abilities and best education, without annexing to the words in their own minds, or impressing in those of their readers or auditors, any precise defined idea. Many instances of this nature might be mentioned;

ed; but one, in particular, requires a comment from the BARRISTER, because the place in which it was used, the HOUSE of COMMONS; the occasion which called it forth; the opinion of the Long Robe, on the ABATEMENT of an IMPEACHMENT, by a DISSOLUTION of PARLIAMENT; the respectability of those who applied it, and the application of the phrase itself—all tend to render it of more consequence to the reputation of the profession of the Law, than the phrase has ever been to any other order of men, in the various instances to which it is applicable.

On the *Order of the Day* being read in the HOUSE of COMMONS, for resuming the consideration of Mr. BURKE'S motion on Mr. HASTINGS'S IMPEACHMENT; the debate deviated into an enquiry, *Whether an Impeachment of that House be abated by a Dissolution of Parliament?* When the profession of the Law fell under the lash of declamation, for their unanimity of opinion, that an Impeachment *is* abated by a dissolution of Parliament; and the Lawyers were accused, as being actuated in their sentiments on that subject, by an *Esprit de Corps*, rather than by integrity of sentiment,
or

or by conviction resulting from a due consideration of that important topic.

It is by no means intended to enter into the argument; and it shall be only hinted, that if any stress be laid on *coincidence* of opinion; or if any respect be due to the opinions of LAWYERS, on points of their profession; the sentiments conveyed by the Gentlemen of the Long Robe ought to have had more weight in that day's debate; and that every principle which actuates the human mind, when in search of truth, should have induced those who lead the sense of that assembly, to have deferred the determination of a point of constitutional Law, in which the profession itself were nearly unanimous; and not to have opposed a VOTE of the HOUSE, to a more *accurate investigation of a serious constitutional point.*

Neither shall the propriety of debating, and determining a point of Law by the House of Commons, which in this instance is a party to the impeachment, standing forth as accusers, be here canvassed; nor shall any time be wasted in proving, that the question which the House determined, is sacred to that high Court of Judicature, which pronounces the accused guilty or not guilty—

guilty—our object is only to prove, that those Gentlemen who applied the Gallic phrase, *Esprit de Corps*, to the profession, *sarcastically*, in that day's debate, either misunderstood its meaning, or applied it unjustly.

It would be nugatory to have recourse to *Chambaud*, or *Boyer*, on this occasion; they would give no precise English phrase for *Esprit de Corps*. It stands in the situation of a foreigner, become a denizen, in some measure by long residence among us. It is used in the *Army* regimentally; in the *Navy* by divisions, or as respecting single ships. It has not been often applied to the learned professions, unless in a satyrical and invidious sense; and with that interpretation annexed to it; the *Church*, although *militant here on earth*, will not claim the phrase. *Physicians* would be alarmed, were it applied to *them*; and so might their *Patients*. The *Profession of the Law* asserts, that such an application of it to *them*, is novel and unjust.

In its fair and honourable sense, *Esprit de Corps* is a modification of rivalry; an honest emulation; that spirit, that actuates a body of men to surpass one another in the same line or profession, in every exertion of laudable

able competition. Such is the military idea of the phrase. It is this principle which urges one regiment to vie with another in courage, discipline, temperance, and every soldier-like qualification. It is productive of honour, honesty, sobriety, and humanity. It stimulates the regiment where it prevails, and every individual in it, to "dare do all that does become a man;" and occasions them to feel, that "who dares do more is none." The same interpretation of *Esprit de Corps*, and the same excellent effect, is derived from this principle in the Navy, when it operates on the minds of our sailors, whether in the greater divisions of the line of battle, or in single ships; and a double contest then prevails—that for victory over the enemy; and that of a noble rivalry for their country's applause with each other. Hence the British flag is so often triumphant.

Was *this* the interpretation intended by those who applied the expression to the profession of the Law? Did any of the eloquent asserters, of the almost omnipotent power of Parliament, in their *zeal* for the privileges of the House of Commons, mean to compliment the profession for the *unanimity* with which they defended, what they

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unanimously

unanimously conceived to be the law of the Constitution? It is not pretended, they wish to be understood in that sense: the phrase, *Esprit de Corps* was in that debate twisted from its *honourable* meaning, and applied *unhandsomely*, because *unjustly*, to signify a spirit, which had inspired the Law with a combination against freedom, the rights of man, and, *as a top to this rhetorical climax*, the privileges of Parliament.

It may possibly be said, that the phrase has often been used in this perverted sense; and that it may with propriety be substituted for the English word *selfishness*, which, according to JOHNSON, means *an attention to one's own interest, without any regard for others*; a predilection or preference of the interests of that particular corps of men with which one is connected, to the interests of any other; a spirit exemplified by JOHNSON as affecting a *whole Nation*, when he says "that a Scotchman must be a sturdy moralist; who prefers truth to Scotland."

Allowing that some instances may be produced, where the phrase has been used in such a sense, and that a body of men, be they a *Nation*, a *Profession*, or a *House of Commons*, may be inspired by a *bad Esprit de*

de Corps, as well as by a good one, which, in pursuit of their interests, may make them blind to honourable means, and urge them to rush on to the completion of their views, *per fas atque nefas*; is a fact too true in experience to be denied in argument: still, such an application of the phrase is a perversion of language; and yet, in such a perverted, a selfish sense, has *Esprit de Corps* been applied to the Gentlemen of the Long Robe; it is an easy matter to prove, that the fact, in *this* instance, cannot apply to them; consequently the invective ought not.

Unfortunately for the views of those in the House of Commons, who wished for a *continuation* of the IMPEACHMENT; the Gentlemen of the profession within whose line of knowledge, and daily habits of enquiry, the question more particularly lay, delivered *almost unanimously* their opinion, that an Impeachment is abated by a dissolution of Parliament: This opinion they also sanctioned, in that day's debate, by principles of Law, and precedents of the practice in former days: In the same sentiments, founded on similar principles and precedents, it was understood that the LAW LORDS and the JUDGES almost unanimously concurred. To accuse such high and respectable authority

authority of ignorance, on a subject which fell so entirely, within the habits of their education and professional enquiries, and to oppose to this *phalanx* of LEGAL AUTHORITY the *sophisms* which so strongly marked the arguments of those speakers, in that day's debate, whose declamations could boast any thing like argument; would have been too glaring a presumption. Invective, therefore, in this instance, which in that House is not unusual, supplied the place of reason. The Gentlemen, whose opinions differed from that of the LAWYERS, did not chuse to accuse those *Peers*, who by their knowledge of the Laws and Constitution of their country, have advanced themselves to that dignity, of *ignorance in their profession*; they ventured not to accuse the *Judges*, whose duty it is to expound those Laws, of ignorance; nor those practising the profession, whose duty as well as interest, it is to understand them—this would have been too bold an accusation; but they insinuated a malign perversion of their knowledge and abilities, and accused the profession unitedly, of an *Esprit de Corps*, which seemed to have inspired them to combine against freedom, the rights of men, and the Privileges of Parliament.

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AN *individual* seldom commits a crime, or deviates from rectitude, but from some motive of interest, ambition, or pleasure; before he quits the plain tract of right, he naturally asks himself—*cui bono?*—What shall I get? How shall I be benefited?

The sense of honour is more likely to be suppressed in a *single* breast, by selfishness, than in *many*; and the *individual* can, with greater security to his reputation, permit self-interest to swerve him from what he feels is right, than can a *number*. A few Orators are more likely to be influenced by interested motives, than a numerous and respectable profession.

That it is possible, selfish considerations, or interested views, may have influenced the conduct of *some*, in this IMPEACHMENT, none will be found hardy enough to dispute; the line of interestedness, and the tendency of the considerations, are so obvious to the view, that those who "*run may read*;" but where are the motives in this question which can have influenced the PROFESSION to combine against freedom, the rights of men, and the privileges of Parliament? Or how is *their* opinion inconsistent with any right, which renders
happy

happy and respectable the situation of an ENGLISHMAN? The opinion of the Profession was, *that an Impeachment of the COMMONS is ABATED by a DISSOLUTION of PARLIAMENT.* Can this sentiment gratify the principle of revenge? Will it preserve, in lucrative places, those who now possess them? Does the Impeachment impede the progress of any of the Profession to the Upper House, or occasion them to "*perch*" a longer time in the Lower than is consistent with the impatience of ambition! Does the Profession in any instance suffer in reputation or profit from the continuation of the IMPACHMENT?—No. They cannot *unitedly* be injured by its continuation; and individuals of the Profession receive pecuniary advantages and reputation from it.

They cannot, therefore, in this instance, be influenced by a *malign* principle, a *selfish Esprit de Corps*; but they were in fact influenced by a *spirit that does them honour*, a nice sense of their duty to preserve, as far as lies in the Profession, by their legal knowledge and sound arguments, the *Line of the Constitution SACRED*, and the *Laws of the Land TRIUMPHANT* over all claims of *PREROGATIVE and Privileges*, which are inconsistent

sistent with the liberty of the subject, and not strictly authorised by the spirit of the Constitution; which, if permitted to prevail where they are not *constitutionally* claimed, will soon subvert that *equal balance* of the Constitution, which, as it now exists, secures at the same time the LIBERTY of an ENGLISHMAN, and the *admiration* of the WORLD.

This is the duty of the Profession, and it has been conscientiously and honourably performed by them in this instance; by which conduct they have held forth to the rising age, and to distant posterity, a fine Precedent of the *honourable Esprit de Corps*—such a Precedent, as it is the desire of the BARRISTER to impress strongly on the minds of the Students in the profession of the Law.



THE
BARRISTER.

NUMBER XIV.

IT is the first approach to that tumultuous scene of dissipation, voluptuousness, and expence, which our *enormous* METROPOLIS in a most alluring manner unfolds to his view, that is so dangerous to the student: Scenes such as these, occasion prudence to retire at the sight of pleasure; in the pursuit of which it will be difficult to proportion expences

expences to income, or to make dissipation coalesce with business:—This is a rock on which many split, and give their friends cause to lament that a liberal education does not with certainty lead to advancement, but may possibly mislead to ruin. To offer advice on this topic, would be vain; the tongue of wisdom would not be heard; Stoicism must not expect attention—EPICURETUS himself ventures to recommend a *pause* only, when pleasure allures, to give reason a chance of resuming her seat, and then throws in his excellent precepts. The example recommends itself, and it shall be followed:

“ If you are struck by the appearance of any pleasure, guard yourself; be not hurried away by it.” In the mean time reflect, that if your fortune be small, and by the seduction of pleasure you are tempted to recede from that diligence which has been recommended, you light your candle at both ends; because, in proportion as a student dissipates his property in the pursuit of pleasure, he becomes less likely to regain it in the profession; the final result will be unfortunate.

Suppose

Suppose his parents to be living, and that they have generously allowed him such an income, as a prudential regard to themselves and the rest of their family will admit of, the consequence of imprudence will, in that case, be as bad, if not worse. Hence debts will arise, increasing in more than a simple ratio with the risk run by creditors: concealment, falsehood, duplicity of conduct, and indolence, soon follow; and lead in their train, loss of character, of spirits, and of health; while all prospect of enjoying the fair and honourable scenes of life, fading by degrees from the sight, a torpid apathy and indifference ensue; and then the only hope of independence rests in that unnatural and ungrateful expectation, arising from the death of those who gave life, nurture, and education.

Let the principles of *liberal economy* be impressed on your minds: Disdain not attention to a vulgar but sound maxim, "Cut your coat according to your cloth." Look round on the BENCHES of JUSTICE, as well as on the *rows* within and without the BAR! many great characters may be seen, who have with equal philosophy and honour preserved this rule inviolate; and to which they may be in some measure indebted for their present respectable situations.

Among

Among the quickest and most certain means of closing at once all honest, or truly honourable prospects of life, the *Gaming Table* stands foremost. It is a **VORTEX indeed!** No dignity, rank, or situation, can preserve itself, when within its eddy. If this *mania* occupies the mind, it obliterates every principle of honesty, and substitutes in its place a vague, desultory point of honour. It destroys all confidence, and excites a spirit of fraud and deception. It confounds all distinctions: It levels the **NOBLEMAN** with the *Knave*—the **JUDGE** with the *Cutpurse*—the **MAN of HONOUR** with the *Bravo*:—Those only should play deep who have *no principle, or no property*; diamond will then cut diamond. In a Rubber of Whist, there is something for thought and memory, as well as amusement; but when the object is *money*, the indulgence becomes dangerous. It is a precipice, from whose slippery summit many have fallen to deep play, and certain ruin.

DRUNKENNESS is not the vice of *Gentlemen* in this country; at least not of those whose education has been a proper introduction to the study of the law. A few words only will be necessary on this topic; accidental ebriety may possibly degenerate into habit;

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as it is possible, a person may contract a taste for emetics. Mr. Archdeacon PALEY, in his principles of Moral Political Philosophy, has given the world some most excellent observations, together with practical hints on this subject: his concluding period it is impossible to forbear transcribing; "*There is a difference, no doubt, between convivial intemperance, and that solitary selfishness which waits neither for company or invitation; but the one, I am afraid, commonly ends in the other; and this last is the basest degradation to which the faculties and dignity of human nature can be reduced.*"

It was the observation of Old WARREN, one of the first Special Pleaders, whose Pupils were Gentlemen intended for the Bar, that "*marriage was a spur to industry.*" This maxim he exemplified by instances taken from his own office; among his various attendants to learn this abstruse branch of the profession; those, he said, who were engaged in the comforts of domestic life, profited most by their attendance. The same observation has also been made by other Pleaders, who have had an opportunity of forming their opinion from a variety of instances.—It is presumed no offence will be given to a most able LAWYER, now on the

the Bench, in the FIRST COURT of LAW at WESTMINSTER, to be informed, that when *he* kept his Commons at the TEMPLE, his present high situation, was then predicted, from his unwearied assiduity in the office, from whence he imbibed those excellent principles of law, which now reflect such honour on his determinations; and that *his industry* was quoted, as in point with WARREN'S maxim. However, this idea is only glanced at, as forming a ground for the application of St. PAUL'S *adage* to the STUDENTS in the INNS of Court—"It is better to marry than burn;" not as a recommendation of marriage in all cases, and to all people, but as an alternative much more creditable and conducive to present happiness and future reputation, than forming such *connections* in early life, as may be broken *in fact at will*; but, in many instances, it must be by a *breach* of every valuable sentiment of the mind, among which *affection* and *humanity* will be the most outraged; and as conducive to a habit of life more likely to preserve the health and spirits, so necessary to this profession, than a pursuit of pleasure, which, with whatever caution the chace may be conducted, the quarry will most probably be overtaken, at the risk of health.

A serious

A serious regard for that profession, to which the Writer of these Strictures dedicated the best years of his early life, has tempted his pen to glance at these topics of advice, which may possibly by some be conceived not so proper for the public eye: It is confessedly an unthankful office, that of an ADVISER; parents, guardians, relations, friends, all find it so. Few receive advice thankfully, let it come from whom it may. Those who, by their reputation, dignity, or rank in society, have the greatest reason to expect their advice to be accepted, will find, if they scatter it in public, much may fall by the way side: An *anonymous Counsellor* has but little chance of impressing his ideas on others: no attention can he expect, except what may arise from the intrinsic utility of his advice operating on candour. But if one grain of good counsel takes root, flourishes, and bears fruit in a liberal mind, all the seed is not thrown away. This single plant makes ample amends for the quantity, large as it may be, which is scattered abroad, and withers unnoticed.

If a *useful and practicable* OUTLINE can be drawn, in the education of the law, such as sound reason, experience, and honour, can approve—many Students, whose friends
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and connections not being with the profession, have nothing but the compass of their own observation to steer by, in a dangerous sea; may, by such a pilot, be conducted into an honourable harbour with safety; the probability of so beneficial a consequence, resulting from the employment of a few hours of retired leisure, is an *ample reward* to the WRITER of this TRACT.



THE

BARRISTER.

NUMBER XV.

WHILE these PAPERS are passing through the PRESS, circumstances arise in the legal and political world, which divert the writer from the chief purpose of the Tract, call his attention from the didactic office of the BARRISTER, and force him to assume for a time, the argumentative style of a legal and constitutional POLITICIAN. The Motion of Mr. Fox, in

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the HOUSE OF COMMONS, respecting the RIGHTS OF JURIES, in matters of LIBELS, is one of those topics; it is almost impossible that a man earnestly revering the constitution of his country, equally venerable for its antiquity, as respectable for its excellence, should permit the subject to pass away without offering his sentiments, when he feels them arise from an honest heart, conscious of the happiness of his situation, as possessing the rights of an ENGLISHMAN, and jealous of the permanency of those principles, on which such rights are founded.

That we are obliged to Mr. Fox for agitating the question in the HOUSE OF COMMONS, I am ready to allow, because I feel intimately the obligation; but cannot at the same time approve of a BILL in the present Parliament, to regulate, explain, and establish, what are the undoubted *fundamental Rights* of our countrymen; to call the attention of the HOUSE to an open breach of those rights, to inform the HOUSE, which, alas! on matters of *Constitutional Law*, too much needs so able an instructor, that in *matters of fact*, the JURY are to determine; in points of law, the JUDGES; that the *quo animo*, the intention with which a book is avowed to be published, in an INDICTMENT
for

soon heal the wound, as the human frame dissolves into annihilation, so does the political into anarchy; this is a law superior to the power of PARLIAMENT; because it springs from a principle from which all *Acts* of the Legislature *themselves* receive their very being, force, and energy; in cases such as these, all external help is vain; "therein the patient can best administer unto himself."

The GREAT CHARTER, which is nothing more than a solemn declaration of the *essential principles of our Constitution*, of the *vis vitæ* of our present form of Government, has said, *nullus liber homo capiatur, vel imprisonetur, aut exulet, aut aliquo alio modo destruatur nisi per legale Indecium parium suorum, vel per legem terræ*. When an indictment is at issue, by being *pleaded to*, the *legale iudicium parium suorum*, is the *ordeal* by which the DEFENDANT stands or falls; his innocence or guilt of the fact at issue, is then to be determined by twelve of his equals, who are *solemnly sworn*, well and truly to try the issue between the parties, and a true verdict give according to the evidence.

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In prosecutions for LIBELS, the fact at issue is malice, or not? It is not, did the Defendant publish the book or not, but did he publish it *maliciously* or not? Let us compare it to an indictment for MURDER or for ARSON. The question is not, Did A. kill B. or not? Did A. set on fire the house of B. or not? But the fact to be tried is, Did A. kill B. *maliciously* or not? Did he set the house of B. on fire *maliciously* or not? *Malice not* being proved to the satisfaction of the Jury, although the fact of *killing* or *setting on fire* be proved, clear as the Sun, A. is not guilty of MURDER, or ARSON. Dares any JUDGE, sitting on the Bench of Criminal Justice, thus address the Jury: "Gentlemen, the *intention* with which the prisoner at the Bar killed his fellow-subject, or the *malice* inherent in his mind when he set the house of his neighbour on fire, *your capacities* cannot judge of, the laws of your country have left those abstruser matters to the determination of us, the Sages of the Law: your duty is to enquire only, whether he *struck the blow*, which occasioned death, or *carried the brand* which kindled a conflagration?" Dares a Judge, who knows that, *de materiâ facti respondere debent juratores*, thus mislead the Jury from the essence of their

their duty—from the solemnity of their oath? If such a one exists, an impeachment, worse than the persecution Mr. HASTINGS groans under, ought to be his punishment—could the spirit of the Constitution bear it, an Impeachment without end: and where is the difference between the malice, essential to constitute the crime of a LIBELLER, and the malice which constitutes the crime of an incendiary, or murderer? I am not casuist nice enough to discover in what it consists, but in the degree.

These, therefore, are the reasons why we want not ACTS of PARLIAMENT on the subject; the vindicating sanction of the Constitution, is equal to the point: let us then not unnecessarily load the STATUTE BOOK with so important a truism—so innate a right.—It is not used to such weighty matters:—the *money-traps* of the financier, the cobwebs of penal acts, which catch e'er they fall “the CINTHIAS of the minute,” have dilated the STATUTE BOOK to a superficies of laws, which no human prudence can comprehend, or industry inforce; let the *sacred principles* of our CONSTITUTION be kept aloof from these enormous volumes, lest they should be lost among the vast load of trash therein contained; for experience
almost

almost justifies this apparent paradox; that to *prevent* the putting in practice a good regulation, it is only necessary to make an ACT of PARLIAMENT, *to enforce it*. BLACKSTONE somewhere compares the constitution of his country to the human skin, which exactly fits the infant, grows with its growth, and with equal exactness covers and defends the stature when arrived at its fullest proportion. If the STATUTE BOOK is to be considered as the skin of the Constitution, the Baby is indeed grown up to a Giant—

In bulk as huge,
As whom the fables name of monstrous size,
Titanian, or earth-born, that warr'd on Jove.

The constitutional sentiments which the PUBLIC PRINTS have spread abroad, as delivered by Lord CAMDEN, in the HOUSE of PEERS, on the subject of the intended Bill to vindicate the rights of Juries, speak strongly on the topic. If the twelve Judges of England; nay, “If the twenty-four Judges were to declare, that Juries have, by the law of England, no right to form their verdict on the whole case, Law, and Intention; I will affirm that they have that right; and that there is no power, by the law of this country, to prevent them from
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the exercise of that right, if they think fit to maintain it."

The late conduct of a learned Lord, in his charge to the Jury, impanelled to try the question of Libel, proves also the argument; that so vital a maxim of the Constitution, wants not the feeble aid of an act to enforce it; *non tali auxilio!* it is an axiom, that stands engraven in the hearts of Englishmen; *there* let it remain, vindicating itself by its own energy, borrowing no adscititious force from a book of penalties; the crime of instructing a Jury to act contrary to their consciences, is HIGH TREASON to the CONSTITUTION; Impeachment, the means of proof—the judgment, on conviction terrible.

There are other matters of some consequence to the essence of the Constitution; and at the same time intimately affecting our boasted freedom, and those principles which raise the reputation of ENGLISH LIBERTY so high throughout the world—that may require an *explanatory* law; because, although the *principle* may be well understood, the extent of its

its effects in *practice*, has, when power has been placed in the hands of some men, tended to oppression, or opened a door to confusion; the power usurped by the JUDGES on the *Circuit*, of fining a COUNTY, or fining an individual, should be enquired into, and abridged, if it tends to vexatious consequences, or popular disquietudes. At the same time, the mode of proof of that crime, the punishment of which is fine, ought to be *regulated*; here possibly a *wise explanatory Act of Parliament* may be of service. It seems, by some late instances, that there are Judges who have, in this respect, been in a strange error. That those emanations of Royalty which preside in our COURTS of ASSIZE and GAOL DELIVERY, should be armed with every *necessary* authority to enforce attention and respect, no friend to justice will dispute; but those officers who take their commissions from the CROWN, are not armed with a greater prerogative than the *source* from whence their authority proceeds possesses; before the laws punish, a crime must be committed; the crime must be

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proved.

proved against the individual—the culprit must be permitted to make his defence; MAJESTY ITSELF cannot proceed from a bare *suspicion* of an offence, to instantaneous punishment; it is the boast of an Englishman that *here*, the meretricious maxim,

Hoc volo, sic jubeo, slet pro ratione voluntas.

is unknown in the pure administration of our laws; but as a question on this point is now in agitation in WESTMINSTER HALL, *silence* on the topic may better become a good subject, than the *best argument*; for it cannot be doubted, but that this principle of the Constitution is perfectly understood by those respectable characters that preside within those walls, which says, *nulli negabimus aut differemus Justitiam vel rectum.*

Those strictures which you have just read, are the result of reflections that arise from the daily occurrences which float on the surface of the times in which we live; they have been sketched with *freedom*, and wrote with *sincerity*; for, is there one
among

among us who loves his country, and can be insincere when such points are agitated? is there one among us who would fear to use the language of freedom, when the free rights of his country are the subject of his DISCUSSION?



T H E
B A R R I S T E R.

NUMBER XVI.

THE UNIVERSITIES being now exchanged by the STUDENT for the INNS of COURT, called by some, *The Lawyer's University*—It may not be thought foreign to our subject, if a small portion of time be employed in tracing to their source, the causes which first congregated the profession of the Law in these Societies; in relating

lating the order of time, in which they were first inhabited by their predecessors, and just glancing at the mode of education, which prevailed in those remote times, when BARRISTERS were known by the name of *Apprentices of the Law*, and Serjeants, raised to that dignity at an enormous expence, and proportionate although ridiculous pomp, were ycleped *Countours*.

It being, determined by MAGNA CHARTA, in the 9th of HENRY the *Third*, that the Common Pleas should not follow the KING'S COURT, but be held in a certain place; and the palace of Westminster, being at that time, or soon after, fixed on as a proper place for the purpose, occasioned those who made the study and practice of the law their profession, to settle in the nearest and most convenient situation, which was the CITY of LONDON, separated from the KING'S PALACE, (within which all the Courts of Justice were *most generally* held, and the Common Pleas *constantly*) not much above a mile.—From this æra, therefore, we may, with great probability, date the *corner-stone* of the Lawyer's University; the profession, by their choice of situation, forming no bad comment on a text, which was supposed to be spoken metaphorically of the Roman Arms—

Arms—*Wheresoever the Carcass is, there will the EAGLES be gathered together.*

Here they remained encreasing in knowledge and in numbers; but whether living in HOSTELS or INNS, as at present, or lodging, as convenience or choice might dictate, is uncertain; as no particular mention is made of them, until EDWARD the *First*, in the twentieth year of his reign, ordered JOHN de METTYNGHAM and his associates *Justices itinerant*, to chuse, from every county, certain Lawyers and Attorneys, the best and most apt for their learning and skill! and that these and none other should follow the Court.—The KING and COUNCIL, then deeming one hundred and forty, to be sufficient for that purpose; but that the Justices might add to, or diminish the numbers as they should find convenient.

So that soon afterwards, although we have no memorial of the direct time, or certainty of the places, we may conclude, that they settled in *Hostels* or *Inns*, which were thenceforth called INNS of COURT; although there is nothing left on record respecting this matter, until the 18th of EDWARD the *Third*, when there was a demise, which DUGDALE says, he has seen from
Lady

Lady CLIFFORD, of that house, called *Clifford's Inn, Apprenticis de Banco*; and concludes, also, for several reasons, but especially from tradition, that they had for a long time passed, been settled in Hostels; and that there was one at DOWGATE, called *Johnston's Inn*; another in Pewter-Lane; another in Paternoster-Row, near St. Paul's, at which Church, each *Lawyer* and *Serjeant*, at his *Pillar*, heard his Client's case, and took notes thereof on his *knee*.

The TEMPLE is the first Inn of Court now existing, of which notices when it came into the hands of the Law remain; and this was soon after the year 1324, demised by the *Knights Hospitallers*, to diverse professors of the Common Law, for the rent of ten pounds a year; the *Knights Hospitallers*, having then lately received a grant of the scite from the Crown, in consequence of a decree passed at VIENNA; bestowing all the lands of the Knights Templars on *them*.—CHAUCER was one of the first Students, and has recorded to distant posterity, the wit of his Temple manciple, which surpassed.

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The wisdom of an heape of learned men,
That were of Law expert and curious;
Of which there was a dozen in that house.

GRAY'S INN was the corps of some prebendary in Saint Paul's Church, and called Gray's Inn, from a family of the *Gray's* dwelling there in the time of EDWARD the *Third*; soon after which it began to be inhabited by the Students of the Law. Of this Inn, were the *Two* BACONS, NICHOLAS, and the Viscount St. ALBANS.

LINCOLN'S INN was the house of HENRY LACY, Earl of LINCOLN, and afterwards of the Bishop of CHICHESTER, until the reign of HENRY the *Eighth*, when it was the property of Sir EDWARD SULLYARD, who sold it in the 22d of ELIZABETH, to the *Benchers*, and Society of Students, who had been resident therein from the time of HENRY the *Sixth* when FORTESCUE was a member of that Society.

These are the INNS of COURT; the INNS of CHANCERY, which belong to them, and which Mr. SELDEN says, were probably so called, because such clerks formerly dwelt in them, as did chiefly study the formation of writs, are,

THAVIES

THAVIES INN, Holbourn—In this, Students of the law were resident, in the reign of EDWARD the Third, to some of whom the Temple was leased. In the fourth year of EDWARD the Sixth, it was granted to the BENCHERS of LINCOLN'S INN, and their successors, for the use of the Students of the Law.

BARNARD'S INN, Holbourn, anciently **MACKWORTH'S INN**, but called **BARNARD'S** from a Gentleman of that name; who lived there in the reign of HENRY the Sixth; this belongs to **GRAY'S INN**.

FURNIVAL'S INN, Holbourn, so called from Sir WILLIAM, afterwards Lord FURNIVAL, in the reign of RICHARD the Second; it belonged to the Earl of SHREWSBURY, in the reign of HENRY the Sixth, and was afterwards purchased by the Society of Lincoln's Inn.

NEW INN, without the Liberties, belonging to the Middle Temple; DUGDALE says, it was a common Inn for Travellers; and from the sign of our *Lady*, was called sometimes *Lady's Inn*. It became an Hostel for Students of the Law; upon their removal from an old Inn of Chancery, in the Old Bailey,

Bailey, called *Saint GEORGE'S Inn*; here the wise and witty Sir THOMAS MORE was Student before he went to Lincoln's Inn.

CLEMENT'S INN, belonging to the Inner Temple, so called, because it was once a messuage belonging to the Parish Church of Saint Clement Danes.

CLIFFORD'S INN, which has been alluded to, is situated in St. Dunstan's in the West; it formerly was the property of the *Barons CLIFFORD*, and now belongs to the Inner Temple.

STAPLE INN, formerly belonging to the merchants of the Staple, is situated in the parish of St. Andrew's, Holbourn, and is now the property of Gray's Inn.

LYON'S INN.—This was an Inn of Chancery, in HENRY the *Fifth's* reign; but how long before is uncertain—prior to the reign of HENRY the Seventh, it was the sign of the *Black Lion*, from which it has its present name; it belongs to the Inner Temple.

STRAND INN; this, and the Bishop of WORCESTER'S Inn, together with the Bishop of COVENTRY and LITCHELD'S house, then

then called Chester Inn; and the Bishop of LANDAUF's house, also a Church called Saint Mary, in the Strand, were *all* demolished about the year 1549, to build a palace for the Duke of SOMERSET, called by his name; lately also demolished, and on the scite of which has arisen, under the happy auspices of his present MAJESTY, a most convenient, as well as magnificent structure; a capital ornament to the metropolis, and an honour to the kingdom.

The tenth Inn of Chancery, standing when FORTESCUE wrote, is wholly lost, unless *Saint George's* Inn be it.

The eight Inns now remaining, are mostly inhabited by Attorneys, Solicitors, and their Clerks; they all belong now to one or the other of the Inns of Court, who send yearly some of their Barristers to read in them.

This short notice of the different Inns of Court, and Chancery, is chiefly abstracted from Mr. SELDEN's notes on FORTESCUE, in his *De Laudibus Legum Angliæ*; who gives the following as a reason, why, in his time, which was in the beginning of the reign of his inglorious and unfortunate pupil,

pupil, the Common Law was not taught in the Universities; which is thus abridged by BLACKSTONE: "As the proceedings at Common Law were, in his time, carried on in three different tongues, the English, the Latin, and the French; that Science must necessarily be taught in those three different languages; but in the Universities, all Sciences were taught in the Latin tongue only; and therefore he concludes, that the Law could not be taught or studied in our Universities."

These reasons, the learned Commentator says are jejune, and not satisfactory; but if the state of learning in this country be inquired into, when FORTESCUE gave this *reason* why the Common Law of England was not then taught in the Universities, it is apprehended it will be agreed, that the Chancellor's reason was the true one.

The Saxon language, about the middle of the Fifteenth Century, had gradually become obsolete, and many of the expressions in it required a glossary to explain them; or if that was not to be had, which was probably the case, the constant conversation of those who were in daily habits of using it in their pleadings, was necessary to obtain
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a compleat knowledge of this language, from which the greater number of phrases, and technical terms, in use in the Common Law are derived; indeed the CONQUEROR seems, as soon as he had peaceably established himself and his family upon the English throne, to have declared war against our language, laws and customs; nay, even the terms used in our principal games and diversions, and probably the diversions themselves, of hunting, dice, and tennis, were all Norman Gallic; and although he pretended to confirm the major part of our *Common Laws*, he may well be said to have changed them, by means of the French idiom, in which they were not only written in the books, but spoken in Courts of Law.

He also, with the intention of overturning our language, ordered all accounts of offices, and lands, to be taken in French; and INGULPHUS, who was Abbot of Crowland, at the Conquest, says, that boys were taught the rudiments of the French, not the English language, in the schools then established, and the custom of writing books and deeds in English ceased to be used, and they were written in French: thus, in a great measure, was the national language changed, and so it remained many years, and French was the only tongue made use of

of in our Courts of Law for near three Centuries, until the 36th of *Edward the Third*; when the Parliament, on account, as the preamble of the act recites, of the mischief which had arisen, ordered all pleas to be pleaded in English, and entered and enrolled in Latin.

The use of French for such a series of years, naturally introduced Gallic phrases, and technical expressions, which remained when FORTESCUE wrote; and indeed are still in use, not only in our professional proceedings, but also in common language; and that English was much more adulterated in those times, than the present, by foreign words, may be seen by any one, who peruses what remains of the compositions, both in prose and verse, of that illiterate age.

The writings of CHAUCER, OCCLEVE, LEDGATE, and GOWER, who was a Student of the Law, as well as Poet; prove the truth of this assertion; at that time this knot of literary friends scattered many rays of light throughout the dark age of ignorance, which prevailed, near a century before the time FORTESCUE addressed his instructions to his Royal Pupil.

The metrical ballads, in PERCY's Collection of Ancient English Poetry; and particularly those letters which Sir JOHN FENN has preserved to posterity from the PASTON Collection,

Collection, will fully prove to us the adulterated state of our language during the Reign alluded to, and the contentions which immediately followed, between the Houses of YORK and LANCASTER: during which which period, science retreated as civil war advanced deluging the nation with blood, and covering the scene with darkness, until all ideas were absorbed by the two prevailing terrors of society—the soldier and his sword.

At this time, indeed, the spirit of the laws disappeared, but the professors of them were not totally silent, and the forms were in general preserved; but the English, which then prevailed, was not the proper vehicle of instruction, in a science which required the knowledge of three languages; unless it be asserted, that the Englishman, to understand his native language must understand all those from which the terms in it may have been derived; the Latin was still less proper, because farther removed from the sources whence the technical terms of law flowed.



THE

BARRISTER.

NUMBER XVII.

THE Universities then taught the very little which was worth learning, in Latin; and so low was the stock of knowledge in these retreats of science, that few could write or read, even one language, with accuracy and elegance; and Grammars, Dictionaries, or Glossaries, were not in all hands, if in *any*: The common law

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of

of the land, therefore, could not be taught systematically as a science; the age abounded rather in *Ignoramuses* than *Blackstones*; and its principles were developed *synthetically* by commensation in the hostels of the law, with its practisers, and by practical observation; and not *analytically*, by the scientific lectures of professors. As such were at that time the only means of arriving at the knowledge of law, and its principles, we must cease to wonder, that *viginti annorum lucubrationes*, were necessary to qualify the Student for the respectable situation of a *Judge*; or that a kind of Law University was established in the METROPOLIS, to which the Students of the common law resorted, not generally perceiving the necessity of studying previously at either OXFORD or CAMBRIDGE, with Civilians and Ecclesiastics.

Into this *Law University* (as it has been called), and in one of its *Colleges*, or *Inns of Court*, our Student is now supposed to be admitted, and to keep, regularly, his COMMONS, almost the only remains of academic discipline, or regularity now expected, except a *regular payment* of dues, fines, and impositions. To these societies, in days of yore, a proof of pedigree was a necessary step

step of admittance, and a *Barrister* was expected to be a *Gentleman of Blood*; although now, thanks to the good sense of the age! a *Gentleman of abilities and industry*, has full as good a chance of the SEALS, as a son of *Bourbon* or *Nassau*; the *Barristers* in the reign of RICHARD the Second, were called *Apprenticii Nobiliores*; at least those of the Temple.

FORTESCUE says, that in his time, a Student could not be maintained in one of these Inns of Court, under twenty-eight pounds a year; and if he has a servant to wait on him, proportionably more; which expence deterred all, but people of rank and fortune, from sending their sons there; so that there were scarce to be found throughout the kingdom, an *eminent Lawyer* who was not a *Gentleman*; and consequently they would have a greater regard for their *character*, than those who were *bred another way*; diffusion of opulence, and change of manners, have now opened the gates of our INNS of COURT much wider; and every son of ADAM and EVE, who chuses it, may be admitted; and to the honour of the profession, it may still with truth be said; you can scarce find throughout the kingdom, an *eminent Lawyer*, who is not a *Gentleman*.

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“ There is both in the Inns of Court, and the Inns of Chancery, a sort of academy, a *Gymnasium*; fit for persons of their station, where they learn *singing*, and all kinds of *music*, *dancing*, and such other accomplishments and diversions which are usually called *revels*, as are suitable to their quality, and such as are usually practised at Court.”

What a curious education for the Lawyer—*Singing, Dancing, Music, Revels!*—one can scarcely credit that this should be a serious eulogium of the Inns of Court and Chancery; and a recommendation of them as a proper place of education for the sages of the Law, and the young Nobility of the Kingdom. For the latter class, indeed, the Earl of CHESTERFIELD'S Letters to his Son speak similar ideas; but are absolutely a *pure Ethic System*, in comparison of the plan of education given by the sage Chief Justice to his young Sovereign, although he also informs him, that—“ At other times, *out of Term*, the greater part apply themselves to the study of the Laws: upon festival days, and after the offices of the Church are over, they employ themselves in the study of Sacred and Profane History. Here every thing
which

which is good and virtuous is to be learned—all vice discouraged and banished.”

What an apparent contradiction, and perversion of all order! *In Term*, diversions; *out of Term*, study, religious duties, goodness, and virtue.

Revels, which were exhibited at great festivals, in the Halls of our Inns of Court, are very circumstantially described by DUGDALE, in his *Origines Judiciales*, and an astonishing scene of absurd mummery they exhibited; in which the performers appear to have taken their lesson from the Lord of the Manor of HEMINGSTOW, who was, according to his tenure, by serjeanty, to perform before our Sovereign Lord the KING on Christmas-day every year—*Simul et semel, unum saltum, unum suffatum et unum bombulam.*

So meanly ridiculous was the wit of our ancestors—so little was the relaxation of their wisdom superior to *obscene folly*—they felt the truth of the maxim,

Dulce est desipere in loco—

and forgot place, time, and circumstance; but they followed the fashion of the day—
let

let that be the apology of past ages, as it must be the only one, for many absurdities of the present.

However some good was done *out* of Term, if not *in*; the study of the Law, of Sacred and Profane History, and every thing *good* and *virtuous*, is an ample *amende* for the buffooneries at festivals, and that somewhat of this was done, we may conclude, from what DUGDALE informs us, that previous to a call at the Inner Temple, the Candidate was obliged to have argued twelve grand Mootes, or Cases, and twenty-four petty Mootes, and to be examined by the whole Bench. These exercises, he says, *had* been discontinued, but were *then* reviving, to the great advantage of the Students; and that the BARRISTERS were then obliged to keep six vacation commons, that they might have an opportunity of attending the Law Readers, in the different Inns of Chancery.

The two TEMPLES, LINCOLN'S INN, and GRAY'S INN, all contained orders somewhat similar, for promoting the study and exercise of different parts of the profession; among which, arguing Supposititious Cases,
or,

or, as it was then called, *Mooting*; and also attending to hear read, and in their turn reading Lectures on different Law topics, were the *means* proposed; that those *means* were not by themselves conducive to the end, and that the necessity of a learned education, on a more substantial foundation and a more comprehensive plan than the London Universities could give, was the cause of failure, is more than probable; the effect has been an almost total disuse of all exercises, previous to a call, except that of the *Purse*—the Financiers of our Inns of Court well understanding the benefit derivable to their Society from *Commutation*; long before the idea struck the Financiers of the State.

However, if not before, yet after the call to the Bar some semblance of former discipline is preserved, at least by the Society of the *Inner Temple*, if not by the other Inns of Court; that Society electing from among its Barristers, three Readers to each of the Inns of Chancery which belong to it; these Inns chuse one of the three, whose duty it is to read them lectures of instruction in the Common Law; but although it is the duty of the Lecturer to read, there is no reciprocal duty in the young men of those

those Inns to hear; and consequently, the Lectures are given frequently to empty Halls, and bare walls; or, if that is not quite the case; all memory of the instruction given, is immediately obliterated in a lethean libation of bad port.

That such a relaxation of discipline must be attended with consequences derogatory to the credit of the profession, is as well apparent to the prophetic foresight of human reason, as deducible from the experience of many years: the pliable mind of youth, properly bent to a severe course of attention, by the habit of a studious education, should not at once be allowed to relax into a life of absolute idleness; nor be permitted, through a deficiency of proper obligations of study, to wanton in all the luxuriance of dissolute ideas, excited by the scenes of pleasure and uncontrolled debauchery, which the surrounding Metropolis presents to his view; neither should it be permitted to compare, by the practice of commutation, the value of a paltry pecuniary fine, with the creditable habit of attention and study. Whatever is laudable of the ancient discipline of those Societies, should in some degree be preserved, although

though their income might possibly feel a diminution; because the mind of the Student, while in training to bear an application to the litigated interest of a multiplicity of clients, and to take an active part in the *ardua regni*, should not for any length of time, be totally relaxed. An expert archer most certainly will tell you, that a bow should not be *always* bent, lest its elastic force suffer a diminution; but the same degree of experience in that fashionable exercise, will also inform you, that when it has been totally unstrung, for a *length of time*, great caution is required to bring it to the string: some exercises, either as solemn arguments or short mootings, should still be insisted on, and the trifle which is required, should be seriously exacted.

Not only on the general principle of fitness and propriety, is this idea calculated, but also on another ground of some importance; the clerks of Attorneys, and the rabble of the Bar, would be obliged by such an alteration in the course of their education, to know some principles of law; and there would be some ordeal to prove their professional fitness

fitness in the paths of science; in those of chicane, unless they have preferred idleness and dissipation, they may possibly already have run through a five years experience.



T H E

B A R R I S T E R.

NUMBER XVIII.

IT will not be the price of our labour; to waste more time in searching the books of Antiquaries, or in puzzling out from the black letter of former days, what the Law and Lawyers then were; neither is it necessary to trace the different Courts of Law, from their remote origin; or to relate in detail the course of our Courts of Equity,

Equity, from their source in those times, when their small stream of business ran only in devising new writs, and in matters respecting the *Jura regalia*; through that æra, about the close of the reign of EDWARD the Third, when this trifling practice forming a junction with the current of ideas, about that time introduced from the Civil Law, by foreign ecclesiastics, respecting the *fidei commissa*; and these co-operating with certain fictions of law; the business of the Courts of Equity flowed in a more copious stream, which has continued increasing to this present day, and is now become a wasteful torrent, which overwhelms a great part of the property that falls in its course.

It will be sufficient only to glance at this as a topic worth the attention of the Student, and then proceed to its effects on the profession itself; these are considerable, as well in their importance to the profits of the Bar, as in their introduction of a division of the business among the Barristers; who now may choose, whether they will practise in the Law Courts, or in the Courts of Equity; or whether, finding themselves not endowed with the talent of persuasion, they will be content with the dull and tedious,

dious, although profitable line of conveying.

The practice in the Courts of Law certainly requires the *strongest* abilities, and the *highest* qualifications; the greater field of business lying open in this line of the profession, the greater variety of talents may be brought into use. Until about thirty years ago, the mode of Candidates offering themselves for business, was different from the fashion of the present times; after the Universities had dismissed their pupils, and the Inns of Court had received them, the general course of education was a close attendance with the note-book on the Courts at Westminster; sometimes when the Common law takes the office of enforcing, or restraining the proceedings in the Courts Ecclesiastical or Civil, those Courts were also an object of the Student's attention; now and then the *Old Bailey* might offer something instructive in the Crown Law.

The Sittings during and after term, taught him the Law of Evidence by practice, how to examine witnesses, and address a Jury; an early call to the Bar was thought proper, followed by attendances at
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the Quarter Sessions, in some of those counties included in the circuit he intended to go; a Country Quarter Sessions has brought into notice many a man of eminence. Hence arose the *first display* of those abilities which have presided long in the Court of Chancery, equally to the satisfaction of the suitor, as to the credit of the Chancellor; an able sessions Lawyer, who had the talent of eloquence, collected briefs on the circuit, in the ratio of his business at the sessions; from whence arose some business in the Courts above; these opportunities of employment, by degrees discovered abilities, and established confidence; many names now obscured by the blaze of Peerage, were in those days scarcely heard of for the first twenty years of their professional assiduity, except upon the circuit.

The Special Pleader's Office, as distinct from the Attorney's, was not *then* known, or but just coming into use; the last description of men was *then* equal to drawing common declarations, and the various branches of pleading arising from them; if any special matter occurred in the written altercation between plaintiff and defendant, it was settled by council; but now this abstruser part of the profession is in the hands.

hands of those gentlemen, who have most of them proceeded, it is supposed, nearly in the line of education already recommended, and the gown is *not* now put on in that *hasty* manner; but after some years attendance in their offices, drawing declarations and pleas, at the common price paid to those under the Bar, until they are certain, by the resort of clients, that they have established a name for abilities and industry, they can then be sure of carrying no inconsiderable share of business directly to the circuit, and the Courts at Westminster, without submitting to that protracted discouraging attendance at the Quarter Sessions and the Circuits, which were formerly necessary.

These offices are now to be attended by the Student, if he wishes to reduce a probability of success to a moral certainty: It is true, many great names have arisen; and first rate abilities, co-operating with fortunate circumstances, have brought forward in early life, *some* who have not submitted to this mode of education; but it is probably more prudent to estimate *these* as splendid exceptions to a general rule, which lays it down as a maxim, that to form the complete Lawyer, great abilities should be united

united to an intimate knowledge of the law; then as proofs that no such necessity of abstruse professional knowledge exists. It is certain that more sound Lawyers have proceeded from a Special Pleader's office, than the profession can boast of, educated in another manner. Eloquence will not be required there, it is true; but legal precision, technical reasoning, and sound law, may, together with an opportunity of demonstrating to those, whose good opinion it is your interest to possess, that you have acquired these essential qualifications.

Let him therefore, who after a strict examination of himself finds his abilities and natural flow of spirits equal to the attack of this more general and arduous branch of the profession, enter a Special Pleader's office, with a determination to become an adept in this technical part of the law: Let him not be disgusted with his employment, which at first will be beyond measure uninteresting; nor, by neglect or inattention, give disgust to others: Let him remember, he wants not only *knowledge*, but a *name for knowledge*; he should keep this maxim in his recollection—

Scire nomen nihil est; nō me scire doc, sciat alter.

Decla-

Declarations, Special Pleas, and all the subsequent altercations of law, are become so verbose; that it is scarcely possible, by a two-years attendance in a Pleader's office to collect a sufficient variety of precedents, in the different stages of an action, to form a stock for future practice; the Student's discernment must therefore point out to him those most worthy his notice; these he should copy, or have copied, in a folio of precedents; as they will be absolutely necessary to him when he draws on his own account. The language of pleadings should by all means be obtained; as otherwise, even in the most common business, he will be at a loss for the proper technical expressions, and constantly be obliged to have recourse to his book of precedents; this habit of writing, *currente calamo*, the legal phraseology, is soonest obtained by the use of dictation, when the Pleader is in practice to draw, *ore tenus*, while his pupil, with the pen of a ready writer, is his *amanuensis*; yet, as it is apprehended that such is not the general habit in the offices of the more eminent Pleaders, but that the different counts in the Declaration are strung together, as they may suit the case, the pupil having first transcribed them from precedents delivered

to

to him for the purpose ; the language must be obtained by frequent transcriptions, or *memoriter* repetitions of technical terms : during the intervals of attendance, reference should be made to the *Law Library*, that the principle, from which the practice he has just been witness of proceeds, may be fixed in the mind. In the first year of his attendance, but very little time can be spared for the courts at Westminster, and but little information could be there obtained, until some knowledge of the *general principles* of law, as well as of the *practice*, be first acquired ; these are absolutely necessary to take a good note, and a bad one is worse than none ; as it *may* mislead, but *cannot* instruct. Many young men may be daily seen in the Jury and Cryer's boxes in the King's Bench, armed at all points for note-taking, writing hour after hour in vain ; many of the notes there taken being inanity itself ; a kind of *crambe recocta*, which no art can make palatable, or skill methodize into law or common sense.

If, after proper consideration, and a due estimate of abilities, the Courts of Equity are chosen for the *debut* of the young Barrister's professional qualifications, the same kind of schools are open in this line also ;
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the Draftsman's office will afford him a practical knowledge of Bills, Answers, Exceptions, Master's Reports, Decrees, &c.; and well may the person who draws these, be styled in the most laborious sense of the word, a *Draftsman*—

—*Studet multum frustra que labore Ausus idem.*

If the verbosity of the Special Pleader excites our surprize, well may the incredible multitude of words, in which pleadings in equity are involved,

“Thick as autumnal leaves that strow the brooks in Vallombrosa,”

overwhelm us with confusion and astonishment; and what is worse, amongst this huge mass of rubbish, there is but *little* intermixed for thought; yet these vain and insignificant expressions, this farrago of nothings, while it remains the language of the Courts, or rather of the Pleaders, must be submitted to; a Draftsman must draw technically, and scientifically; must heap pleonasm on pleonasm, until he has spun out a *complaint*, which, together with the prayer for redress, might be made intelligible in ten lines, into a *bill* of sixty or eighty

eighty office sheets; and spread a *defence*, which would lie in a *nut-shell*, over a *hundred folios*; what to suggest as means most likely to obtain this wire-drawn language is no easy attempt; possibly nothing but repeated practice, and long habit can acquire it; and when acquired, it must be left with the pen in the office, and on no account must this *prosing habit* be carried into Westminster-hall; it would be more grating to the patience of the Chancellor than Mr. HASTINGS's Impeachment.

Some useful knowledge may nevertheless be obtained in a Draftsman's office; a *plain*, though *dull* statement of facts; the equity which flows from the case stated; the art of putting cross interrogatories; to extract unwilling truths; the charges which authorise these interrogatories; the caution requisite in a *full* answer; the various matters which may be pleaded or demurred to, in a bill; together with a great variety of knowledge, peculiarly appropriate to the practice in the Courts of Equity, are the fruits which may be gained—In the mean time, a *habit* of attention, and a *name* for it, will be acquired; both absolutely necessary at your outset in the profession.

The

The Student must enter the Conveyancer's office, armed with much the same *panoply*, as in the Equity Draffman's; *patience* is here equally necessary to shield him from disgust; as is *unremitting industry*, to transcribe the immense volume of words made use of in modern Conveyances. An estate, which formerly passed by feoffment, from grantor to grantee in one deed, containing about fifteen lines; is now conveyed by lease and release, in two deeds; and probably *five hundred lines* will not arrive at the last of the covenants, swallowing together with the premises and the *habendum*, five thousand words; *than all which*, the terse and expressive *warrantizabimus in perpetuum* of the old feoffment was formerly thought more secure.

A marriage settlement has been known to extend to five hundred skins of parchment; each skin, by an Act of the 19th Session of the present Reign, may contain a thousand and eighty words, which are stated in the preamble to the enacting clause, as having been the number by general practice, inserted in one skin; it follows, therefore, that a thousand and eighty, multiplied by five hundred, or *five hundred and forty thousand words* have been crammed into a *modern marriage*

marriage settlement; being more in number than are contained in twenty-two volumes, of the size and print of STERNE'S works, a horrible waste of words, the client's money, and the lawyer's time! admirably exemplified by that entertaining writer, in the production of a single covenant of proportionable verbosity, in his *Tristram Shandy*, containing about a thousand words; and then summing up the idea expressed, "in three words, my mother was to lay-in, if she chose it, in London;" Sir RICHARD STEELE, in his *Tatler*, proposes a penal cure for this verbal *dyarrhea*; "If any lawyer is above two days in drawing a marriage settlement, or uses more words in it than one skin of parchment will contain, or takes above five pounds for drawing it, let him be thrown over the Bar."

But the information obtained in a Conveyancer's office, does not rest in words alone; the *black letter of the law*, must be called to the aid of the Student, during his attendance on the course of practice which passes through this office; COKE LITTLETON must be turned over; the more abstruse learning of TITLES must be explored; the feudal system should be understood, together with the different modifications and changes
it

it underwent ; the rights of the copyholder and his lord ; the rule of descents ; the origin of uses ; the doctrine of executory devises ; with many other topics, which will, as soon as understood, prove, that conveyancing relies not for its support on *verbosity* alone ; all this fund of knowledge should in fact be amassed by him who attends either to the *pleadings in Common Law, or Equity* ; but it is more particularly appropriate to the *Conveyancer*.



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BARRISTER.

NUMBER XIX.

THIS *waste of words* in the several offices which has been alluded to; this beating of sentences on the anvil of a goldsmith; this infinite divisibility of a single idea, cannot be defended; *partial* as the *Barrister* may be to his profession, *highly* as he may esteem it, or however *strongly* he may be *embued* with a *regimental esprit de Corps,*

Corps, the profession shall not on this head be defended by him. *Cui bono* this mass of words? Whose is the profit? Do those who preside in our Courts of Law and Equity gain by it? No. Do the parties, the plaintiff, or defendant? No. They obtain not *substantial justice* from *useless words*, but they *pay dearly* for them; the Draughtsman, or Pleader, gains somewhat, about three shillings for above a thousand words; dog-cheap at such a price they certainly are; if, at the same time, they be *necessary*; the Attorney, or Solicitor, gains more by them; as they may have occasion to copy, recopy, and abbreviate the pleadings, and are paid at a higher rate; but the *Revenue* gains most of all by the stamp duties on pleadings in the Courts of Law and Equity; which are now two shillings and sixpence for every skin containing a thousand and eighty words, besides the duty on all copies of these proceedings.

If it be true, that for every *half-crown*, which the revenue thus receives for the stamp-duty on law and equity proceedings, forty shillings are drawn from the pocket of each suitor; and although this may be conceived as a random statement, it is sufficiently near the fact, to warrant the conclusion

clusion which follows from it; even those who foolishly imagine, that revenue is the principal end of Government, dare not argue; because they cannot; that this verbosity in our pleadings, and conveyances ought to be encouraged for the advantage of the revenue, at such a vast expence to the public; should it then for the benefit of the Practisers or Pleadors? Surely not: and, in fact, it is not for their advantage; this enormous expence of law absolutely deters people from contesting their rights—they had rather submit to the *lesser ill* than undergo the greater; that object being by no means trifling, the loss or acquisition of which will indemnify the parties their expence of contesting the matter at law, or equity; this *mountain of words*, therefore, overwhelms the interest of those who make use of them; and the number of suitors in Westminster-Hall are and will always remain, *inversely as the expence*. The Barrister cannot have any interest in this verbosity of pleading, unless *the fee* bears a proportion with the brief of the pleadings, which it ought not to do, but with the importance of the cause, and the portion of his time which it may occupy: *the Bench* cannot have any interest in length of pleading, or profusion of words; as far as they are concerned, *their desire of*

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proper

proper dispatch, and their natural wish for leisure, demand all possible compression of matter—their interests and their wishes must coincide in this respect with the suitors; to *them* therefore, and to *them alone*, we must look for redress—the *dignity* of their situation, *their precedency* in the Courts, enables them to rescue their fellow-subjects from this crying evil; no other description of men can, with such readiness and propriety, cleanse the *Augean Stable* of this unnecessary fodder; and to *them* it is no *Herculean labour*; if *they* do not undertake it, the evil will continue, and will increase; if they speak but the *fat*, millions of useless words will vanish; our pleadings and conveyances will be terse, sensible, and to the point; the profession will find themselves disencumbered of a *plethora* of words, which threatens suffocation to them, while it certainly brings with it a *cruminal atrophy* to all their clients; the spirit of law and equity, being freed of a load of rubbish will revive, and England will be renowned to all nations, not only for its impartial administration of justice, for which it now stands high in the opinion of the world, when *once* the cause is brought *before the Judge*; but also for the ease and good sense attending its progress to that period: in short, the
Court

Court will abound with suitors, their proceedings will be respected, their judgments revered—the only deficiency will be *in words, in useless words, and nothing else.*

Before the topic is closed, some notice shall be taken of the *glorious* uncertainty of the Law, as it is *ironically* called, together with its concomitant *dilatatoriness*. To the complaint of its uncertainty, the answer is obvious.

So innumerable are the causes of contest, while each individual case turns on its own hinge; that maxims or principles of law, forming general rules, can very seldom be adapted, so as to fit at all points each particular case; were *general principles*, therefore applied to *individual cases*, our Courts of Justice would resemble the bed of PROCRUSTES, on which Plaintiffs and Defendants being indiscriminately cast, by cutting one and stretching another, until they were made to fit the general rule, their determinations would be equally unjust to their suitors, as the conduct of that noted robber was inhuman to those who fell in his way. It is almost impossible to find a similar case already determined, among the Reports in the Books, full in point, and exactly fitting the one before the Court; one might

might as soon expect to find, in real life, two AMPHITRYONS, and two SOSIAS. Each case moving, as it were, on a *fulcrum* of its own, it is not easy to say, until the matter is thoroughly investigated as to fact, and those facts applied to legal reason, how the event may turn out. To expect, therefore, *certainty of the issue*, anterior to the *combat*, is folly; and to declaim against a human system, because it is not endued with powers above human nature, is vain. The law acknowledges the maxim—*Certum est quod certum reddi potest*—and it is equally applicable to all events in human life—*What is, is certain*; what *may* happen, is equally uncertain as the event of a law-suit. Besides, if the complaint ever had any just foundation, it certainly has less now than formerly, when, according to the legal precision laid down as necessary in pleadings, by the old books—*qui cadit a syllaba, cadit a tota causa*—this would indeed be a hardship in *these days*, when our pleadings abound in so many useless syllables; but thanks to the light of philosophy, and the liberal sentiments of the profession, this black-letter maxim is now entirely scouted; and JOHN DOB will recover of RICHARD ROE the premises in question, although the pleader may, by a blunder,

blunder, have stated in the declaration the *sufter* before the *entry*.

With respect to the *Law's delay*, so feelingly adverted to by our immortal SHAKESPEAR, in his character of *Hamlet*, as an incitement to, and an apology for suicide, which the wit of man cannot, and if it could, ought not to palliate—a Chancery suit instituted in the last century, a few years after the Revolution, in which an interlocutory judgment was obtained, in the House of Lords, about the year 1773 or 74, being such an instance of procrastination, as confounds our *credulity* at first, and our *reason* afterwards. An Impeachment now moving, though scarce progressive, before the House of Lords, in the fourth year of its continuation, giving an instance of delay in a criminal prosecution, which renders *delusive* that memorable sentence in Magna Charta, *Nulli differemus Justitiam, vel rectum*. Where the blame rests in the first instance, it is difficult to say; in the second, it may with truth be averred, that it rests not with the Laws, nor with the Profession. Instances of *lesser* note, may be often traced into the *Practiser's Office*; seldom can the *Bar* be charged with them; the

the Judges never, unless in cases requiring further investigation.

It is true, many reasons are very gravely detailed by FORTESCUE, as an answer to his Pupil the PRINCE, who had objected to the Laws of England; that they admitted of delays in the course of their proceedings, beyond what the laws of any other country allow of; which not only obstruct justice, but are often an insupportable expence to the parties who are at law. Among other arguments, the Chief Justice roundly asserts, that delays in legal proceedings are necessary, that *judgment is never so safe when the process is hurried on, and that deliberation brings judgment to maturity*; therefore the Laws of England allow of *Essoins and Imparlances*, provided they be not *frivolous and vexatious*; and concludes, after a comparison of the Law's delay *here*, with the same complaint *in France* and other countries; that we are more expeditious than our neighbours; and that, from what he has advanced, the Laws of England must be very good, *either in fact, or in possibility*. This conclusion of his argument being but in the *disjunctive*, is fair; they are good in *possibility*, but that they are so *in fact*, or, at least, that the *delay* attending the Courts which

which administer them is so—the instances which have been mentioned, and others which might be alluded to, must be first excepted, before the assertion can be admitted in its full extent: that such delays are indefensible, we must all acknowledge; as we must also that, *wherever* the mischief lies, *there* should the remedy be applied; it is a foul gangrenous sore, which may contaminate the mass of our boasted Constitution, and should be eradicated, while it remains in any limb of the profession, even by amputation.—

—————Immedicabile Vulnus
 Ense recidendum, ne pars sincera trahatur.

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NUMBER XX

All is believed, and it is not the
to avoid, but to avoid, the course of
Fidelity, and Government, and receive
from their pupils, and not to their
dead business, for business, that there
places in their regard, and there
are some who, in the end, of the
young lawyers, and there is a section
for



THE
BARRISTER.

NUMBER XX.

CAN it be believed, that among the Pleaders, Draftsmen in the Courts of Equity, and Conveyancers, who receive from their pupils from one to three hundred guineas, for permitting their attendances in their respective offices; there are some who whisper in the ears of the young Lawyers, that there is no occasion for

for them to be proficient in the *Theory* of their profession? who hint to them you need not read;

Books are but formal dulness, tedious friends;

In *precedents* and *præctice* alone, rests all the knowledge you need acquire of the profession, to make your fortune by it; the knowledge of the *elements* of law is unnecessary; the labour is long, and may be avoided: to such insinuations an answer should be given, if they may be conceived to deserve an answer, in the words of CICERO; *tamen et tardi ingenii est, rivulos contsectari, fontes rerum non videre*. If there are any who will give such *counsel* to their *pupils*, the *opinions* they give their *clients*, must indeed be curious; and the assistance the *suitors* in the Courts receive from this union of their abilities, learning, and eloquence, must be such as no *fee* can be equal to the purchase of; because any *quiddam honorarium* must be infinitely greater than their merits; if there are men in the profession who have seriously formed this opinion, the BARRISTER does not address himself to them; but to their *pupils*; to shake ideas which are formed from an union of *selfishness* with *ignorance*, is a difficult task; to prevent

prevent such ideas taking root in *liberal minds*, is equally easy.

To *such* it will only be necessary to hint, that the business which is obtained by habits of intimacy and familiarity with the practisers, is not a whit more *permanent* than it is *honourable*; that the many instances which might be enumerated, of Gentlemen who have, they *know not how*, lost their clients, are instances which prove the instability of that business which arises from such desultory habits, and is not founded in a well established reputation for abilities and professional knowledge; friendships of this nature, are as mutable as they are selfish; when a client brings his brief, on any other motive than that which ought to actuate him, *the solid interest of his principal*; his steadiness cannot be depended on; he resembles the fickle Goddess, *nunc mihi nunc alii benignus*; and the fees which are thus received, can no more be estimated as a proof of established practice, than can a prize in the lottery, as an earnest of the stability of fortune; besides this kind of practice reverses the situations of the profession; the *Barrister* becomes the humble servant of the *Attorney*, whereas they stand with respect to each other in a natural situation,

tion, directly the reverse, the one is *quoad hoc* the *servant* of his principal; the other is the patron of his Client; the abilities, legal knowledge, and eloquence of the *Bar-rister*, are engaged by the *Attorney*, at the price of an honourable fee; to instruct him in the means, and assist him at the Bar of Justice, to bring the case of his principal in the best manner, that an union of abilities, wisdom, eloquence, and integrity can devise; before those who, by the constitution of the country, are appointed to determine matters respecting the property, the liberty, the life of the suitor. But if we suffer the present dishonourable mode of acquiring fees to gain ground, (for I cannot call an accumulation of them thus obtained, the business of the profession,) the Bar will become retrograde in its dignity; and the practisers will soon expect the professors to take upon themselves that ignoble office which some pettyfogging Attornies have been charged with.

One cetero viros, calamoque accendere litem.

There is a delicacy in this subject, which forbids treating it with those probing instruments, that by searching foul wounds to the bottom, lay a foundation for a cure; although

although the *fact* is, that some of the Bar open their way to business in a manner which does not become the man of a liberal mind; they retain, nevertheless, such a consciousness of what is right, that they would shrink from any hint which might be given them, in the words of NATHAN, "thou art the man;" and do not willingly put on the cap of self-accusation, however well it may fit them. It shall only be suggested to these Gentlemen, what probably they have already found to be true, from vexatious experience; *that they have begun at the wrong end*; that it is a certain truth, all *interested friendships* are as *fallacious*, as the *incitements* to them are *sycophantic*; that the pride of a man, whose acquaintance is sought from selfish views, soon takes the alarm, when the interests of him who makes the first advances, appear to have lulled asleep the finer sentiments of the Gentleman; this gives birth to mutual distrust, followed by coolness, ended in disgust. The practiser, who brings fees to a Barrister of no abilities or application, confers a favour on him at the expence of his client, and naturally expects some return, at the least *obsequiousness*; this is, of all things, what is paid with the greatest reluctance. Honour and true politeness know not how to do it; meanness

meannefs only can expect it, and a character where that grovelling principle predominates, can alone pay it: connections, therefore, thus formed refemble a rope of fand—touch it ever fo tenderly, it falls to pieces; if the wholefome gale breathes on it, it is difipated.

Befides, it is hard on thofe in whole education large fums have been expended; who, with the learning of the Scholar and found Lawyer, bring to the Bar rectitude of principle, and the honour of the Gentleman; it is a grating circumftance to fuch, when they find the avenues to bufinefs, difhonourably pre-occupied; when they perceive, that to become eminent, they muft begin by *meannefs*: to be great they muft be little: It is difcouraging alfo, to classic minds, when they fee, at the Englifh Bar, the *Patron* and *Client* have changed places. We have not as yet heard of any eminent Attorney, who has grown rich from *Legacies* of the Gentlemen to whom they gave their bufinefs at the Bar; but it is impoffible to fay what *another age* may produce; for fome do not wait *now-a-days* for dead men's fhoes, but partake of the profits of the profefion during the life of the patrons; as instances may be produced, where briefs have

have been obtained by a division of the fee with the practiser; the Barrister who condescends to such a participation, can surely set up no defence for his conduct, except the adage, *Half a Loaf is better than no Bread.*

If young ambition must plume its wings for higher flights in the nest of lowliness, let it pay attention to *professional eminence*; let it be on the spot, and ever ready to assist those, whose universality of business is their apology for leaving the more common matters to be taken care of by friends, who have not yet emerged to eminence. Briefs thus obtained, are an earnest of future fame. The Barrister who holds them, while his friend is obliged to attend matters of greater importance elsewhere, holds in his hands what does him credit; it resembles the best praise—*laudari laudate viro*, it is at least *employment by him* who is thought *worthy to be employed.*

These strictures on this delicate subject have been suggested to the mind of the *Writer*, by the same principle, as some other unwelcome truths he has disclosed, a knowledge that such things are, and an ardent wish to impress

impress this truth, that such things *ought not to be.*

The Elementary part of the profession must be intimately understood; the Theory of law must be studied, or the practice of it will always remain desultory, and uncertain; it is not enough to our Student that he is enabled to go through, as it were by rote, the daily practice of the Bar; the principles on which that practice proceeds, should be known, the elements must be analyzed, that their nice connections, and dependencies may be seen; it is not enough, that a *Lawyer* should be able to say, *this is Law*; but he should also see, and be able to explain clearly, *why it is law*: that man would be held a contemptible Mathematician, who should assert, although true, that two angles of a triangle, however taken, are less than two right angles; and not be able to prove it.

To lay down a course of study in the law was once a difficult undertaking; *Abridgments* and *Digests* are only so many Dictionaries, to be applied to by the Student; but they do not point out the course of his studies; *Wood's Institutes* did somewhat towards reducing this chaos to general order; but

but BLACKSTONE in fact brought darkness to light; until that excellent book appeared, it was difficult to see the way through such loads of black lettered lore, as were required to be turned over; COKE's Institutes which contain a vast treasury of law, without order or connection, was the first book put into the Student's hands; the quaintness of the phrases, the blackness of the letter, the want of connection in the topics, drove many a Student from Law to Poetry, as it did RANGER, in Dr. HOADLEY's *Suspicious Husband*, from COKE to CONGREVE. BLACKSTONE's Commentaries contain method as well as law, sound sense, mixed with legal and constitutional sentiments, delivered in an easy flow of language, with the politeness of a gentleman.

It has been said, that a certain learned Serjeant, deservedly famous for the black lettered lore, has asserted, that almost every page in these Commentaries, contains somewhat, which is *not law*; that the proof of this position was in his power; although having been an intimate of the late worthy Judge, it was not in his inclination. It is hoped, and believed, that the learned Serjeant never made such an assertion, or at least not in such unqualified terms, because it is imagined,

gined, that as every point of law, laid down by BLACKSTONE, is founded on authorities, to which, at the bottom of each page, he refers; if those references are exact, what is laid down as law, takes its weight from the *writers* and *authorities* referred to, and not from the *dictum* of the *Commentator*; and that those references are generally exact, the writer of this tract can venture to assert, because having entered on the study of the law, at the time these Commentaries were first published, in separate volumes, he took the pains, in the course of his reading them, as they were published, to examine, as far as his library enabled him, each reference, and mark them in his copy when found; this he did, to be certain that the ground-work of his studies was well founded, and to fix in his mind the substance of what he read.

To recommend as a kind of Polar Star, a book liable to such a criticism, would be unpardonable; the *Barrister* therefore, thought it a duty incumbent on him, to mention the report, that such an assertion had been made, together with the reasons for his disbelief in the extent of that assertion; and by no means to call in question the profound knowledge of the very respectable character he alludes to;

to ; if our confidence in these Commentaries is weakened, darkness in the elements of the profession has again overwhelmed us, and we are at sea without a pilot to be depended on.

Permission must therefore be assumed, to recommend BLACKSTONE'S Commentaries, as the *first* and *best book* to be put into the hands of the Student ; let him consider it as an Academy figure, in the possession of a young Painter, where every contour and outline, is strongly, and with anatomical exactness marked ; and it is his business by lights and shade, by tints and colours, to finish it to a natural and beautiful representation of the human figure.

To effect this, a copy of BLACKSTONE very fully interleaved with blank paper in quarto, should be obtained ; the marginal references to the authorities should be examined, the books referred to, be consulted ; notes should be entered of errors, if any be found, together with what additional ideas may be collected on the subject, which the writer of a compendium only might think it unnecessary to insert. The topic should not even then be considered as finished, but subsequent notices should be
inserted,

inserted, as future reading, observation and practice, may tend to render the knowledge of the law, on each head, more full, or present determinations in any wise alter the doctrine laid down by precedents of past times: by such or similar means, *Blackstone's Commentaries* may become the corner-stone of a Common Place Book; vastly superior in method, to the alphabetical order of a Dictionary, full as easily referred to; displaying in systematic regularity, the theory, the ancient practice, and modern deviations, if any, on every topic of law.

A good Law Library is absolutely necessary to such a plan of study; and indeed no science can be fully and clearly investigated, unless the books which have been written on the subject, are in a manner within the reach of the Student. If he is obliged to cross Fleet-street from the Temple, to BROOKE'S; or the Strand from Lincoln's Inn to CADELL'S, when he wishes to consult an authority; his legal ideas will run a risk of being dissipated by the bustle of the streets; and those of pleasure succeeding, the topic of law will be postponed until the return of cool reason. What books constitute a good law library, is a subject which shall not be minutely entered on, because

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the nature of these fugitive strictures will not admit a recapitulation of the greater part of Mr. BROOKE'S Catalogue, together with an enumeration of the useful editions of books in ancient and modern languages, philosophy, history, poetry, and all those liberal disquisitions, which form together the library of the Scholar and Gentleman; for they are all equally connected with one another, *communi quodam vinculo*, as they are with the profession of the law. The Student is requested to consider a good Law Library as the Farmer does his *live and dead stock in trade*; as the Carpenter his chest of tools; or the Weaver his looms: they are the implements with which he is to work, and which if he be obliged, when he wants their use, to borrow or hire, he will find no small portion of his most useful time will be spent in the pursuit of what he ought to have at hand.

At what expence an useful library may be collected, is no easy matter to determine; but it is suggested, that in the close of an education, which must, if taken from the earliest school days, have cost many hundreds, possibly some thousands of pounds; three or four hundred pounds expended on a good collection of books, which are a
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stock in trade absolutely necessary to the Lawyer, and equally creditable as necessary, cannot be estimated, even if he should soon retire from business, as money thrown away. His books will retire as faithful friends into the country with him, or, if the editions are well chosen, may produce nearly their prime cost.

Many great writers of antiquity, to whose genius after the lapse of thousands of years, we still look up with respect and veneration, have expressed similar sentiments; and some of them we know, with certainty, to have laboured under the symptoms of extreme diffidence, and to have been remarkable for the "*multum sanguinis, multum verecundiae, multum sollicitudinis in ore.*" CICERO, speaking in the character of CRASSUS, says to his auditors; I often perceive *you*, and often find *myself* grow pale, and tremble in voice and every limb, as I begin to speak; when I was young at the Bar, I was so confused and faint in opening an Impeachment, that QUINTUS MAXIMUS laid me under an infinite obligation, by dismissing the Court as soon as he saw me totally debilitated, and half dead for fear. There is an astonishing coincidence in circumstance of genius in all ages, and in all countries; the late Lord ASHBURTON, better known to the Bar by the name of DUNNINE, was in a similar predicament, the first brief he opened in the House of Commons, so totally had fear, or extreme diffidence, overpowered his faculties and confused his ideas, that he conceived himself to hold in his hand *not his brief*, but *a roll of white paper*, caught up by mistake, and under that impression was obliged

obliged to retire from the Bar of the House; these finer affections of the nerves, when operating on minds in unison with them, have driven many a young Lawyer from the tumult of the world, and the blaze of public life, into the gloom of solitude and retirement: but it had not this effect on Mr. DUNNING; he returned to the charge, and crowded as much honourable advancement into the compass of a life not long, as the most ambitious mind could reasonably expect; he exhibited, indeed, a remarkable proof, that the force of genius, united with perseverance, will overcome *all* difficulties.

Although it is allowed, that this modesty or diffidence, is frequently allied to great abilities; and is by some esteemed symptomatic of them; yet the excess of it must by some means be got rid of; or it will weigh down the spirits, clog the faculties of the mind, and render the animal oecomy totally unfit for the discharge of professional duties.

Excess of this malady is seated in the nerves; or in other words, if, in the nervous system, there is not a predisposing cause; apprehensions floating in the mind, will not have so serious an effect; here,

therefore, the patient must advise with his physicians; but as far as the mind is concerned, he may best administer unto himself; the remainder of this paper shall be devoted to assist him in the attempt.

Two conceptions of one's abilities, diametrically opposite to each other, produce this effect in different minds; the one has its foundation in too humble an opinion of our faculties; the other in too high a conceit of one's own importance; the one absolutely sinks under a false conception of the weight and importance of the business to be undertaken, in comparison of our powers to perform it; the other fancies the listening multitude to be as much impressed with an high opinion of the abilities of the person about to address them, as he himself is; and feels tremblingly alive all over, lest he should not answer the imagined excess of their expectation. To the *humble* mind the advice of Lord CHESTERFIELD to his son, may properly be given: "To govern mankind, we must not over-rate them; and to please an audience as a speaker, one must not over-value it. When I first came into the House of Commons, I respected that assembly as a venerable one, and felt a certain awe upon me; but upon better acquaintance,

quaintance, that awe soon vanished, and I discovered that of the *five hundred and sixty*, not above *thirty* could understand reason, and that all the rest were *people*; that those thirty only required plain common sense, dressed up in good language, and that all the others only required flowing and harmonious periods, whether they conveyed any meaning or not: having ears to hear, but not sense enough to judge. These considerations made me speak with little concern the *first* time, with less the *second*, and with none at all the *third*." If this idea, his Lordship attempts to impress on the mind of Mr. STANHOPE, will bear any application to that respectable assembly; how much stronger may it apply to all *Courts of Justice*; and how proper may it be to inculcate on the humble mind a higher idea of its own abilities, when placed in comparison with those of its auditors; which is done as well by raising the conceptions of the one, as by diminishing the importance of the other.

To him whose bashfulness arises from too high an opinion of his own importance, Dr. Johnson addresses his wife and moral precepts: "He that imagines an Assembly filled with his merit, panting with expectation, and hushed with attention, easily ter-
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rifies himself with the dread of disappointing them, and strains his imagination in pursuit of something which will vindicate the veracity of Fame, and shew that his reputation was not gained by chance. He considers, that what he shall say or do will never be forgotten—that renown or infamy is suspended upon every syllable—and that nothing ought to fall from him which will not bear the test of time. Under such solicitude, who can wonder that the mind is overwhelmed, and by struggling with attempts above her strength, quickly sinks into languishment and despondency.

“ Those who are thus oppressed by their *own* reputation, will, perhaps, not be comforted by hearing, that their cares are unnecessary. But the truth is, that no man is much regarded by the rest of the world. He that considers how little he dwells upon the condition of *others*, will learn how little the attention of *others* is attracted by *himself*. While we see multitudes passing before us, of whom, perhaps, not one appears to deserve our notice, or excite our sympathy, we should remember, that we, likewise, are lost in the *same throng*—that the eye which happens to glance upon *us*, is turned in a moment on *him* who follows us—and that the utmost which we can reasonably hope

hope or fear, is to fill a vacant hour with prattle, and to be forgotten."

Thus much for the theory of diffidence and bashfulness, both which are attended with the same debilitating effects on the attempts of the Candidate for fame—but may, with propriety, take the name of either, as the cause may arise from humility, or from an over-weaning conceit of abilities and self-importance; *diffidence* being always allied with merit; bashfulness is false modesty, or a vicious species of shame.

But habit will often regulate that derangement of the nerves, which many suffer from, whether it may be constitutional or accidental; that mind which takes *serious alarms* from *trifles*, may, by use, be brought to consider the most *alarming dangers* as *trifles*. The raw recruit, who at *first*, flinches when he hears the report of his own musket, habit will in time accustom to see, with indifference, his comrades dropping on every side of him, in the field of battle; and to march with coolness to the mouth of the enemy's battery. A public school is to the future Lawyer, what the drill is to the recruit—declamation and public exercises are the reviews and field-days, which steel the nerves for

for the shock of battle. Disputations, mootings, arguments, *politely*, yet *spiritedly* managed, in mixed companies, are the sham fights, which habituate ingenuous diffidence to bear the charge of the serious onset; and inure the mind to habits of collected coolness, in scenes of actual difficulty.

Public Schools, followed by the discipline of the University, stand, therefore, strongly recommended to our reason on every consideration; not only as incitements to emulation, but as corroborants of the intellectual faculties, so intimately connected with the nerves. The Metropolis will give the Student in the Inns of Court frequent opportunities of keeping in practice this habit of public argumentation, possibly in assemblies, not quite so *reputable* to the feelings of the Gentleman, as *necessary* to the future fame of the Barrister.

Clubs, which in a *neighbouring Nation* have been made use of, for purposes that their original institution and etymologic definition never comprehended, may be mentioned among the means of acquiring a habit of speaking the sentiments which may arise in the mind, with ease and good language. It is believed that some, at all times,

times, may be found frequented by the profession, where subjects of *Literature* and *Law* are canvassed with freedom and politeness; where the charms of the bottle are no farther courted, than to unlock the reserved breast, or set at liberty the diffident tongue. In such societies, young men, who have received a liberal education, learn to discuss topics with each other, on which they would be silent in more formal companies; and when once the tongue finds itself at ease before an assembly of men well educated, it will not tremble when it speaks before the multitude.

There are also characters, who act from impressions diametrically opposite to this—*modesty of fearful duty*; in whose vocabulary, *dashing* is substituted for *diffidence*; who rush at once on all topics, and before all assemblies *in medias res*; armed with no lance but impudence, and shielded by no panoply but ignorance. It is from such you hear the rattling tongue of saucy and audacious language; it is by such the Bar is disgraced; they are the pestilential vapours of the profession, the low-born mists of the law that disappear in the presence of the noon-day sun of real knowledge. Such characters conceive themselves *superior to*

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advice, when in fact they are *beneath notice*; to such, therefore, these Essays are not addressed; because they are intended to convey serious advice, through a channel totally different from that of satiric invective.



THE
BARRISTER.

NUMBER XXII.

THE opportunities which offer to a young Barrister for a display of his abilities, his eloquence, or his professional knowledge, at his first call to the Bar, are as few in number as they are trifling in their importance; yet even in this very *Coup d'Essai* of his professional career, some hints may be given, which, if attended to, will

will increase his growing credit with the profession, and throw an appearance of attention over that *little* with which he is intrusted.

In the Courts at Westminster, Lincoln's Inn, the Rolls, and Serjeant's Inn, his business will first lie in opening the pleadings, motions of course, special motions, urging exceptions to answers in equity, or defending the answers, together with other *ore tenus* altercations, not of the first importance; some of which, when in open Court, will not be entrusted to him alone, but more experienced Counsel will lead him: there are also other of the less important duties of the profession, which will be committed to him on his first emerging from the office of the Pleader; and putting on the gown of the Barrister; but the recapitulation of them might be thought equally nugatory, as unnecessary.

One general rule from our excellent and eloquent Monitor, CICERO, shall be given him in the words of the Author—
 “*Hoc ei primum præcipiemus, Quascumque causas erit acturus, ut eas diligenter penitusque cognoscat.*” Other observations shall
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be made, as each different topic is more particularly glanced at in detail.

Although in opening pleadings, it may be thought, that if the merits of the case are in the least alluded to by the junior Counsel, he takes on himself somewhat of the duty of his seniors; yet surely the bare recapitulation of the progress the Pleaders may have made, is not the whole that is expected from *him*, who receives an honourable fee with his brief; but some assistance should the cause receive, as well as his own reputation, from this public display of his professional knowledge.

A terse and laconic statement of the leading facts, which appear in the pleadings, is what he should aim at; he should be *brief*, but *clear*; should recapitulate *all* that is necessary, and *no more*; *compression* should be his object, not *amplification*; here the style of TACITUS should be his model, not that of TULLY.

In *Motions of Course*, the first care is to be on guard, that you are not induced to ask for what is *not of course*—the Court sometimes takes offence when improper requests are made, as motions of course; con-
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ceiving the Counsel intended to take the Court by surprise, whereas, in fact, the *Client* has taken the Counsel by surprize: sometimes questions respecting the cause, from whence the motion originates, are asked the Counsel—ignorance how to answer such questions, is no inconsiderable disgrace.

Special motions are not frequently trusted to inexperienced individuals alone; therefore a junior Barrister follows his more learned leaders in the support of, or in opposition to them.—An intimate knowledge of the pleadings will frequently enable him to hit a blot, which his seniors have passed over; but it is peculiarly essential to him, that he is acquainted with every thing that can be said in support of his brief, because his office is to *glean the field*—in which, if he can pick up nothing, he will either be reduced to silence, which does not become *him* who has received a fee for speaking, or to a recapitulation of what has been advanced, most likely in a better manner; which is worse, because it takes up time to no good purpose.

The pleadings both in law and equity, particularly of the last, frequently take the
Counsel

Counsel out of his office, to an *ore tenus* altercation before the Judges, at their Chambers, the Masters in Chancery, and those different inferior Judges in our Courts, who give interlocutory Judgment on matters branching out of the principal question *pendente lite*. In all attendances of this nature, not only a knowledge of the matter in question should go with the Barrister, but a desire of victory, let the subject-matter in contest be ever so trifling: the wisest men have asserted, that in general, victory and not truth, is the object in all argumentative contests, whether carried on in private from the Study, in public among listening multitudes, or at our social boards. How much more does the observation apply, where the fee occasions this principle, which has pride for its basis, to become our duty; but although we owe it to our client to be *fortiter in re*, we should take care to preserve our own comfort and reputation, by adhering to the *suaviter in modo*.

Our Courts of *Nisi Prius*, and Criminal Jurisdiction, give other opportunities to the rising Lawyers of the age—it is the office of the Junior Counsel to open the pleadings, and examine the witnesses in his turn; the first part of his office is calculated to do
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more for his rising reputation than is generally attended to: the observations already made, with respect to opening pleadings in the Courts above, will, with equal propriety, apply to this point; a little more attention to the *grace* of a concise statement of the Case would not bring a junior too forward into the business of his seniors—if a man has occasion to say but *little*, he surely ought to say that *little, well*.

An examination of *viva voce* evidence, is perhaps one of the most difficult branches in the multifarious employments of a Barrister; more causes are lost by failing in this part of the duties of the profession, and more are got by excelling in it, than will probably at first sight, meet with our belief.—In all trials by Jury, it is infinitely more conducive to victory—that the witnesses are wisely, cautiously, and astutely examined, than that a fine speech be made to the Jury; because, after the address to their passions or prejudices, has had its full effect, the Judge sums up from his Note Book, in a plain and distinct manner, the evidence before the Court, and the Jury are bound by a solemn oath to give a true verdict according to the evidence. Here, therefore, the practice of the Bar trusts full enough, if

if not too much, to the inexperience of youth; although it may be said, that the more experienced are on the spot, to check any improper, or suggest any material question; but the reputation of rising ambition is somewhat sullied, if such an interference be necessary; that it may not, it is advisable, the law of evidence be thoroughly and intimately understood in theory; and that, by an attendance at trials, *Nisi Prius*, and in the Crown Courts, the Counsel has, before he puts himself in a situation of being trusted, well fixed in his mind the coincidence of the theory with the practice. BARON GILBERT'S Law of Evidence still remains the best treatise on this important topic; and the chapter in QUINTILIAN, *De Testibus*, will give some excellent hints on the practice.

With respect to the Courts in which a knowledge of Crown Law is essential, they are of some variety, and infinite importance, exhibiting a kind of climax from the office of the Sitting Magistrates of the Police in the Metropolis, leading through Hicks's-hall and the Old Bailey, to the King's Bench and the House of Lords; how long the *Gens togata* has condescended to attend the office of Sitting Magistrates, cannot be asserted.

asserted with precision; but it is supposed to be of modern practice, possibly commencing and gaining ground as a liberal education became less necessary to success at the Bar; neither is it clear, what good they can do there; the *Habeas Corpus Act* being the best defence of the subject against any improper commitments; *that* restoring them immediately to their liberty; while the Court of King's Bench is open to any information against the Magistrates, for wilful default in the discharge of their duty; and an action for false imprisonment will give the individual compensation for the injury he may have sustained.

But few Gentlemen of the profession chuse to make their *debut* at Hicks's-hall, or the Old Bailey; it is possible they may fancy there is something *ominous* in commencing their career in those Courts; however necessary for the safety of society it may be, that there should be found Counsel to lead the prosecution; or for the defence of the prisoner's life, liberty, and reputation, that Gentlemen of the profession astute in all the law, and chicanery of the Criminal Courts, should be willing to accept a fee, and undertake his defence; yet it is not to be supposed, that a Barrister, just emerged

emerged from a Pleader's office, should be chosen for this purpose; and if chosen, it would better become him to decline the brief, unless he determines to confine his future business to what is called Old Bailey practice; by which, although it must be confessed, that many Gentlemen have acquired large incomes, with more credit to themselves, than the general reputation of the practice there would urge us to suppose; yet, on the whole, the Crown Courts are not the cleanest to sit down in; as it is morally impossible, but that somewhat of the dirt and pollution which so closely adhere to those wretches, who are the objects of prosecution at the Old Bailey, must infect those also, who by their counsel, and assistance at the Bar of that Tribunal, are the means of these marauders mixing again in society, with all their imperfections on their head.

The Crown Court, on the Circuit, will introduce the Barrister to a sufficient degree of Practice in this branch of the profession, for his appearance with reputation in the higher Courts, to which, in criminal cases, an appeal lies; and more knowledge in the subtleties of Crown Law than what may be necessary to this effect, an ingenuous mind will not be ambitious of acquiring.

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The sacred principles of the constitution, have established such a bulwark round the liberty, property, and life, of all the happy subjects of the British Empire, as might almost induce one to assert, that Counsel to defend them, when called in question on account of a supposed crime, is a super-abundant caution: The Grand Jury of the County, after having heard the witnesses on oath, who can swear to any circumstance, with respect to the crime specified in the indictment, that may affect the accused; must agree to find the indictment a true bill before he can be put on his trial, during which trial the Judge is *ex officio* his Counsel, and the law presumes him innocent, until the Jury of his countrymen, who sit and hear all that can be alledged for and against him, by witnesses examined personally on oath before the Court, unanimously concur to find him guilty. - Is it probable, that innocence should be confounded with guilt, when it is defended by such a rampart? Is it not more probable, that the guilty should escape the punishment due to their crimes; when to all this cautionary procedure, the quirks and subtleties of law, together with the lucrative art of perplexing and confounding witnesses, are brought in aid of the culprit; it is by no means intended to assert, that Counsel for the prisoner

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is either unnecessary or improper ; but that so few cases occur, where *innocence* actually stands in need of such assistance ; that was the *moral sentiment* alone consulted, a knowledge of the Old Bailey practice would not be essential to the rising Barrister ; possibly ignorance of it might be thought equally conducive to his future fame, as to his present peace of mind—and

Where ignorance is bliss,
'Tis folly to be wise.

The system of our poor laws, which fundamentally and originally possesses every merit, that humanity, united with great wisdom, has a right to claim ; by adscititious acts of Parliament, altering and botching, what required only enforcing ; has become so voluminous a Code, as to require great application to understand, and vast expence to carry into execution. This system is now a source of great profit to the profession, affording the Courts of Quarter Sessions and the King's Bench, considerable employment, and the profession a large revenue.

From this source, therefore the young Barrister has, at the Quarter Sessions, those opportunities for the display of his talents
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and professional knowledge, which an aspiring mind naturally pants for; but even here he will too often find the business pre-engaged, and must wait with patience for that employment which comes not but by favour; until a name is established, and merit has become conspicuous.



THE

BARRISTER.

NUMBER XXIII.

THERE remains a topic to be considered of some consequence to the future fame of the Student ; to descant on which, with the propriety the importance of the subject demands, requires a considerable share of science, taste, and judgment. The topic alluded to, is the Eloquence of the Bar.

Fugitive

Fugitive strictures, the memory of which may perish with the day, are only calculated to give the general outline, the skeleton, as it were, of the subject; were they to descend to particular directions, as applied to particular instances, it is much to be feared that the accidental eye of curiosity, which may run over a periodical print, would fastidiously be averted from a serious didactic treatise, which might better become the shelves of the library; and the writer, by attempting to instruct in form, would not be read at all. A kind of bird's eye view of Eloquence, is, therefore, the most proper for these papers, in which the Barrister is solicitous to remove from himself any imputation of conceit, by asserting, that he by no means considers himself as *ὄναρ καὶ σὺν ἑστέρι*; he disclaims every idea of instructing the instructed; and desires to be understood, as writing to the inexperienced.

In a country where such large revenues are raised by the profession of the law—where it is the high road to the first situations in the state—and men of good abilities, and great professional fame, are frequently called to the highest offices in society; it is amazing that the Eloquence of the Bar should be
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so little attended to. Except a MURRAY, or a WEDDERBURN, appears once in an age, to convince the World that Eloquence is not a *meteor* fallen never to rise again, we should have reason to believe its fire was extinguished with CICERO, and could not be rekindled, even by those immortal writings on the subject which fell from his pen. Very few of the many who have, through ages, talked on subjects of Law, in Westminster Hall, have been recorded, as speaking with the gift of Eloquence; very few who at this hour attend the Courts, can claim much merit, in a talent which is equally congenial with their proper education, as it is essential to their lasting fame.

But it has happened in the Law, just as it has in the other liberal professions—those, who by *merit* or *luck* have raised themselves to the heights of their respective vocations, cannot find time, or inclination, to instruct the World how others may attain those eminent situations.—Jealousy, lest others should, by such advice as they could give, become their rivals in reputation, surely cannot influence their conduct!—nor can we suppose them warped by the feelings of SHAKESPEAR'S ambitious climber—

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" Who when he once attains the utmost round,
 " He then unto the ladder turns his back,
 " Looks in the clouds, scorning the base degrees
 " By which he did ascend."

But so it is; we have no *writing Chancellor*, no *publishing Chief Justice*; from them we cannot learn the principles, although we may have heard the practice of eloquence; and the Barrister, if he possesses any share of the talent, so soon gets into full business, that he may very probably plead want of time: it remains, therefore, with those who have retired from the busy scene of life; who, should they understand the theory, certainly have not given proofs of the practice, that hints on this subject have any chance of being spread abroad, by means of the press, to minds thirsting for information.

A division of the subject into three heads, will be sufficient for the purpose of these strictures—*Method*, *Language*, and *Action*, shall constitute the principal topics; and the application of these to the several situations in which a Barrister may stand, as an advocate of his client, at the Bars of the different Courts of Justice; together with a few strictures on the style of Eloquence,

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which is more particularly appropriate to his situation as a Member of Parliament, shall conclude the subject.

The various applications to the Courts of Law and Equity, which arise from the practice, and do not involve any point or principle of Law, but respect only the *hodierna consuetudo fori*, shall be considered as of too trivial a nature to excite the eloquence of the Pleader, and be thrown out of the question. In all applications of this kind, these hints will suffice—that he preserves a clear order in his statement—that what he states be facts, well seconded by proofs—that he avoids amplification, and requests nothing more from the Court, than what the customary practice authorises.

In this particular part of the profession, the practisers are attempting to reverse the old, and to establish a new mode of doing business. It was formerly held, that the Attorney of a Court should know the practice of his Court—that this knowledge was directly in the line of his duty to his employer—that on the score of his skillfulness in practice, he was entitled to certain fees, which, if such knowledge was not necessary, might as well be earned by his

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bag-bearer as himself; but now the practiser is free to confess, he knows nothing of the matter, and brings his client's business to that Counsel who is best versed in the duty of the Attorney. A Barrister must, therefore, now descend to an intimate knowledge of the practice appropriate to his client:—this is new; and it is not the natural order of the Courts.

The CHANCELLOR, the MASTER of the ROLLS, the JUDGES on their different Benches, do not clog *their* memories with the practice of the Attornies in their different Courts; they refer for information in these matters to their respective officers, and sometimes, to a practiser of known merit and integrity, who may be present—*“De minimis non curat lex,”* is an old adage, and may be applied to the Judges, with equal propriety as to the law itself; and those who administer the law, as well as those whose office it is to explain the principles of it, are not expected to be versed in the chicanery of the practice; as such astuteness sometimes leads to conduct not strictly honest; so it is always beneath the dignity of the Bar; and this devolution of the duties of office arises, together with other improprieties, from the encouragement

ment given to *Attorney Barristers*, or *Bar Attornies*.

However this may be ; it is by no means recommended to the Barrister to be ignorant of the practice, as it is certainly the part of a good workman to know not only the use of all his tools, but also to be skilled in the knack of keeping them in order, and of using each of them to the greatest possible advantage ; besides it will give him a decided preference with the practisers.

There never was an eminent lawyer from whose pleading it was so difficult to take a good note, as the late CHARLES YORKE ; he possessed an unbounded fluency of words, which generally led him into unnecessary amplification, and his arguments did not always possess method ;—*lucidus ordo* was rarely the merit of his eloquence ; the attention was jaded by a verbosity, which might have suited a *Draftsman's* office, for there it would have been reduced into method ; but being applied to the ear only, confused the memory, instead of instructing the mind—But how different was the clear, the well adapted language of the present Lord LOUGHBOROUGH—a desire to amplify, never led him to involve himself in words ;
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at the same time, perspicuous method gave such a clue to the attention of those who heard him, that the principles on which he reasoned, as well as his application of them, remained fixed in the memory, or clearly recorded in the Note Books of his auditors. This Nobleman has produced to our observation, a remarkable instance of what an union of ability with industry may effect in the profession: they have placed a man, born and educated in *North Britain*, at the head of *English eloquence*; and have raised an advocate, unsuccessful at the *Scotch Bar*, to the rank of an *English Nobleman*, and made him Chief of the most ancient and respectable *Common Law Court* in the kingdom.

A clear arrangement of the parts of a special argument, is essential to its being clearly understood; and that the principles attempted to be enforced, may be established in the minds of those whose office it is to determine; it is necessary they should be understood, unless they will not bear examination; therefore, when the case is well founded, method is necessary to insure success.

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But it should be also in the mind of the speaker, that *his* duty is not only to explain what the law is, but also to enforce that interpretation of it, which bears most favourably, towards the interests of his Client—this is more emphatically *his* duty; while it remains with the Court to take care, that *his* ingenuity does not wrest from *them* a determination not warranted by law.

The arrangement, therefore, of the argument, possibly, should not *always* tend to establish this lucid order in the minds of his hearers, although it should flow from this perspicuous view of the whole argument in his own mind—such a view as will enable the speaker, in his reply, to defend on the spot, each weakness in his argument which may be subject to be attacked; and to defend it also, with all the ingenuity of practised sophistry.

First principles of law are sometimes the major proposition on which his argument rests, the conclusion being a judgment of the Court, favourable to the Client: when this is the case, a single syllogism would do the *business*; but it would also do, according to the popular phrase, the *business* of the

the Barrister. Here, therefore, amplification is not redundancy, and a flow of words may be necessary; not to his argument, but to his reputation with his Clients; who are too apt to conceive, that what is *soon* said cannot be *well* said; and therefore will not allow that a Barrister's reputation is well supported, or a case is properly argued, by a *short*, although *successful* argument.

Sometimes a judgment of the Court, favourable to the Client, must be attempted by a multiplicity of Cases, collected from the various Law Reporters—sometimes deviations from general principles, with a view to more substantial justice, than the strict application of the principles themselves alone would warrant, will be the object of the Pleader's attention; sometimes the black-lettered maxims of the Law, subsequent Acts of Parliament, which may have altered or explained them, also numerous quotations from the Reports, are altogether necessary to the argument; nay, the field is sometimes still more extended, the natural Rights of Man, the Law of Nations, the Dogmas of the ancient Legislators, the Apothegms of their Philosophers, and Moralists,

ralists, must be had recourse to ; but ever, the wider the field, and the greater the quantity of matter to be digested, the stronger is the necessity of *method* and *arrangement*.

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ENTERTAINERS

THE ENTERTAINERS

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METHOD is also necessary in an address to Juries; an exordium and peroration has a more striking effect on their minds, than with more instructed judges. The *passions*, the *prejudices* of mankind, are more likely to be excited by the opening or conclusion of a speech in a country Assize, than within the walls of
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Westminster Hall; yet *there*, in special arguments, such an observation of the rules of Eloquence among the Ancients, has its peculiar grace and effect, in gaining the attention of, and leaving an impression on, the minds of the Judges; and, with respect to these more ornamented parts of an oration, CICERO details the best precepts in the most elegant language—On the subject of an exordium, he says, “*Oportet ut ædibus ac tēplis vestibula et additus, sic causis principia proportione rerum præponere.*” And to caution the speaker against offending by a pompous or pathetic appeal to the *unalienable* Rights of Man, or to the sacred or reciprocal duties, or *affections* of domestic life, when the cause hinges on a trifling dispute of property; he adds “*Itaque in parvis et infrequentibus causis, ab ipsâ re est exordiri sæpe commodius.*”

These excellent hints are quoted, because they are worthy the attention of the *first* orators at our Bar; and deserve the consideration of those who would wish to shun imperfections, which even the most successful among us have not always avoided.

And, as the same master of Eloquence informs us, that in our opening we should
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try to make the Judges attentive, and favourable to us; or in the language of these days, *get possession of them*; so he also tells us, that it should be attempted by somewhat that is connected with the cause, and not be like the prelude of a musician—
*“ tanquam citharædi proemium, afflictum ali-
 quod; sed coherens cum omni corpore membrum
 esse videatur.*

QUINTILLIAN must also be attended to on this subject: he insinuates the necessity of order and method throughout, and applies his observations both to the opening and to the conclusion of a speech; and seems to lay most stress on the conclusion—for he says—*“ concitare quoque invidiam, odium, iram, liberius in peroratione contingit.”* And as it was the universal opinion and practice of the ancient orators, to impress, by the peroration, the greatest strength and weight of their client's cause; so also it is the practice of the most eloquent among the moderns; but there are some, who do not, while they are pursuing this rule, bear in mind the great difficulty there is in exciting their auditors affections by the *pathetic*; who are not aware of the ludicrous effect arising from an abortive attempt to stir up the more tender sympathies of the mind,
 and

and strike water from the fountain of tears; such pretenders to the finer traits of Eloquence, should recollect the advice of this great Rhetorician of antiquity—“ *Illud præcipue monendum, nequis nisi summis, ingenii viribus, ad movendas lacrymas aggredi audeat — Nihil habet ista res medium, sed, aut lacrymas meretur, aut risum.*”

As the principal object of the exordium is to render the auditors favourable and attentive; any attempt to disperse that attention is unreasonable, and consequently, any interruption of the speaker is want of manners, and such interruption from an opponent is particularly illiberal; yet too often do we see and hear the Gentlemen of the profession, rudely stopping each other in the midst of their harangues; and in the presence of crowded Courts; and to the great mirth of the vulgar; who enjoy such ludicrous instances of boyish manners, enveloped in all the dignity of gown and wig.

An interruption of this nature, continued for some time, by those monosyllables expressive of contempt, *pish!* and *pooh!* roused at last the indignation of a learned orator, in a crowded Nisi Prius Court at a late Assize,

Assize, and produced the following reproof, delivered with a particular emphasis :

Brother, you may piss and pooh your heart out, I do not mind it a farthing—if his Lordship had pissed and poohed, there might be something in it! To be sure the reproof has no attic salt in it, yet it possessed one merit; the occasion demanded a reproof; but what was the effect on the minds of a crowded Audience? a general sentiment of *derision*, amounting nearly to *contempt*; a feeling, which, if repeatedly excited by the Gentlemen at the Bar, against each other, will tend to extinguish the small degree of respect which remains in the minds of the million for the profession of the law, and its numerous adherents.

Make use, therefore, of wit, joke, satire, and repartee, with great caution; they are all two-edged tools, and like them, cut two ways; they wound him who handles them injudiciously, as well as the individual on whom their temper is tried; they may create *enmities* and dissolve *friendships*; but will never gain friends, or increase esteem; it is cowardly to make use of them, on those who cannot reply; and dan-

dangerous on those who can; they are also much out of place in our Courts of Justice; business of the greatest importance to the suitors is there to be determined on; the life, the reputation, the property, of the individual is at stake; and judgment is obtained at an immense expence; ruin to both parties is not unfrequently the consequence, even where the object in dispute does not appear to be considerable: Is wit, joke, satire, or repartee, a salve for such sores? Are they not rather an aggravation of the wound? The suitors, when their feelings are treated with such exasperating caustics, may well exclaim with Æsop's frogs, when pelted by boys—What is play to you, is death to us.

But still, there is such a pleasant quickness in the relish of genuine attic salt; that a speech may certainly be rendered palatable by a light sprinkling, which would otherwise pall upon the sense; let therefore the use and application of it, be guided by the following, among other excellent rules of our great master; "*Omnino probabiliora sunt, quæ lacessiti dicimus quam quæ priores, nam et ingenii celeritas major est,*

est, quæ apparet in respondendo, et humanitatis est responsio: videmur enim quieturi fuisse nisi essemus lacesciti." It is plain, that if all were to follow strictly this maxim, there would be an end of fatiric wit in our Courts of Justice; because none would begin the attack; and wit seems to be in some esteem with CICERO; for, speaking of it under the designation of facetiousness, he adds, "*Est planè oratoris movere risum;*" and gives the following, among other reasons, for his opinion; "*Maximèque quod tristitiam, ac severitatem, mitigat, et relaxat, odiosasque res sæpe quas argumentis dilui non facile est, joco risuque dissolvit.*"

Any one who will run over those strictures which CICERO has given, with respect to the application of wit and satire to the eloquence of the Bar, will find every idea on the subject which can assist the judgment, not only of youth, but also of experience, elucidated by the most elegant language; and in so full a manner, that it may be asserted with truth—the best practice of the moderns need only keep in view, those
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precepts of this ancient master of his profession, which tend to confine the application of wit, or to purify its use.

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AS a painter is not reckoned perfect in his art, though he may be able to sketch a contour with grace, and each curve may undulate with the elegance of beautiful nature; unless, also, a knowledge, and practice, of the chiaro oscuro, give relief to the figure; and the elegant tints of the Flemish, or Venetian Schools, polish his picture;

picture; so will the orator be esteemed deficient, however artfully he may have arranged the topics of his speech; with whatever science he may have methodized the outlines of his harangue; unless he relieves the languid tenor of his argument by interesting anecdote, witty allusions, and apt quotations; and polishes the whole with a grace of good language: the arrangement has been slightly touched on; the last polish remains for a few comments.

In the first of these papers, the writer had the late Chief of the King's Bench in his eye, when mentioning the graces of eloquence; and he unavoidably recurs to the same finished pattern, when the ornamental parts of an harangue become again the object of his attention.

The means that Earl MANSFIELD made use of in the *closet*, to arrive at that excellence of elocution, which delighted his hearers, and rivetted their attention, are not open to our *certain* knowledge; but we may suppose, an education at *Westminster*, continued at *Oxford*, made him intimately acquainted with those genuine sources of elegant literature, which are in some respect open to us all; the ancient Orators and
Poets.

Poets. Whether his Lordship improved his style by composition for the press, we know not; as nothing that fell from his pen, has been preserved in our libraries, as of his composition; but one leading feature of his early life we know, and in which, all of us can in some degree follow his example; he was in habits of intimacy with the *best company of the age*; not those who could boast *nobility or wealth only*; but with those whose memory is still alive; although they have many years left that circle of friends, whose attention hung on the charms of their conversation; and that world which they equally delighted and instructed by their writing; the conversation of POPE and BOLINBROKE, polished the periods of MURRAY'S Eloquence; and early in his career at the Bar, did the Swan of Twickenham record his wit, and contrast him with the heavier lumber of the profession.

The Temple late two Brother Serjeants saw,
 Who deem'd each other Oracles of Law;
 Each had a gravity would make you split,
 And shook his head at MURRAY as a Wit.

The singular strain of eloquence, in which this Nobleman delivered the Judgment of the Court of King's Bench, on the reversal of Mr. WILKES'S Outlawry, is in
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the memory of many; possibly never did a question of constitutional Law more attract the attention of all ranks of men; the Court was filled with people of the first notice, for high situation and great talents; the capacious hall itself was never more crowded; and principally with the Mob; whose passions were excited; for constitutional liberty was the theme; and their resentment had been industriously raised against the Chief himself by the prints of the day; the windows of the King's Bench were drawn up, the curtain was thrown aside, by Lord MANSFIELD's express direction.

— Silent, arrectisque auribus adsunt,
Ille regit dictis animos.

The other Judges of the Court delivered also their opinions, *seriatim*; the Law, the Authority, the Judgment was the same; but the contrast was such as occasioned Mr. WILKES himself to exclaim, when one of them, in less polished phrase and action than the rest, had finished his long laboured harangue—"This is a draught of hog-wash indeed, after a bottle of Champagne."

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The dead silence of the multitude; the attention they paid to those eloquent periods, which throughout the greatest part of Lord Mansfield's speech, appeared to have condemned their favourite, to the long ruin of a cruel outlawry; the hushed attention which continued for a stound after the Chief Justice had concluded; the vast audience seemed to think him still speaking, still stood fixed to hear; the gradual increase of noise, and intermixture of voices, while the rest of the court delivered their opinion; and Mr. WILKES's observation, too loud not to be heard; spoke strongly the contrast; and is in point to prove the captivating effects of the graces of eloquence; as it was, undoubtedly, the united excellence of style, and manner, which operated thus powerfully; and proved how much we are affected by the dress of thoughts; the one was all neatness and elegance; the other all rags and tatters.

Much of this is in the power of the speaker; the poet *must* be born, but the orator *may* be fashioned; and there are certain directions handed to us from antiquity, which have never been superseded; **QUINTILIAN** and **CICERO** remain in full force; they have been *translated* and *commented* on, but have not yet been *contradicted*.

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The one tells us, in a few words, the great secret; that the pen is the readiest and best master of Eloquence; this weapon must therefore be in constant use: translations, may be esteemed rather as the school-exercises of the *Boy*; but depend on it, they will improve, in maturer life, the language of the *Man*; but if this labour is held too puerile; the daily prints offer constant opportunities to the practice of composition. We naturally wish to render perfect what is intended for public inspection; when writing to the *World*; we wish to be read by the *World*; to borrow their eyes and attention, to what is before them; and when we *speak*, we expect from the audience, a loan of their ears; "Friends! Romans! Countrymen! lend me your ears!" says SHAKESPEAR in the person of the eloquent ANTHONY; but we must, undoubtedly, produce some claim to this attention, when we require it: have not some of the fascinations, in Mr. ERSKINE's pleadings, arisen from this practice? has not the public *read*, harmonious and well-pointed periods, from his pen, before they *heard* them from his mouth? let those answer the questions who can speak to the facts; the Barrister, for the sake of the inference, will take for granted; that they would not have heard from *him* such bewitching eloquence, if the *pen* had not been

been in practice, before the Lawyer was known.

Dr. JOHNSON, is another instance in point, to prove the benefit which flows from the use of the pen; without any other object in view but to *write well*; to what excellence did he attain in *speaking well*; the common language of his conversation flowed in such charming periods, that those who enjoyed the happiness of his acquaintance, knew not which to prefer, the soundness of his maxims or the sweetness of his language; the cadence of his sentences, fell emphatically on those words which led the sense of the period; and he conversed as the subject inspired; sometimes with the full-flowing grace of CICERO, sometimes with the laconic energy of TACITUS.

This certainly arose from the use of composition; and followed naturally and inevitably, as the consequence of a proposition does from the terms of it—that the pen is, “*perfectorem dicendi ac magistrum,*” CICERO repeatedly asserts: That JOHNSON used the pen, to the instruction of the age, and his own immortal reputation, we all know, and he became unintentionally eloquent; not only his *writing*, but his *conversation*, was universally sought after; the first characters

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of

of the age, not only *read* him, but crowd-
ed to *hear* him.

To the polish of style, add those orna-
ments which the subject naturally calls forth;
not artificial wreaths, or adscitious embel-
lishments; but such as by their plastic na-
ture, will mould well with the piece; no com-
mon-place stories; nothing which appears
to detain the *unwilling* attention; but apt,
interesting anecdote; whose foundation lies
in truth, merit in conciseness, and effect, in
that hum of applause which strongly proves
the approbation of the hearers: this is an
age for anecdotes; moral truths, serious
maxims, religious exhortations, must now
be wrapped up in them, as the bolus of the
Druggist, by leaf gold; a desire to pene-
trate the privacies of retirement, to see the
hero of the piece in his undress; a woman-
ish curiosity to know of every body, what
relates to none of us, is the prevailing taste
of the age; and we confirm ourselves in the
impertinence of our curiosity, by the pre-
tence that we study character; stretching
the babbling example of PLUTARCH to an
extreme; we retail paltry anecdotes, because
we know they will be *read* with avidity, or
heard with pleasure; marking strongly a
vitiated, and degenerate taste; which, blame-
able as it is; the BARRISTER not being able

to correct, must, if he wishes to be heard, in some degree fall in with; at least when the attention of the vulgar is to be excited, or preserved; but when he speaks before judges of superior taste; when he addresses himself to more refined auditors; let us hope for the credit of the superior Court, that these deviations are less necessary.

Facetiousness, has already been touched on; this subject has been so fully and elegantly handled by CICERO; that to quote would be endless; and to translate, is, to deface; the one would discredit the language, and the other the precepts of these strictures.

Quotations, unless they assort well with the subject, both in fabric and colour, strongly show the poverty of the speaker; adding to a thread-bare style, the vanity of ostentation; the contrast being so obviously hurtful: the fervid imagination of the poets; the music of their measure; the nervous, and eloquent periods of the ancient orators; the fine language of their moralists; introduced as ornaments, to a jejune, raw, and rapid style; strangely expose the barrenness of a speech, and to the poverty of language, add a demonstration of want of judgment.

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But there is such a charm in these embellishments, which, when aptly introduced, greatly relieve a field of dry and unenterprising argument; that the best speakers, in all ages, have illuminated the prosaic language of didactic reasoning, with these flashes of borrowed eloquence; and they have constantly and uniformly, when well introduced, been attended with the happiest effects; but this application of splendid patches, requires both feeling and judgment; not only with respect to the subject, but to the audience. What man of sense would strew classic pearls before a common Jury; or retail the vulgarisms of a Jest Book, to Judges of Literature and Eloquence?

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ROLLIN tells us that pronunciation, and action, are more particularly neglected by modern speakers; and adds, "*Cependant c'est ce qui contribue davantage au succes de la parole;*" yet this instructive writer does not favour us with any hints on this head, except such as may be found among the precepts of the great masters of ancient

ancient oratory; their opinions and their precepts the Barrister cursorily looked over before he began this concluding paper of his Advice to Students in the profession; and confesses himself inclined to think, that every ancient writer on the subject, has been in some respect deficient in describing the kind and degree of action calculated to win or fix the attention of an English audience.

Nor is this a subject of wonder; Foreigners, especially those from the southern parts of Europe, make use of so much action in their common conversation, as appears to us, phlegmatic Islanders, bordering on buffoonery; can we be surprised therefore if we read among Cicero's excellent hints on this subject, a degree of action recommended, which, in Westminster Hall, would be deemed too theatric and extravagant? What would the Courts of Law and Equity think of the "*brachium procerius projectum, quasi quoddam telum orationis; Supplorso pedis in contentionibus aut inciendis aut finiendis?*" The Bench would commit the orator for a contempt of the Court; and a sober English Jury would think the Gentleman was out of his head; the degree of action which might captivate the P. S. Q. R. of ancient Rome, would excite ridicule, or

or create disgust in an English Court of Justice; therefore instructions on this topic, delivered by CICERO, or QUINTILIAN, should be read and followed with some degree of caution.

In Westminster Hall, and the two Houses of Parliament, the general object of the Bar, is, to explain and apply the principles of Law and Justice in the most favourable sense for the interests of the Client; certainly no considerable degree of action can then be proper; the very spirit of the subject requires a lenient, mild, persuasive, and respectful tone of voice, and a concomitant action; here an authoritative style would by no means be in character, but offensive; a style widely different from what is calculated to alarm the fears, excite the passions, or rouse the indignation of a popular assembly; the same principle also pervades all arguments arising from points of Law necessary to be discussed before inferior tribunals, or during trials *per pais*, in the Crown, or Nisi Prius Courts, when the Counsel addresses himself to the Bench; in all or most of these situations, the less there is of action, the less there is likely to be of absurdity.

Where a Jury is addressed, somewhat of a more animated style of pronunciation and action

action may be attempted; here the prejudices, the passions, as well as the reasoning faculties of mankind, are to be combated or to be excited; but great caution is requisite, when once the line of plain sense is deserted with a view to stage effect: *that is the business of the Player*:

Tears in his eyes, distraction in his aspect;
A broken voice, and his whole function fluting
With forms to his conceit;

become *him*—because he must, during the scene, be, and feel himself, the character he assumes; but disgrace the Barrister, because they must be, in most instances, hypocritical; the Counsel in a cause, professes not to be in the situation of the Client; or to feel the anguish of mind, the miserable culprit experiences, while his defence is managed at the Bar of the Crown Court.

In a former paper the consequences arising to the Law Student from engaging in the drama of private theatres, were hinted at; but the very improper action for the Bar, which may be there acquired, with other bad habits of the Gentleman Actor, was not then touched on; yet surely something of this must be obvious to every thinking mind; the wide difference between the duty of the Player,
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reciting *memoriter* a part in an assumed character of the Drama; and that of the Barrister, who should not permit any assistance from *memoriter* recitation to appear, must be striking to any one who reflects on the subject; if the actor introduces into his part any extraneous matter, or speaks more than is set down for him, he will be hissed; and if the Barrister reads, or recites *memoriter*, his argument, he will not be employed.

But there are situations open to the ambition of the rising Lawyer, where all the pomp of language, every grace of eloquence, and most of those maxims so elegantly delivered by CICERO, may, with propriety, under the guidance of good sense, and nice feeling, be put in practice: the interest of friends, the reputation of rising abilities, or, the intrinsic usefulness of elocution in a popular assembly, may obtain the Barrister a seat in the British Senate; and when *there*, however ridiculous the idea may appear in the minds of some; we will suppose orators, to speak from the dictates of their conscience; for *there*, in that assembly, have the nervous periods of Chatham's eloquence, in former days of glory, carried the victorious arms of his Country to the remotest parts of the Globe; in that honourable House, have the

the fascinating charms of his oratory, persuaded the Commons of Great Britain, that by the expenditure of millions sterling in the defence of Prussia; and by the effusion of torrents of blood on the plains of Germany; have the enemies of Britain been conquered in the wilds of America. Extravagant attempt of Oratory! Astonishing effect of Eloquence! No common language, no ordinary flow of rhetoric, no inanimate see-saw of the arm, can be equal to this effect; here, therefore, sublimity of idea, boldness of metaphor, pomp of diction, and strength of patriotic feeling, will not only apologize for; but also in some measure give, propriety to some extravagance of action: What else than a combination of these causes, can atone for that Herculean strength, with which a Right Honourable Gentleman, high on the Treasury Bench, belabours the Speaker's table? Why, unless from the excess of patriotic feelings; while the ear and judgment are both gratified with expressions always flowing in unison with the ideas intended to be explained, and in a tone which marks the exact propriety of cadence; is the eye disgusted with a vulgar monotony of action, while one of our first orators is on his legs? What other apology can be made for that isochronous

swing

swing of the arm so common to many speakers in that Honourable House? An action which somewhat resembles the labour, and may be appropriate to, the anvil of the Blacksmith; but adds no grace to the eloquence of the Senator.

These instances have been mentioned to prove that great Senatorial Orators, use great action; but are by no means brought forward as objects of imitation; on the contrary, they serve as a reason for this caution; that unless you can regulate your action, and make it more subservient to the dictates of good sense, than some Orators in the House of Commons; the less of it you indulge in, the better; even as a Senator.

And now having brought to a conclusion this short Tract on the Education proper for the Bar; having detailed a variety of hints, which, if attended to, will lead to a probability of *honourable* success in this highly respectable profession; after having declared that the sole motive which induced the Barrister to address himself, through the medium of a well-known print, to the profession of the Law; was, the hope, united with the belief; that by exciting the curiosity of Gentlemen in the profession; he might captivate

tivate their attention, and impress on some liberal minds, a conviction of the necessity to preserve the proper dignity of the Bar, and a knowledge of the honourable means of advancement in the profession: he now takes leave of the Students, in the words of Lord COKE; “and for a farewell to our
“ Jurisprudent, he wishes unto him the
“ gladsome light of Jurisprudence, the love-
“ liness of Temperance, the stability of For-
“ titude, and the solidity of JUSTICE.”

THE END.





