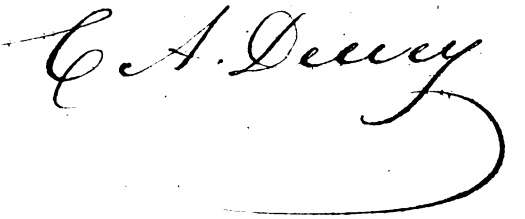

A

COURSE

OF

LEGAL STUDY;

RESPECTFULLY ADDRESSED

TO THE

Students of Law in the United States.

BY DAVID HOFFMAN,

PROFESSOR OF LAW IN THE UNIVERSITY OF MARYLAND.

Method is the *light* and *life* of study: without it the simplest subject is dark, and with it the most abstruse is often easy, and even pleasing.

"Si quid novisti rectius istis,
"Candidus imperti; si non, his utere mecum."....HOR.

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District of Maryland, to wit:

BE IT REMEMBERED, That on this eighteenth day of November, in the fortieth year
SEAL of the Independence of the United States of America, David Hoffman, of the said
district, hath deposited in this office the title of a book, the right whereof he claims as author, in the words and figures following, to wit:

"A Course of Legal Study respectfully addressed to the Students of Law in the United "States, by David Hoffman, Professor of Law in the University of Maryland.

"Method *is the* light *and* life *of study; without it the simplest subject is dark, and with it "the most abstruse is easy, and even pleasing.*

" '*Si quid novisti rectius istis,*
"*Candidus imperti; si non, his utere mecum.*'....Hor."

In conformity to the act of the Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies, during the times therein mentioned;" and also to the act, entitled, "An act supplementary to the act, entitled, 'An act for the encouragement of learning; by securing the copies of maps, charts, and books to the authors and propietors of such copies, during the times therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

PHILIP MOORE,
Clerk of the District of Maryland.

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INTRODUCTION.

"The noblest employment of Man, is to assist Man."...*Sophocles.*

IN the various pursuits of man throughout life, method appears no less important than industry. If the latter bring us with certainty to the contemplated end, the former facilitates our progress, designates the paths which are unincumbered, and leads us directly, and without fatigue, to the object of pursuit.

Method places in our hands a torch and clue which guide us through the surest and easiest ways: it agreeably impresses the mind with the most distinct and lively pictures of every thing worthy of notice, and at last brings us to the end of our journey, improved, invigorated, and delighted.

In the moral, as well as the natural world, we perceive that Infinite Intelligence undeviatingly acts upon the principle of order, which is nothing

more than the pursuit of that plan or system which attains a desired end, by the most direct path; and in all the endeavours of man, either to acquire or use knowledge, we find his success to be strictly proportioned to the regularity and method by which he has been directed; and he who has been uniformly the most methodical, though he may not have seen, heard, read, and reflected more than another, has certainly acquired more, both in extent and quality. Method, like the minute division of labour, greatly increases its productive powers; but with this superadded advantage, that whilst the division of labour enfeebles the mind, method on the contrary strengthens and expands it, by imparting the choicest and most nutritious food, and this in such time, place, quantity, and kind as are, respectively, the most suitable.

In the *Arts and Sciences*, as lord Bacon emphatically expresses himself, *it is the architecture;* in *argument*, it may be compared to the "discipline of modern nations; it corrects in some measure the inequalities of controversial dexterity, and levels, on the intellectual field, the giant and the dwarf."* In *reading*, as lord Bolingbroke says, "we may acquire by it less learning, but more knowledge; and as this is collected

* Mack. Vin. Gall. Intro.

with design, and cultivated with art and method, it will be at all times of immediate and ready use to us and others."

> "Thus useful arms in magazines we place,
> All rang'd in order and dispos'd in grace,
> Nor thus alone the curious eye to please,
> But to be found, when need require, with ease."

When we reflect on the shortness of human life, compared with its legitimate objects, the importance of systematic selection appears in a very forcible point of view: but in the acquisition of knowledge through the medium of books, it is still more manifestly displayed.

If a man should calculate on living to the age of sixty years, and should appropriate, with great industry, forty of these years to the study of books, the most that could be accomplished in this time, would be the perusal of about *sixteen hundred* octavo volumes, of *five hundred* pages each. What is this number, compared with the millions of volumes out of which he has to select! How important is it, therefore, that the choice should be judicious, and that after it is made, the whole should be studied with method; and how much more necessary is it to those, who instead of forty years' devotion to books, appropriate not more than a fourth part of that period. We are aware that such calculations cannot be made

with mathematical accuracy, but an approximation is sufficient for our purpose, which is to illustrate the great importance of method and judicious selection, in the attainment of knowledge through the channel of books.

It is observed by Dr. Watts, that "the world is full of books, but there are multitudes which are so ill written, they were never worth any man's reading; and there are thousands more which may be good in their kind, yet are worth nothing when the month, or year, or occasion is past for which they were written." "Others," continues the Doctor, "may be valuable in themselves, for some special purpose, or in some peculiar science, but are not fit to be perused by any but those who are engaged in that particular science or business; it is therefore of vast advantage for the improvement of knowledge, and saving of time, for a young man to have the most proper books for his reading recommended by some judicious friend."

Martin Luther, who by uniting method with industry, attained an eminence in learning unknown to the age in which he lived, compares indiscriminate and immethodical readers to such as have no fixed habitation, who dwell every where, reside in no place, and cannot be said to belong to any country. He advises students to confine their attention to the most learned, methodical,

and well selected authors, and by no means to distract themselves with too great a variety of books.

A judicious selection of nutriment is not less requisite to the enlargement and invigoration of the mind than of the body; for, as lord Bacon quaintly observes, "some books are to be tasted, others to be swallowed, and some few to be chewed and digested; that is, some books are to be read only in part, others to be read, but not curiously, and some few to be read wholly, and with diligence and attention. Some books also may be read by deputy, and extracts made of them by others; but that would be only in the less important arguments, and the meaner sort of books."

But whilst the student is judicious in his selection, there is another consideration no less worthy his attention. Books are not only to be the best on the subject of which they treat, but they are to be read in that progressive succession, and each is to be studied with that method, which the gradual enlargement of the mind on the particular subject requires. It is not only requisite, therefore, that certain books be designated as most worthy perusal, but *the order in which they are to be read*, and the *particular manner in which they are to be studied*, should receive an earnest attention.

If method in the common concerns of life, and in our studies generally, is of great importance, there surely is no department of knowledge in which it is so imperiously requisite as in the science of jurisprudence. The subject which treats of human conduct, must necessarily be as extensive and various as human action; we consequently find that the *Law*, in its most extensive signification, has occupied the pen of the learned to a greater extent than perhaps any other science. An infinite deal has been written on the rights and obligations of man in all his various relations; and as the one thousandth part cannot and ought not to be read, the selection of such legal matter, as has the stamp of authority, and is most distinguished for its learning, method, and style, cannot but be an undertaking of the first importance.

He who aspires to a thorough acquaintance with legal science, should cultivate the most enlarged ideas of its transcendant dignity, its vital importance, its boundless extent, and infinite variety. As it relates to the conduct of man, it is a moral science of great sublimity; as its object is individual and national happiness, it is, of all others, the most important; as it respects the moral actions of man in all his relations, it is infinitely varied; and as it concerns all his rights and obligations, either derived from, or due to

his God, his neighbour, his country, or himself, it must necessarily be a science of vast extent. To the elevated and dignified view of this august science, cultivated and fostered, perhaps, from early age, we may attribute the astonishing progress made in it by a few; whilst, on the other hand, those who have attained even a sciolous knowledge, have with much sensibility accorded to it the homage of their profoundest respect, and considered it as, of all others, the most noble and dignified.

Those, among the ancients and moderns, who have paid their tribute of respect to this science, appear to have been at a loss to find in the language of eulogy and eloquence, terms sufficiently expressive of their great admiration. Hence the enthusiasm of Hooker vented itself in the following sublime strain.

"*Of Law no less can be said, than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and the creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace.*"*

* Eccle. Pol. Book I.

How restricted is that view which estimates the science of jurisprudence in the light of a mere collection of positive rules and institutions, destitute of all those principles, and of that philosophy, which rank it among the sciences! How different the language of Burke, who denominated it the "*pride of the human intellect; the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns.*"* How unlike the sentiments of those distinguished luminaries, Cicero, Mansfield, Hardwicke, Holt, Eden, Jones, and others, who placed law on the basis of reason, and the principles of moral rectitude.

Sir William Jones, a man ever dear to the lovers of genius and learning, to whose comprehensive mind universal science bowed, and seemed to delight in yielding the rich abundance of her treasures, in the conclusion of that inimitable production, modestly denominated by him an Essay on the Law of Bailments, thus speaks of law; "The great science of jurisprudence, like that of the universe, consists of many subordinate systems, all of which are connected by nice links, and beautiful dependencies; and each of them, as I have fully persuaded myself, is reducible to a few plain elements, either the wise max-

*Burke's Works, 3 vol. 134.

ims of national policy and general convenience, or the positive rules of our forefathers, which are seldom deficient in wisdom or utility. If law be a science and really deserve so sublime a name, it must be founded on principle, and claim an exalted rank in the empire of reason; but if it be merely an unconnected series of decrees and ordinances, its use may remain, though its dignity be lessened, and he will become the greatest lawyer who has the strongest habitual or artificial memory.

"In practice, law certainly employs two of the mental faculties; *reason* in the primary investigation and decision of points entirely new; and *memory*, in transmitting to us the reason of sage and learned men, to which our own ought invariably to yield, if not from becoming modesty, at least from a just attention to that object, for which all laws are framed, and all societies instituted, the Good of Mankind."

A science so liberal and extended, so dignified and important, should be cultivated by those alone, who are actuated by the principles of the purest and most refined honour. If the opinions of Quinctilian, Cato, Longinus, and others among the ancients, be correct, that no one can be an orator who is not a good man, it may be applied with still more force to the lawyer, whose vocation is the protection of the injured and the in-

nocent, the defence of the weak and the poor, the conservation of the rights and prosperity of the citizen, and the vigorous maintenance of the legitimate and wholesome powers of government; whose vocation, in the language of Justice Blackstone, "is the science which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in its *theory* the noblest faculties of the soul, and exerts in its *practice* the cardinal virtues of the heart; a science which is universal in its extent, accommodated to each individual, yet comprehending the whole community." To be great in the law, therefore, it is important that we should be great in every virtue; skilled in many, and somewhat improved in most of the departments of knowledge; for "it applies the greatest powers of the understanding to the greatest number of facts," and embraces nearly the entire extent of human action and concerns. It is obvious that to the just comprehension of the infinitely various points of litigation submitted to the judge, the lawyer, or the advocate, every species of knowledge may prove necessary; and as every passion and affection of the heart may be excited, how important is it that whilst the mind is enlarged, and strengthened, and refined, by all that is useful in knowledge, the heart should be purified by the choi-

cest lessons of moral wisdom. Paterculus, indeed, says of Curio, that "he was ingeniously wicked, and eloquent, to the destruction of his country, (*ingeniosissime nequam et fecundus malo publico;*) and the testimony of history and our own experience manifestly shew, that that beautiful theory, which makes the want of virtue the want of efficient genius, is rather specious than true; yet we must ever maintain that genius and learning acquire much additional force, and derive their principal charm from virtue; and that he who desires to impart a lustre to the utility of his *learning*, must foster all *the amiable affections* of the heart.

The complaints of students, of the difficulty and embarrassment attending the study of English law, are not without reason. Before the publication of the Commentaries of Blackstone, to whose learning and research, comprehensive understanding, and methodical arrangement and treatment of the various topics of the law, every inquirer on that subject will gratefully acknowledge his obligations, the legal tyro was without any extensive, and at the same time elementary and institutionary treatise, on that vast and mingled mass of custom and statute; unless that character be accorded to Wood's Institutes, and the voluminous and immethodical production of sir Edward Coke.

Thus, by a strange fatality, in the study of a body of law rendered singularly laborious and perplexing by the great extent of the subject; by the great variety of matter to which it applied; and by the vicissitudes which it had suffered at various times, from the various situations, necessities, and habitudes of the people for whom it was framed; whose principles, maxims, and rules were dispersed through innumerable volumes, displeasing or obscure from the obsoleteness of their style and language; the student was abandoned to a hap-hazard choice of the sources from which to draw the treasures of "black-lettered wisdom;" and of the avenue by which he might penetrate, with least fear of stoppage or entanglement, into the maze of the law.

Though the extensive and elegant commentary of Blackstone now forms the portal through which the student customarily passes to a more particular and laborious study of his profession, yet much time and labour are undoubtedly afterwards thrown away, for want of due method in taking up the topics of which he has only exhibited the outline; and however valuable his work as an induction to English law, it would certainly prove more pleasing and more profitable to him who had previously mastered the peculiarities of the feudal institutions from which it arose, and of which the nature of his plan al-

lowed but a brief and general notice. It was the design of the author, in the following Course of Legal Study, to reclaim the time and labour thus often and unprofitably expended, by selecting what was valuable in legal learning, and so arranging, as best to adapt it to the complete and ready comprehension of the student.

The value of method is, we acknowledge, a trite topic of dissertation; but in the inquiries of the American law student this method becomes indispensable: where the ideas and language are remote from those of common life; where the terms are, in an especial degree, peculiar to the science, and of various and singular derivation; and where the body of forms, as well as principles, depends, to a very great extent, on institutions and systems which have long since passed away. Instead of bewildering himself in works which presuppose a knowledge of these changes, and a familiarity with these terms, the student should descend to institutionary treatises; examine the earliest history of the people whose law is his study; detect this in its elements; trace it through all the modifications which time, circumstance, and modes of thinking produce; discover the origin and reasons of the seemingly unmeaning forms with which it is environed; and thus proceed gradually, but with smoothness and certainty, over difficulties otherwise insuperable,

and to the understanding of peculiarities otherwise inexplicable.

The common law of England, which forms the great body of our own law, has its principal foundation in the feudal institutions. After acquiring the general principles of morals and politics, the next step is, therefore, to inquire minutely into these; and, after examining how far they were mingled, in the law of England, with a portion of of the old Saxon constitutions, to pursue them through all the successive alterations which resulted from a change of men's opinions in matters of religion, government, or commerce: in this investigation the authors recommended under the second title will be the best guides. The student may then contemplate these revolutions more nearly and critically in his consideration of the doctrine of *Real and Personal Rights*, and their respective *Remedies*, (which two titles comprehend the great body of the English common law,) and of the law which obtains in the courts of *Equity;* which last, together with the *Lex Mercatoria*, and the *Law of Crimes and Punishments*, are only great branches or divisions of the general law of England. Next succeeds the *Law of Nations*, followed by the *Maritime and Admiralty Law*, which is connected with the National Law on the one hand, and with the next title, the *Roman Civil Law* (from which it draws most of its

principles and procedures, and which consequently becomes of importance to the English lawyer,) on the other. Thus, master of English jurisprudence, the student may proceed to inquire in what points it is altered or modified in the *Constitution* and *Laws* of the *United States*, or in those of the *respective States*, particularly his own; and having fortified his mind with the principles of *political economy*, and borne these with him in his review of the natural and political resources of his own country, (a study essential in a nation where the lawyer and politician are so frequently combined,) should close his studious career with some attention to *rhetoric* and *oratory*.

Notwithstanding the seemingly great extent of this course, (and certainly we cannot flatter the student with the hope of mastering it with the degree and kind of attention which is usually bestowed on it,) let him not be discouraged. What necessarily proves difficult to the desultory and immethodical reader, who comes to his books in the intervals of idleness or dissipation only, and resumes with reluctance what is willingly abandoned on the first call of pleasure, or the first apology for relaxation, may, by a temporary exertion of method and attention, be converted first into a habit, and eventually into a pleasure.

Study and research are not without their attractions: the mere exertion of mind is productive of pleasure, when the difficulties are not conceived too formidable, or too numerous, and the student does not advance to the investigation, hopeless of success, or unfurnished with the means, and ignorant of the sources of information. In short we conceive, that to an intellect of ordinary capacity, the Law, instead of that guise of difficulty and perplexity in which it for the most part appears, would assume no small degree of interest, and offer no inconsiderable gratification, were the student initiated, so to speak, in its *geography;* were he instructed in the nice connexions and dependencies which unite its many minute divisions, and conduct him naturally and easily from one topic to another, instead of being set down in the first instance in the midst of difficulties of which he has had no previous explanation, and of which he knows not whither to apply for a solution. These minute connexions, this natural order and arrangement, it was the aim of the author (in which he hopes to have succeeded in some imperfect degree,) to exhibit in the following pages.

As the law of England is not a fabric begun and completed by a single legislator, nor has ever been digested by authority which had the

power to lop its excrescences, and reduce it to symmetry, its forms will often seem absurd and complicated, its modes of redress, (in theory at least,) circuitous, and its distinctions, in some few cases, unfounded or unjust. But however it may be wanting somewhat in unity and regularity, it possesses an interest of a higher description. Its history is the history of the manners and opinions of a people advancing from barbarity, through many modes of thinking, under the impulse of many circumstances, some of a temporary and particular, and others of a more general and durable influence, to a high degree of civil and political liberty, of physical and intellectual improvement. In all the grand revolutions of the law is to be discovered, not the variations arising from accident, or the contradiction of individual opinion in its makers and interpreters, but the gradual expansion of men's minds on the subjects most allied to their felicity as men, and their freedom as citizens. In the authors who have delineated these changes, (and some of whom will be found enumerated under the second title of our course,) the reader will discover how these revolutions of opinion, as regarded the relations of monarch and subject, the ends of society, the pursuits and avocations of life, have changed also the law in the points of *tenures*, the *alienation* of property, the suc-

cession to *inhiretanas*, &c; and in his investigation of the origin of the various modes of *conveyance*, besides detecting the science of these seemingly awkward and irrational *formulas*, will have occasion to observe that even the superstitions of mankind have sometimes conduced to their benefit, and how ineffectual are the provisions of legislatures, when popular prejudice and ingenuity once combine to elude them. Thus viewed in reference to the principles which caused them, the progressive alterations of the law become subjects of entertaining contemplation: from the dry detail of legal rules and maxims, their exceptions and modifications; from that multifarious mass, which would seem only calculated to distract attention, and overburden memory, may be elicited an interest to accompany and animate us in every path of laborious inquiry.

In this kind of investigation the study of the English historians will prove an important assistance, as well as an agreeable relaxation. In the Appendixes of Hume, and in some other parts of his work, which will be found designated in their proper place, are some of the most valuable, and, to our apprehension, after all the cavils and controversies of party, some of the most just and impartial disquisitions, on the rise and progress of the English constitution and lib-

erties, and of the revolutions of opinion conducing thereto; which, as we have noticed before, have exerted also, in many important particulars, a material influence on the law. Indeed the whole of that elegant and philosophical production deserves to be the manual of every scientific student of English jurisprudence.

But with all the aids which the student may derive from his adherence to method, he will nevertheless sometimes encounter a principle, a rule, a distinction, a form, or a term, which his previous reading may not have enabled him to understand, and which no legal friend is at hand to explain: in this case, whatever a Law Dictionary is insufficient to elucidate, should be carefully and orderly noted down in the manner hereafter explained.* The student who abandons a subject without understanding it, is like a commander who leaves an enemy in his rear: he advances without the cheering certainty of being fully master of the road over which he has travelled, and most generally finds the difficulty which he has left without overcoming, start up in the course of his progress in a hundred different shapes, and a hundred different subjects, to harass and perplex him. But as he cannot always remove every obstacle in his course, he may at

* Vide observations on note-books, at the end of the work.

least know his weak points. Lord Coke has encouraged his reader by saying, "that although he may not at any one time reach the meaning of his author; yet at some other time, and in some other place, his doubts will be cleared;" a remark which most of his readers have found not a little consolatory, and which they are often happy to take for granted. But however it may be true that most of the student's doubts and perplexities vanish on a farther acquaintance with his subject, it is not impossible that some of them may remain; and it would certainly be well, had he some regular memorial or record of them, by refering to which he might either be assured of his advancement, or informed of his deficiencies. Another method which we have found of service both for the distinct understanding, and faithful retention of any long and various work, (as for example, Blackstone's Commentaries, or Rutherforth's Institutes,) is for the student to make a written analysis of it; the advantage of which is, not merely the readiness with which any topic may be refered to, or the general idea it affords of the scope and arrangement of the work, but the call which it makes on the analytical and synthetical powers, and the vivid impression left on the mind from this joint operation of reason and memory.

Such as are destined for any of the liberal professions, and particularly for the law, should previously treasure up a fund of general and diversified knowledge; thus acquiring information on subjects which the study of their profession will seldom permit to be extensively and minutely inquired into afterwards, and at the same time framing their minds to habits of research and diligence. This is not, however, designed to exclude altogether the study of other sciences, or of polite literature, contemporaneously with that of law: the most indefatigable student has, either from external circumstances, or from mental exhaustion, many intervals of time in which he revolts from his immediate pursuit, though he would gladly fill them with less laborious avocations. The mind is unwilling to be for ever contending with difficulty, or exerted to the full measure of its strength: the most diligent require some relaxation of employment, some change to diversify the rugged track of investigation. The author of the Spirit of Laws was accustomed to unbend his mind, in the moments stolen from the composition of that work, by the perusal of the Arabian Tales. The student who desires to economise time, should therefore indulge these variations of the intellectual appetite; and tempt this mental satiety with every modification with which genius has

adorned literature, or disguised the harshness of science.

The title *Political Economy*, and the several *Auxiliary Subjects*, in the following Course, as they do not require to be taken up in a certain arrangement, in order to be properly understood, may be studied at the same time with those of a more abstruse and difficult character: too great a variety would withdraw the attention from its grand and legitimate object, but a moderate diversity of the student's pursuits will relieve monotony, and eliven that langour which is the inevitable consequence of a single study.

At the same time there is nothing which we more earnestly inculcate on every tyro in law, than to observe scrupulously the hours which he has allotted to the study of his profession. Whatever may be the temptations of other and more pleasing literary pursuits, or whatever the allurements of idleness or pleasure, this should be a permanent object from which his attention should never be long diverted. In all studious enterprises, (if we may be allowed the phrase,) he will be found to proceed on a very erroneous plan, who thinks to make the extraordinary efforts of to-morrow supply the deficiencies of to-day. The mind which contemplates with pleasure a short exertion of its powers, which, though it must be regularly made, will, it knows, be regularly re-

lieved by the period for relaxation or for rest, is apt to shrink from the long and uninterrupted exertion which the student often imposes on himself by way of compensation for past indolence. It will, therefore, diminish his toil, as much as it will advance his progress, to allot to every day its just labour, and to perform this with all the scrupulosity which circumstances will permit. If, however, accident has deranged his plan, or idleness and dissipation have made inroads into the seasons set apart for study, we would warn him against the common mistake of neglecting to employ the fragments of time thus produced, in the expectation and design of more methodical exertion for the morrow. How much might be gained by the studious occupation of the moments thus idly and unprofitably thrown away, is incredible to those who have never calculated the days, the weeks, and months, to which they rapidly amount. He that would not experience the vain regret of misemployed days, "must learn, therefore, to know the present value of single minutes, and endeavour to let no particle of time fall useless to the ground."* Whoever pursues a contrary plan will forever find something to break that continuity of exertion, in looking forward to

*Rambler.

which he solaces himself for his present supineness; and at the expiration of the period allotted for the completion of his legal apprenticeship, will generally find a mighty waste of time to have proceeded from the trivial value he attached to its fragments.

The sedentary and the studious have, indeed, to contend with obstacles peculiar to themselves. Secluded of necessity, for the larger portion of their time, from the business and bustle of men, their ideas insensibly assume a monotonous character, and, receiving little ventilation from the constant current of novelties which refresh those who are engaged in active and crowded scenes, are apt to stagnate into langour and melancholy. It is little wonderful that intellectual exertion should become irksome, when thus accompanied by despondency; and that the student should find the lapse to indolence and relaxation so easy, and the return to his solitary avocations so painful; a painfulness most generally augmented by a consciousness of the neglect of duty, which he is happy to drown in the pleasures or bustle of society, rather than brood over in the stillness of his study. Instead of attempting to remedy this tendency by total seclusion, it is better to indulge it with moderation; and to mingle business and pleasure in those proper proportions, which will equally prevent the fatigue of too much exer-

tion, and the satiety of too much enjoyment. Hermits, whether in religion or in literature, have generally found their scheme of exclusive and solitary devotion to a single pursuit, to issue in lassitude and in indolence. But with this occasional relaxation from society; with the exact and uniform attention, and the strict economy in the occupation of time, which we have recommended; together with the facilities which we flatter ourselves will be afforded by the methodical arrangement attempted in the Course which we respectfully submit to the student; and the interest which we have endeavoured to shew may be extracted in no inconsiderable degree even from the singularities and perplexities of law; the study of this important and useful profession, instead of a revolting task, will be found an interesting employment, with which to fill up those portions of life, which he, who knows his own happiness, will be sedulous to devote to business, in order to the more exquisite enjoyment of the remainder.

We doubt not but that this little work is yet susceptible of considerable improvement, although it has certainly received no inconsiderable portion of our attention: but as the subject is, we may say, entirely new, we cannot presume

that a first attempt at a regular and methodical treatise can be free from errors either of insertion or omission. The few productions which have appeared, under a somewhat similar title, have in fact been essentially of a different character; in most instances mentioning but a few books, and those almost universally known, and uniformly read: the subjects discussed in them, sometimes with an able pen, being too general in their nature to be of particular utility to those to whom they are addressed, and not unfrequently so much so as to be of equal benefit to the students of any profession.

Our object in the following Course, is to produce a learned and accomplished lawyer. We have selected with our best judgment, from an infinitude of works, and have, in no instance, recommended a single work, or even chapter, or page, which could with propriety have been omitted. The Course, we acknowledge, is extensive, but can be accomplished, we compute, in six years, making every allowance for other necessary reading. This may appear to some a very long period; but the student should bear in mind the extent, difficulty, and importance of the science, and how necessary it is to treasure up an ample fund of knowledge before he becomes engaged in practice, after which he will scarce be able to pursue any study with perseverance or

method. We find in the third Henry's reign that *nine* years were considered as the period of the legal novitiate, since which time, although the science has been much simplified, it has also been much enlarged. We are aware that there are circumstances, such as a too advanced age, pecuniary necessity, &c. which may render the prosecution of our entire Course impracticable, at least as preliminary to practice; and there are, no doubt, some young men, who, though they may be affected by neither of these circumstances, have not sufficient industry or zeal to undertake so extensive a Course: in order, therefore, to avoid all objection or cavil on this point, and to render our endeavours as generally useful and acceptable as possible, we have designated by the letter E. such books, &c. as may be ejected from the Course by such as may not have it in their power to embrace the whole: the remainder, according to our best calculation on such a subject, will require about *four* years. Let it not, however, be supposed that what we have thus designated is to be at a future period disregarded: we deemed the whole so highly valuable that the selection became difficult: we therefore urge all, who have it in their power, to study the entire course, under the full persuasion that, if they have read with attention and understanding, they may engage in their professional career with con-

fidence of uninterrupted success; and on those who, from necessity, adopt the shorter course, we enjoin, as far as may be practicable, an uninterrupted continuance of their studies after they have engaged in practice; as the first year or two thereafter are generally but little occupied by business.

This plan is adviseable, as studious habits, if once from any cause abandoned, are not easily regained; but, on the other hand, it requires at this time much caution, lest a zeal for study should occasion them to neglect the interests of the few clients they may have.

BALTIMORE, DECEMBER, 1816.

A COURSE

OF

LEGAL STUDY.

"Qui studet optatam cursû contingere metam,
Multa tulit, fecitque puer, sudavit et alsit."..... HOR. ART. POET.

LAW, in its most comprehensive signification, is that system of rules to which the intellectual and physical worlds are subjected; either by *God* their creator, or by *man;* by which the existence, rest, motion, and conduct of all created and uncreated entities are regulated, and on the due observance of which their being or happiness depends.

Law, as applied to *human* conduct generally, signifies that body of rules established for the regulation of human economy, whether *national* or *individual;* dictated to us by the light of nature, or by revelation; or prescribed by human superiours for individual observance; or ordained by the consent, express or implied, of sovereign states, for the guidance of international conduct; and to which those respectively, to whom the rules are directed, are obliged to make their actions conformable.

Law, or "*The Law*," is an abstract term, and as a *genus* means nothing more than the totality of individual laws contemplated as *one body*, without reference either to their origin or application. In this point of view, it is a mere fictitious entity.

Law in the *concrete* signifies a rule of action and, according to the subject of its application, admits of numerous divisions.

Law in the concrete, as it prescribes rules of human conduct, may be advantageously studied under the following titles or divisions, which we presume will be found to embrace as much of this widely extended science as an individual should aspire to attain; and in its prosecution we would advise the student to take up the subjects in the order in which we have arranged them, both in the general and particular syllabus, subject, however, to the qualifications contained in our Introduction.

GENERAL SYLLABUS.

I MORAL AND POLITICAL PHILOSOPHY.

II. THE ELEMENTARY AND CONSTITUTIONAL PRINCIPLES OF THE MUNICIPAL LAW OF ENGLAND: AND HEREIN,

1ST. OF THE FEUDAL LAW.

2D. THE INSTITUTES OF THE MUNICIPAL LAW GENERALLY.

3D. OF THE ORIGIN AND PROGRESS OF THE COMMON LAW.

III. The Law of Real Rights and Real Remedies.
IV. The Law of Personal Rights and Personal Remedies.
V. The Law of Equity.
VI. The Lex Mercatoria.
VII. The Law of Crimes and Punishments.
VIII. The Law of Nations.
IX. The Maritime and Admiralty Law.
X. The Civil or Roman Law.
XI. The Constitution and Laws of the United States of America.
XII. The Constitution and Laws of the several States of the Union.
XIII. Political Economy.

AUXILIARY SUBJECTS.

1st. The Geography, Natural, Civil and Political History of the United States.
2d. Forensick Eloquence and Oratory.
3d. Legal Biography and Bibliography.
4th. Professional Deportment.

PARTICULAR SYLLABUS.

TITLE I.

"Natura enim juris explicanda est nobis, eaque ab hominis repetenda naturâ." CIC. DE LEG. LIB. I, C. V.

MORAL AND POLITICAL PHILOSOPHY.

1st. The Bible. *(Note 1.)*

E. 2d. Cicero's Offices. *(Note 2.)*

E. 3d. Seneca's Morals. *(Note 3.)*

E. 4th. Xenophon's Memorabilia Socratis. *(Note 4.)*

E. 5th. Aristotle's Ethics, Gillies's translation. *(Note 5.)*

6th. Beattie's Elements of Moral Science, the following titles:

1st. "Psychology."
2d. "Natural Theology."
3d. "Moral Philosophy." } *(Note 6.)*

7th. Paley's Moral and Political Philosophy, the first five Books. *(Note 7.)*

8th. Locke's Essay concerning Human Understanding; (especial attention to be paid to the following chapters:)

"Of Identity and Diversity." } BOOK II.
"Of Moral Relations." } c. 28, 29.
"Of Words." Book iii. (the whole.)
"Of Maxims." chap. 7th.
"Of Probability." chap. 15th.
"Of the Degrees of Assent." chap. 16th.
"Of Reason." chap. 17th.
"Of Errour." chap. 20th. } BOOK IV.

9th. Smith's Theory of Moral Sentiments; (particular attention to be paid to part iv. "Of the Systems of Moral Philosophy.")

10th. Reid's Essays on the Powers of the Human Mind; (particular attention to be paid to the following Essays:)

Essay i. "Preliminary." Vol. 1st.
Essay vi. "Of Judgment." Vol. 2d.
Essay vii. "Of Reasoning." Vol. 2d.
Essay iii. "Of the Rational Principles of Action." Vol. 3d. Part 3d.
Essay iv. "Of the Liberty of Moral Agents." Vol. 3d. Part 3d.
Essay v. "Of Morals." Vol. 3d. Part 3d. *(Note 8.)*

11th. Paley's Moral and Political Philosophy, (the 6th Book.)*

* Vide note 7 on Title I.

12th. Beattie's Elements of Moral Science. "Of Politicks."

13th. Burlamaqui's Institutes of Natural and Political Law. *(Note 9.)*

14th. Rutherforth's Institutes. *(Note 10.)*

E. 15th. Bentham's Introduction to the Principles of Morals and Legislation; the first eleven chapters.*

E. 16th. Aristotle's Politicks.† *(Note 11.)*

17th. Montesquieu's Spirit of Laws; particular attention to be paid to the 28th, 30th, and 31st books, for the reasons assigned in note 2, to the second Title of this work. *(Note 12.)*

E. 18th. Count de Cataneo's Source, Strength, and True Spirit of Laws, in which the errours and defects of M. de Montesquieu are pointed out and considered. *(Note 13.)*

19th. The following select chapters in Grotius, "On the Rights of War and Peace." *(Note 14.)*

1st. The Preliminary Discourse.

2d. The 5th chap. of the 2d book entitled, "Of the Original Acquisition of a right over Persons;" "of the right of Parents;" "of Marriage;" "of Societies;"

* Vide note 2 to Title VII. † Vide note 5 to this Title.

"of the right over Subjects;" "of Slaves."

3d. The 7th ch. entitled "Of Acquisitions by virtue of some Law," and "of Succession to the Estate and Effects of an Intestate."

4th. The 9th chap. "When Jurisdiction and Property cease."

5th. The 11th ch. "Of Promises."

6th. The 12th ch. "Of Contracts."

7th. The 16th chap. "Of Interpretation."

20th. The following select chapters in Puffendorf, on the Law of Nature and Nations. *(Note 14.)*

Book I.
- 1st. "Of the Certainty of Moral Science." ch. vii.
- 2d. "Of Law in general." chap. vi.
- 3d. "Of the Qualities of Moral Actions." ch. vii.

Book II.
- 4th "Of the Law of Nature in general," ch. iii. "Of Self-Defence." ch. v.
- 5th. "Of Ministers in general," &c. chap. ix. book. iii.
- 6th.* "Of an Oath.,' ch. ii. book iv.

* It will not be premature for the student in this place, to read the celebrated case of Omicund *v.* Barker: Atkyns' Reports, p. 21.

7th. "Of Price." chap. i.	Book V.
8th. "Of Bartering, Buying, and Selling." chap. v.	
9th. "Of Renting and Hiring." chap. vi.	
10th. "Of Partnership." chap. viii.	
11th. "Of the Master's Authority," &c. chap. iii. book vi.	
12th. "Of the Parts of Sovereignty," &c. chap. iv.	Book VII.
13th. "Of the Forms of Commonwealths." chap. v.	
14th. "Of the Power to direct the Actions of the Subject." chap. i.	Book VIII.
15th. "How Subjection ceases." chap. xi.	

NOTES ON THE FIRST TITLE.

(*Note* 1.) THE BIBLE. The Bible forms a very natural introduction to this Course, as recording a form of government and law originating in the great legislator of the universe; whose pleasure it was to enjoin, by a direct communication of his will, those duties, and declare those obligations which, when by reasoning on the nature and relations of man, we have concluded to be such, we consider as the dic-

tates of the law of nature. Those ordinances also, which were not designed to be of universal authority, but only to regulate the polity of the particular people to whom they were delivered, should however be minutely known; as they are, in many instances, the foundation of the law, and the clue to the controversies of the Canonists.

The Bible is valuable also in two other points of light: it affords the only authentick history of the origin and multiplication of mankind; and by exhibiting the actual manner in which society was generated, and communities were formed, offers the best theory of the social compact; a point on which there has been no small misconception. Its historical parts will tend to shew with great probability, that those general principles of morals prevalent amongst the rudest and most unlettered nations, and which have perhaps been too hastily attributed to the efforts of natural reason, are more rationally to be ascribed to direct revelation, and will appear, with all the errours and impurities which time, situation, and the proclivity to corruption may have produced, to have been the broken glimpses of a fuller and clearer light, originally radiated directly from heaven. These remarks apply of course chiefly to those portions of the Bible connected with the origin and polity of the Jews.

The purity and sublimity of the morals of the Bible have at no time and in no country been questioned; it is the foundation of the common law of every christian nation. The christian religion is a part of the law of the land, and, as such, should certainly receive no inconsiderable portion of the lawyer's attention. In vain do we look among the writings of the ancient phi-

losophers for a system of moral law comparable with that of the Bible. How meagre and lifeless are the "Ethicks" of Aristotle, the "Morals" of Seneca, the "Memorabilia" of Xenophon, or the "Offices" of Cicero, compared with it. "From the Bible," says Soame Jenyns, "may be collected a system of ethicks, in which every moral precept founded on reason, is carried to a higher degree of purity and perfection than in any other of the wisest philosopers of preceding ages. Every moral precept founded on false principles, is totally omitted, and many new precepts added, particularly corresponding with the new object of this religion."

So also Mr. Locke remarks, that in morality there have been books enough written, both by ancient and modern philosophers, but that the morality of the Gospel so exceeds them all, that to give a man a complete knowledge of genuine morality, he would send him no other book but the Testament. These opinions are zealously corroborated by sir William Jones, who thus expresses himself. "I have carefully and regularly perused these Holy Scriptures, and am of opinion that the volume, independently of its divine origin, contains more *sublimity*, purer *morality*, more important *history*, and finer strains of *eloquence*, than can be collected from *any other book, in whatever language it may have been written.*" On another occasion he repeats, with but a slight variation, the same opinion. "I cannot," says he, "refrain from adding, that the collection of tracts, which we call from their excellence the Scriptures, contain, independently of a divine origin, more true sublimity, more exquisite beauty, purer morality, more important history, and finer strains

both of poetry and eloquence, than could be collected, within the same compass, from all the other books that were ever composed in any age or in any idiom." "The two parts of which the Scriptures consist," continues this distinguished writer, "are connected by a chain of compositions, which bear no resemblance in form or style to any that can be produced from the stores of Grecian, Indian, Persian, or even Arabian learning. The antiquity of those compositions no man doubts, and the unrestrained application of them to events long subsequent to their publication, is a solid ground of belief that they are genuine compositions, and consequently inspired."

If treatises on morals should be the first which are placed in the hands of the student, and the structure of his legal education be raised on the broad and solid foundation of ethicks, what book so proper to be thoroughly studied with this view, as the Bible?

But the religion and morals of the Scriptures by no means constitute the only claim which this inestimable volume possesses on the earnest attention of the legal student. There is much *law* in it, and a great deal which sheds more than a glimmering light on a variety of legal topicks. Political science is certainly indebted to it for an accurate account of the origin of *society*, *government*, and *property*. The subjects of *marriage*, the *alienation of property inter vivos*, its acquisition by *inheritance* and *bequest*, the obligation of an *oath*, the relations of *governor* and *governed*, of *master* and *servant*, *husband* and *wife*, the nature and punishment of a variety of crimes and offences, as murder, theft, adultery, incest, polygamy, &c., the grounds of divorce, &c. &c., still receive illustrations from this co-

pious source; and this high authority is often appealed to by legal writers, either as decisive or argumentative of their doctrines.

The eloquence and sublimity of the style of the Bible entitle it to the particular attention of all who are designed for publick speaking: for under the head of Eloquence, in this Course, surely no book has so fair a claim to insertion. The infinite variety of topicks, as history, biography, law, politicks, ethicks, poetry, &c., necessarily produce a great diversity of style. Does any history narrate events so grand and interesting, and consequently so well suited for sublimity of expression and manner, as the book of *Genesis?* In the book of *Exodus* we have, in appropriate language, detailed to us the astonishing wonders effected by the Almighty for the rescue of the Israelites from the severity of Egyptian bondage. In *Leviticus, Numbers,* and *Deuteronomy,* we have the ritual, moral, and civil law of the Jews. The book of *Joshua* unfolds the progress of the Israelites till their establishment in the land of promise; the books of *Judges, Samuel, Kings, Chronicles, Ezra, Nehemiah,* are chiefly historical. Where, among uninspired authors, do we find a work so replete with the most affecting and interesting tales, narrated in a style of singular perspicuity, and often of wonderful eloquence: the stories of Abraham's intended sacrifice of his son, Joseph and his brethren, Sampson and the Philistines, Jeptha and his daughter, and of Esther, are of unrivalled excellence; and the biographies of Job and David are no less interesting than sublime and instructive. In the poetry of the Bible there is great variety: *didactick, lyrick, elegiack* and *pastoral:* as an instance of the first

we have the book of Proverbs. The book of Psalms affords us an example of the second; of elegiack poetry there are many specimens, as David's lamentations over Jonathan, and the Lamentations of Jeremiah, which Dr. Blair is inclined to consider as the most perfect model of this species of composition in the whole world; and as an instance of pastoral poetry, we have the Song of Solomon.

In sublimity the Scriptures infinitely surpass every other composition. *Isaiah* is "without exception," says Dr. Blair, "the most sublime of all poets; and the book of Job is not only equal to that of any other of the sacred writings, but is superiour to them, Isaiah alone excepted."

Burgh, in his "Dignity of Human Nature," deduces an argument for the divinity of the Scriptures from their sublimity. "The loftiest passage," remarks this sensible writer, "in the most sublime of all *human* productions, is the beginning of the eighth book of Homer's Iliad. There the greatest of all human imaginations labours to describe, not a hero, but a God; not an inferiour but the supreme God; not to shew his superiority to mortals, but to the heavenly powers; and not to one, but to them all united. The following is a *verbal* translation of it."

"*The saffron coloured morning was spread over the whole earth; and Jupiter, rejoicing in his thunder, held an assembly of the gods upon the highest top of the many-headed Olympus. He himself made a speech to them, and all the gods together listened.*

Hear me, all ye gods, and all ye goddesses, that I may say what my soul in my breast commands. Let not, therefore, any female deity, or any male, endea-

vour to break through my word; but all consent together, that I may most quickly perform these works. Whomsoever, therefore, of the gods I shall understand to have gone by himself, and of his own accord, to give assistance either to the Trojans or the Greeks, he shall return to Olympus shamefully wounded; or I will throw him, seized by me, into dark hell, very far off, whither the most deep abyss is under the earth; whither there are iron gates and a brazen threshold, as far within hell, as heaven is distant from the earth. He will then know, by how much I am the most powerful of all the gods. But come, try, O ye gods, that ye may all see. Hang down the golden chain from heaven, hang upon it all ye gods, and all ye goddesses; but ye shall not be able to draw from heaven to the ground Jupiter, the great counsellor, though ye strive ever so much. But when I afterwards shall be willing to draw, I shall lift both the earth itself, and the sea itself. Then I shall bind the chain round the top of Olympus, and they shall all hang aloft. For as much am I above gods and above men."

"With this most masterly passage," continues Burgh, "of the greatest master of the sublime of all antiquity; the writer who probably had the greatest natural and acquired advantages of any mortal for perfecting a genius; let the following verbal translation of a passage from writings penned by one brought up a shepherd, and in a country where learning was not thought of, be compared, that the difference may appear. In this comparison, I know of no unfair advantage given the inspired writer: for both fragments are literally translated; and if the cri-

ticks are right, the Hebrew original is verse, as well as the Greek.

"O Lord, my God, thou art very great! Thou art clothed with honour and majesty! Who coverest thyself with light as with a garment: who stretchest out the heavens like a canopy. Who layest the beams of his chambers in the waters: who maketh the clouds his chariots: who walketh upon the wings of the wind. Who maketh his angels spirits; his ministers a flame of fire. Who laid the foundation of the earth, that it should not be moved for ever. Thou coveredest it with the deep, as with a garment: the waters stood above the mountains. At thy rebuke they fled; at the voice of thy thunder they hasted away. They go up by the mountains; they go down by the vallies unto the place thou hast founded for them. Thou hast set a bound, that they may not pass over; that they turn not again to cover the earth.

"O Lord, how manifold are thy works! In wisdom hast thou made them all. The earth is full of thy riches. So is the great and wide sea, wherein are creatures innumerable, both small and great. There go the ships. There is that Leviathan, which thou hast made to play therein. These all wait upon thee, that thou mayest give them their food in due season. That thou givest them they gather. Thou openest thy hand: they are filled with good. Thou hidest thy face; they are troubled. They die, and return to their dust. Thou sendest forth thy spirit; they are created; and thou renewest the face of the earth. The glory of the Lord shall endure forever. The Lord shall rejoice in his works. He looketh on the earth, and it trembleth. He toucheth the hills; and

they smoke. I will sing unto the Lord as long as I live. I will sing praise unto my God, while I have my being."

All comment on the comparative merit of these passages is superfluous.

In the morals of the New Testament we have the fulness of light, the radiance of divine truth. The history of Christ and his apostles is in the highest degree interesting, and the style exceedingly fine. The parables of our divine master, for ease, simplicity, and aptness, have never been equalled; finally, this, in common with the Old Testament, contains more of the *utile et dulce* than any other composition.

We have been thus particular on the subject of the utility of the Bible to the *lawyer*, from a deep conviction that its morality, history, and law cannot fail of being eminently serviceable to him; from our observation that young lawyers frequently read any other book but this; and lastly from the fact, that nearly all the distinguished lawyers with whom we have been personally, or through the medium of books, or otherwise acquainted, have not only professed the highest veneration for biblical learning, but were themselves considerably versed in it. We make no apology for the length of this note, nor for any matter in it which may be conceived not strictly within the design of this volume. The Bible may be allowed to form an exception; for upon no occasion, where it is recommended, can any matter be irrelevant which unfolds its excellencies.

With respect to the mode of studying the Bible, we would recommend a plain edition, without notes, to be read in the first instance: and subsequently

an edition with annotations and good maps, two or three chapters daily at a stated hour, if practicable, throughout the year.

(*Note* 2.) CICERO'S OFFICES. The "Offices" of Cicero justly hold an elevated rank among the ethical writings of heathen philosophers; and as a summary of practical morals, may be perused with great advantage by the christian reader. The moral system of Cicero is chiefly founded on the doctrines of the Stoicks, to the rigours of which, however, he was by no means friendly; nor did he countenance the doubts and uncertainties of the Scepticks. In opposition to the Epicurean philosophy, he asserted the existence of a supreme being, and of a superintending providence. He maintained the immortality of the soul, and the essential and immutable difference between virtue and vice. This little volume is no doubt familiar to most classical scholars, as it is generally in the course of academick tuition. Of this work there are two English translations; one by L'Estrange, and the other by Cockman, with a variety of valuable notes.

On the subject of *translations*, we shall perhaps find it not easy to make ourselves understood. Whilst we would anxiously caution the student against the habit of generally reading translations, we would guard him against that false and injurious contempt of them inspired by an idle emulation of classical learning; and which too often deters him from a perusal of any other than their originals. Few young men read the dead languages with that facility, without which a laborious perusal of all the Latin and Greek authors in the original is an idle waste of time; and admitting

them to read the languages with ease, to feel the beauties, and enter into the spirit of what Quinctilian denominates the simple style, it is but reasonable to suppose that those who have devoted years to the critical investigation of a particular author, have attained a more accurate knowledge of his meaning, than could be acquired by even the very attentive consideration of minds engaged in a variety of other pursuits. These translations, besides, are usually illustrated by numerous annotations; and we see no reason why the tyro should insist on being his own pioneer, when he has the choice of broad and secure avenues. Is it not irrational, because you have a torch, to refuse the light of the sun? These observations apply chiefly to a certain description of writers,— historical, didactick, and philosophical: but an occasional reference even to these in the original is by no means ineligible.

Homer, Virgil, Horace, Juvenal, Martial, &c. the orations of Demosthenes, Cicero, Isæus, Lysias, Isocrates, &c. should be read chiefly in the original: but still who hesitates to read with pleasure Pope's translation of the Iliad and Odyssey? Or who would conceive his time mispent in occasionally perusing the translations of any of the above authors? Such works as the excellent translations of Aristotle's Ethicks and Politicks, by Gillies; of Tacitus, by Murphy; of Polybius, by Hampton; Plato, by Taylor; Herodotus, by Beloe; Plutarch, by Langhorne; Thucydides, by Smith; should be read by legal students chiefly in their translations, by all means occasionally perusing the original, in order to catch the peculiar beauties of the style. Enough of the ancient classical writings may be read, principally, if not exclusively in the original,

not only to occupy as much time as the legal student can afford to this species of reading, but to extend his knowledge, and verse him in the elegancies of their respective tongues. The student then, even if he be an excellent classical scholar, should hold good translations in high respect: And while some of these he may be permitted to disregard in compliance with his classical taste, or more often his classical pride, others are in every respect, as valuable to him as their originals, or are at least auxiliary to their complete understanding.

In regard to works on the subject of *Civil Law*, while we would recommend translations, as well for the facilities they afford to the student, as for the sake of the illustrations by which they are accompanied, we would at the same time in most cases advise an attentive perusal of the originals, as their language is often peculiarly expressive, and their maxims, rules, and definitions are full, comprehensive, and sententious, scarce admitting of adequate translation. The object of these remarks is to direct the student into every path in which solid learning is to be easily acquired: and if actuated by the same desire, he will neither wholly neglect nor entirely rely on translations.

(*Note* 3.) SENECA'S MORALS. Though the principles of moral philosophy may be found more plainly demonstrated and more orderly arranged in many modern treatises than in Seneca, and other ancient ethical writers whom we have recommended, it may be agreeable and profitable to the student to see in what light these matters were contemplated by ancient moralists. He will find the sentiments of all ages on

moral conduct to be nearly the same, however the theories of philosophy may have varied; and in the author under consideration, if he discovers no systematical arrangement, he will meet many of those terse and condensed maxims of life and morals, which most forcibly convey truth, and most readily impress themselves on the recollection; and which are of excellent service to him, who in the practice of his profession is oftener under the necessity of enforcing truth, than of demonstrating it.

The translation, or the work entitled *"Seneca's Morals by way of abstract"* by sir Roger L'Estrange, is in this country, we presume, better known than the original. Sir Roger is strong in his commendation of Seneca. *"Next to the Gospel itself,"* says he *"I do look upon it as the most sovereign remedy against the miseries of human nature; and I have ever found it so, in all the injuries and distresses of an unfortunate life."* So Lactantius holds, "That he who would know all things, let him read Seneca; the most lively describer of publick vices and manners, and the smartest reprehender of them." He has been denominated the prince of erudition, and a man of excellent wit and learning.* His style however has been very generally censured: Caligula, if he be authority for any thing, compares it to sand without lime, and Quinctilian says that it is *corrupt throughout.* No doubt the classical scholar will not often consult the pages of Seneca for elegant and pure latinity, nor for very rare and well arranged moral wisdom; but he may with confidence and pleasure resort to him for

* L'Estrange's Seneca.

sound ethicks, conveyed in a very sententious and pithy manner, and, as was the custom of Bolingbroke, he may frequently quote him *"rather for the smartness of expression, than the weight or newness of matter."*†

(*Note* 4.) XENOPHON'S MEMORABILIA. Mrs. Fielding's translation of this work is very highly and justly esteemed.

(*Note* 5.) ARISTOTLE'S ETHICKS. The writings of Aristotle, whom Suidas denominates the *"Secretary of Nature,"* and whom another philosopher styles *"Princeps Politicorum,"* maintained, during many centuries, an authority accorded to those of no other man.

But whilst his admirers have been extravagant in their eulogy, his opponents have been no less so in their censures. While on the one hand we are informed that he was ordained a special messenger to prepare the way for divine revelation; that the mysteries of religion have been solved by his philosophy; that his moral wisdom was from Solomon, and himself of the tribe of Benjamin; that he was (according to Plato) the philosopher of truth, and styled by Cicero a man of eloquence, unbounded learning, fertility and acuteness of invention, and fulness of thought; we are, on the other hand, instructed that his writings display a vain and verbose pretence of learning; that they are too acromatick, and contain little else than a wordy and unintelligible shew of occult learning; perplexing the intellect with metaphysical and sublimated notions; leaving on the mind no definite impressions, and finally, that until the mental vassalage to Aristo-

† Boling. Works, vol. 4. 165.

telian philosophy was dissolved, intellect was at a stand, and useful science at least stationary, if not retrograde. The fact is that the truth, as is often the case, lies in the middle of these extremes; and as we have elsewhere stated, it is not for us to be enlisted on either side of these scientifick and literary contests and prejudices; our duty is to select from the writings of all that which is really meritorious, and stamped with the seal of good sense and sound philosophy. We would recommend or pass by, without reference to the fashion or idol of the day, and take for our motto, *Amicus Plato, Amicus Socrates, sed magis amica veritas.*

The writings of this extraordinary man unquestionably shew him to have been possessed of singular intellectual vigour, happily and richly improved by the learning of his age; and notwithstanding much may be said against some of his writings, it would still not be easy to say too much in praise of them generally. As to the merit of the work here recommended, there is at present not much diversity of opinion; in the books on *Ethicks* and *Politicks* we find him luminous, satisfactory and learned. To the exertions of Dr. Gillies are we indebted for the revival of this valuable treatise. Twice, in common with his other works, has it been consigned to oblivion, and twice revived from its undeserved obscurity. "The extraordinary and unmerited fate," says Dr. Gillies, "of these writings, while it excites the curiosity, must provoke the indignation of every friend to science. Few of them were published in his life time; the greater part nearly perished through neglect; and the remainder have been so grossly misapplied, that doubts have arisen whether

their preservation ought to be regarded as a benefit. Aristotle's manuscripts and library were bequeathed to Theophrastus, the most illustrious of his pupils. Theophrastus again bequeathed them to his own scholar Neleus, who carrying them to Scepsis, a city of the ancient Troas, left them to his heir in the undistinguished mass of his property. The heirs of Neleus, men ignorant of literature, and careless of books, totally neglected the intellectual treasure, that had most unworthily devolved to them, until they heard that the king of Pergamus, under whose dominion they lived, was employing much attention and much research in collecting a large library. With the caution incident to the subjects of a despot, who often have recourse to concealment in order to avoid robbery, they hid their books under ground; and the writings of Aristotle, as well as the vast collection of materials from which they had been composed, thus remained in a subterranean mansion for many generations, a prey to dampness and to worms. At length they were released from their prison, or rather raised from their graves, and sold for a large sum to Apellicon of Athens, a lover of books, rather than a scholar; through whose labour and expense the work of restoring Aristotle's manuscripts, though performed in the same city in which they had been originally written, was very imperfectly executed. What became of the original manuscript, we are not informed; but the copy made for Apellicon was, together with his whole library, seized by Sylla, the Roman conqueror of Athens, and by him transmitted to Rome. Tyrannion, a native of Amysus in Pontus, procured the manuscript by paying court to Sylla's librarian, and communicated the use of it to Andronicus

of Rhodes, who flourished as a philosopher at Rome, in the time of Cicero and Pompey; and who, having undertaken the task of arranging and correcting those long injured writings, finally performed the duty of a skilful editor."*

The work under consideration, with its sequel, the treatise of *Politicks*, is unquestionably the most valuable among his productions which have reached us. "The Nicomachean Ethicks," says Rennell, "afford not only the most perfect specimen of scientifick morality, but exhibit also the powers of the most compact and best constructed system, which the human intellect ever produced upon any subject; enlivening occasionally great severity of method, and strict precision of terms, by the sublimest splendour of diction. If moral philosophy, I mean specifically and properly so called, is to be studied as a science, in such sources is it to be sought. Thence will be formed a manly intellectual vigour, an ingenuous modesty and dignity of habit, an energy of thought and diction, and a reach of comprehensive knowledge which distinguish the true English scholar. On the contrary, it is to be feared that the feeble speculation which almost all modern systems of morality encourage, and the superficial information they afford, superseding the necessity of all active and real employment of the faculties, have operated more fatally upon the mental habits of the rising generation, than total ignorance could possibly have done."†

Dr. Gillies observes in the preface to his translation of the *Ethicks*, that "this and the treatise on *Poli-*

*Vide Gill. Aris. 1 Vol. 34. †Vide Gill. Aris. 409, Note S.

ticks should never have been disjoined, since they are considered by Aristotle himself as forming essential parts of one and the same work; which, as it was the last and principal object of his studies, is of all his performances the longest, the best connected, and comparatively the most interesting. The two treatises combined constitute what he calls his *"Practical Philosophy," "His Philosophy concerning Human affairs;"* an epithet to which, in comparison with other works of the same kind, they will be found peculiarly entitled. "In the Ethicks," continues this able translator, "the reader will see a full and satisfactory delineation of the moral nature of man, and of the discipline and exercise best adapted to its improvement. The philosopher speaks with commanding authority to the heart and affections, through the irresistible conviction of the understanding. His morality is neither on the one hand too indulgent, nor on the other impracticable. His lessons are not cramped by the narrow, nor perverted by the wild spirit of system; they are clear inductions, flowing naturally and spontaneously from a copious and pure source of well-digested experience."

So strongly do we desire to recommend this work to the studious perusal of our young inquirers after knowledge, that they must pardon a further extract from the judicious observations of the learned translator, as it affords additional testimony of the merit of this production.

"The most profound, as well as the most elegant of all modern writers on the subject of political ethicks, the immortal Grotius, in his treatise on the laws of war and peace, observes that Aristotle holds the first rank among philosophers, whether we estimate him by

the perspicuity of his method, the acuteness of his distinctions, or the weight and solidity of his arguments. This criticism is fully justified," continues the doctor,* "by the book before us, in which our author treats of the nature of moral virtue; shews by what means it is acquired; proves by an accurate induction that it consists in the habit of mediocrity, and lays down three practical rules for its attainment. This part of his work will bear that trial which he regards as the test of excellence; *it requires not any addition, and it will not admit of retrenchment.* The objections made to it, as falling short of the purity and sublimity of christian morality, will equally apply to all the discoveries of human reason, when compared with *'that divine light which coming into the world, gives or offers light to every man in it.'* But the criticks who make objections to Aristotle, would urge them with less confidence, if they attended to two remarks, on which our author often insists; first, that practical matters admit not of scientifick or logical accuracy; secondly, that the virtues of which he is in quest, are all of them merely relative to the condition and exigencies of man in political society; being those habits acquired by our own exertion, in which, when confirmed, we shall uniformly act our parts on the theatre of the world, usefully, agreeably, and gracefully. In Aristotle's philosophy man is the judge of man; in christianity, the judge of man is God. Philosophy confines itself to the perishing interests of the present world: christianity, looking beyond those interests, takes a loftier aim, inspires the mind with nobler motives, and promises to adorn

*Gillies' introduction to 2d book of Aristotle's Ethicks.

it with perfections worthy of its inestimably valuable rewards. Yet to the man of piety it may be a matter of edification, to compare the virtue of philosophical firmness with the grace of christian patience; and to observe how nearly the rules discovered by reason and experience, as most conducive to the happiness of our present state, coincide with those precepts which are given in the Gospel, in order to fit us for a better."

(*Note* 6.) BEATTIE'S ELEMENTS. It is but seldom we see so much useful knowledge in so small a compass. The subjects treated are numerous, and of the first importance, and all in an elementary and uncommonly perspicuous manner. A second perusal of this little work need scarce be recommended, as we believe few of its readers will be content with one reading.

(*Note* 7.) PALEY'S MORAL PHILOSOPHY. The theory of moral obligation is necessarily a preliminary study to that of municipal and international law. The student should, therefore, well comprehend the principles on which the vast body of human institutions is built, the end at which they aim, and the nature of that necessity imposed upon us, of conforming to their injunctions. In obedience to this consideration, we desire strongly to recommend the selection we have made under this title; as these topicks are set forth and illustrated in these works with more ability and learning than in any with which we are acquainted. This work of Dr. Paley is deservedly very popular. His arrangement is very methodical and lucid, and his conclusions are deduced from the great cardinal principles of morals, in a style at once clear and logical. No work on this subject is more highly distinguished by good sense.

(*Note* 8.) REID'S ESSAYS. The philosophy of the mind is so intimately connected with the philosophy of the rules by which that mind is under a moral sanction to be regulated, that the psychological authors here recommended will not appear out of place; besides which, the chapters selected as worthy particular attention, are, for the most part, on topicks which are the proper concern of the lawyer. The essays of Reid, Locke, and Stewart, are inestimable to the student, who to familiarity with the science in the erection of which they have all been master workmen, is ambitious to add the talents of profound and severe investigation, of just reasoning, and happy illustration. Of all writers, ancient and modern, none has been so rational on the subject of metaphysicks as Dr. Reid; and there is more substance and good sense in the few volumes published by him and his disciple Stewart, than are to be found any where else, in perhaps ten times the compass. We therefore urgently recommend every tyro in law to acquaint himself intimately with the metaphysical works of Locke, Reid, and Stewart, as they can scarcely fail to fashion his mind to patient inquiry, and to furnish it with principles of universal application in the science of law.

(*Note* 9.) BURLAMAQUI'S INSTITUTES. This has at all times been a very admired and popular work, not indeed as a very original production, but as an excellent commentary on the works of those great masters of natural and political law, Grotius, Puffendorf, Barbeyrac, &c. The great merit of this production consists in its uniformly ascending to the original principles of the science of morals and politicks, and gradually unfolding the subject in a forcible, clear, and me-

thodical manner. The style is sententious, and the definitions perspicuous and satisfactory. The connexion between morals and jurisprudence is often dwelt on in a pleasing and useful manner. This little production is very generally placed in the hands of the student; we advise that it should be attentively read, but never be considered as a substitute for that inestimable work on the natural law by Mr. Rutherforth, which we think decidedly preferable to any other production on that topick, with which we are acquainted. There is an English translation of Burlamaqui by Thomas Nugent, in 1748. Burlamaqui was born at Geneva in 1694; was appointed professor of law in 1720, and subsequently counsellor of state.

(*Note* 10.) RUTHERFORTH'S INSTITUTES. This book has an undoubted claim to be considered much more than its very able author has modestly termed it,—a commentary on the work of Grotius. The reader will find every important question and topick discussed in the great treatise of that author, compressed into the lectures of his elegant commentator without the formality of a regular comment, his decisions compared with those of other casuists, and his occasional errours detected and corrected, in a style and method not so concise as to be obscure, nor so diffuse as to fatigue the attention of the reader. Indeed we conceive the logical clearness with which this very sensible work is written, to impart to it an interest unusual in treatises of its abstract nature; and to give it on the whole a decided preference to any other work on that subject, with which we are acquainted. Hieneccius, Hutchinson, Cumberland, Wolf, Vattel, Burlamaqui, &c, are more usually placed in students' hands, and

are better known, only because they considerably preceded Rutherforth, and were the sources to which the senior lawyers of the present time were accustomed to resort. They are each possessed of great merit; but none so free from errour and objection as the Institutes of Rutherforth. The two last we do not hesitate in giving a place in our Course, and the others may be occasionally looked into with advantage. We would remark, that Burlamaqui's conclusions are not always correct; and he is somewhat tainted with the errours of the Gallick school. Vattel is rather too wordy, promising, and "all things to all men." Rutherforth is occasionally too argumentative on simple points; and his chapters on marriage and slavery, present, as we conceive, from first to last, absurd and singular sophisms.—We point out the following chapters as particularly worthy attention and meriting repeated perusals.

1st Volume.
- Chapter xii. "Of Promises."
- Chapter xiii. "Of Contracts."
- Chapter xvi. "Of the Right of Defence."
- Chapter xvii. "Of Reparation for Damages done."
- Chapter xviii. "Of Punishment."

2d Volume.
- Chapter v. "Of the changes produced in the rights of individuals by Civil Union."
- Chapter vi. "Of Civil Laws."
- Chapter vii. "Of Interpretation."
- Chapter ix. "Of the Law of Nations."

(*Note* 11.) ARISTOTLE'S POLITICKS. The "Ethicks" and "Politicks" of Aristotle, as has been observed, (in note 5, on the first title) are not to be disjoined.

What has been there advanced in praise of the excellence and value of the treatise of "Morals," may with perhaps additional propriety be extended to the work on "Politicks," as it is a production which most persons will unite with Dr. Taylor in pronouncing "*One of the most sterling among the works of antiquity, and a most inexhaustible treasure to the statesman, the lawyer, and the philosopher.*"* Mr. Locke, in a letter to Mr. King, who had requested his opinion as to a plan of reading on morality and politicks, remarks that "to proceed orderly in this, the foundation should be laid in inquiring into the ground and nature of civil society, and how it is formed into different models of government, and what are the several species of it. In this science, Aristotle is allowed to be a master; and few enter into this consideration of government without reading his 'Politicks.'".

In order to give the student a previous idea of the valuable contents of this work, we shall, in as brief a manner as possible, exhibit a summary of it, differently and more extensively stated by Dr. Gillies in his introductions. The truly zealous and inquiring student would not desire such previous tastes, in order to stimulate or provoke his appetite to a more ample repast: but as every one is not possessed with an ardent thirst after knowledge, provocatives are often necessary. Under the influence of this sentiment is it that we extend this note, and shall in many instances dwell on the nature, contents, and merits of works, longer than may appear requisite.

* Vide Taylor's Civil Law, 342.

In the First Book of the "Politicks," the student will meet with a succinct and rational account of the origin of society and government, and of the distinction of ranks; and an inquiry into the most approved systems of political economy. As to the first, the author considers society "a sort of community or copartnership, instituted for the benefit of the partners. Utility is the end and aim of every such institution; and the greatest and most extensive utility is the aim of that great association comprehending all the rest, and known by the name of the *'Commonwealth.'*"

In investigating the origin of society and government, he unfolds the elements of which they are composed, and shews conclusively, that both are as natural and essential to man, as it is for plants to radicate themselves in the earth, and draw their nourishment from the encompassing soil and air: he therefore considers society and government, and men and society, as coeval. He is of opinion that monarchy was the first form of civil government, and that it originated from paternal influence and authority. The nature of domestic economy; the origin of servitude or slavery, its extent and several kinds; the origin and accumulation of property; the various kinds of commerce; the use and real value of money; the illegality of usury; the utility of agriculture, &c.; are displayed in a concise, but masterly manner. He points out the analogy between the authority exercised in the three domestic or economical relations of master and servant, parent and child, and husband and wife, and that which is used in the three forms of government. A *master*, he says, commands like an *absolute monarch;* a *father* rules like a *king;* and a *husband* governs like a *republican*

magistrate: he concludes the book by pointing out the connexion between domestic and political economy, for as husband and wife, parent and child, master and servant, are the elements of *families*, so families are the elements of *states*.

In the Second Book are described the most celebrated systems or forms of government, which have actually existed; and likewise those ideal or imaginary schemes of polity or government, devised and matured by the fancy and philosophy of celebrated men. In this book are examined the governments of Sparta, Crete, Carthage, and Athens; the systems of Zaleucus, Charondas, Philolaus, Diocles, Phaleas, Pittacus and Androgamus; and a minute inquiry is made into Plato's Republick. The commonwealth of Carthage, and the institutions of Crete and Sparta (the wisest of any which have been reduced to practice,) are amply described.

The introduction to this book by the learned translator, is excellent, and no doubt will receive more than one perusal. The student will find in it a masterly refutation of the opinion advanced by some, that the ancients knew but little, if any thing, of *representative* government. To this second book, Dr. Gillies has appended an ample and highly interesting account of the little republick of St. Marino.

In the Third Book, the various forms of government which had existed, and the principles and characteristicks of each are ably investigated, the author bestowing, as Dr. Gillies observes, "just and liberal praise, where praise seemed to be due; but declaring himself not completely satisfied with any thing that

philosophers had devised, legislators prescribed, or time and chance had produced."

In this book, Aristotle first defines a state or commonwealth, of which the component elements are those called *citizens*. He then proceeds to the inquiry as to what constitutes a citizen, and the *identity* of a commonwealth. He holds man to be naturally a gregarious and political animal, and that all just and legitimate governments must have the good of the governed for their object. He considers the just and pure governments to be *monarchy, aristocracy,* and a *republick:* the corruptions of these are *tyranny, oligarchy,* and *democracy.*

The great and delicate question as to the portion of the state in which sovereignty ought to reside, is discussed and solved: the principle of distributive justice in the apportionment of political honours and emoluments, and the principle and necessity of ostracism, are investigated; and lastly, monarchy and its five kinds, its advantages, defects and corruptions, are satisfactorily displayed.

In the Fourth Book Aristotle inquires into the genuine sources of individual and national happiness, and exposes the various errours which have been adopted on this subject. He institutes many important and interesting inquiries as to the salutary limits to population; the extent and nature of the territory; the situation of the capital, as to remoteness from, or proximity to the sea; the cultivation of commerce; the influence of climate on government and men; the things essential to the subsistence of a state, which according to him, are six, viz: *food, arts, arms, money, religious establishments,* and *deliberative councils,*

and *courts of justice.* In every commonwealth, therefore, there must be *husbandmen, artizans, soldiers, merchants, priests,* and *judges.* The proper employments of citizens, according to the different periods of life; the distinctions of rank; the organization of the capital: the different kinds and aim of education; the proper age and season of the year for marriage in either sex; exposure of children, their nourishment and exercises, their moral and physical education, are interesting topicks, successively and ably treated.

In the Fifth Book, the subject of the education best suited to the maintenance of the wisest system of government, is considered somewhat in detail; and the necessity of this education being relative to the nature of the government, is advocated and illustrated.

In the Sixth Book, Aristotle has fully developed the astonishing powers of his mind. This production alone would entitle him to the reputation of the profoundest philosophical statesman. He has never been equalled, and probably never will be surpassed. On the subject treated it is certainly a *chef d'œuvre,* and to it was Montesquieu (in politicks the modern Aristotle,) so largely indebted. "In this book," says his translator, "Aristotle approves himself a master in politicks, surpassing, as even Locke acknowledges, in perspicuity and precision every writer ancient and modern, in explaining how civil society is formed into different models of government, and the several species of it." In this book all the different species of pure and corrupt governments are fully treated of, and the relation between laws and governments satisfactorily displayed.

The Seventh Book is a production of unrivalled excellence on the subject of political revolutions. The introduction by Dr. Gillies is exceedingly sensible and valuable, as it applies with much force the doctrines of this book to the wild and revolutionary spirit which has been so long prevalent in Europe and elsewhere.

The Eighth and last Book contains much excellent matter on the subject of governments, the same in name, but essentially different in their nature. In some respects this is a summary of some of the preceding books, and in many instances supplies their defects. The different kinds of democracies and oligarchies, with the means of improving and perpetuating them; the adaptation of the military and naval force to the various forms of polity; and the subject of the nature and extent of the executive authority of a state, are all very interestingly and learnedly discussed.

The above brief analysis of this admirable work cannot fail in producing its intended effect, of impelling the student to accord to this translation and the excellent introductory observations of Dr. Gillies, a considerable portion of his time and attention.

(*Note* 12.) MONTESQUIEU'S SPIRIT OF LAWS.* Few works in any age or nation have contributed more to the fame of their authors than this very philosophical and masterly production of the baron de Montesquieu. With the exception of Aristotle, no writer ancient or modern has entered so deeply into the spirit and genius of government and law; or so well entitled

* Vide note 2 on the Second Title.

himself to the distinguished appellations of the *"legislator of the human race, and prince of philosophical politicians."*

This very singular work, full of thought, learning, and genius, is the offspring of no less than *twenty years'* reflection and diligent elaboration; and, as its illustrious author says, should not be judged of by a *few hours'* reading.

But Montesquieu, like his great predecessor Aristotle, has had enemies to his fame, no less distinguished for their zeal than were his friends. He has been much praised and not a little censured. That there are errours and faults in that work cannot be denied; for what human production is exempt from them? But as long as genius has power, as long as learning and philosophy have influence, so long must the "Spirit of Laws" be esteemed among the most valuable of intellectual productions. The commentators on and censurers of this work have in many instances evidenced a disingenuous and fault-finding spirit, inconsistent with the genius of liberal and useful criticism, and manifestly dictated by a desire of acquiring fame from an ephemeral opposition to the opinions of so great a master. The merits and faults, however, of this work are now well known, and generally allowed; and it may with confidence be asserted, that the statesman, the general politician, the lawyer, and philosopher, will often seek instruction and delight in the pages of Montesquieu, when the ablest productions on similar topicks, of ancient and modern times, will be but occasionally resorted to. The errours, real and asserted, of Montesquieu, have been so much commented on, that the student can be in no danger of imbibing

them from the weight of authority, or the absence of different information. While the "Spirit of Laws" therefore is read, let not the student close his eyes to its errours, or neglect the perusal of some even of its warmest opponents; this is the most effectual way of fully understanding an author. A few short extracts from the opinions of a few authors as to the merit of this writer, may serve to place him in a proper point of view. "Montesquieu," says Dr. Priestley, "is one of the most excellent of all political writers; but his lively manner of expression is apt to lead his readers into mistakes, if they do not make use of some parts of his works to explain others. Thus it is too peremptory to say, as he does, that the blood of Lucretia put an end to kingly power at Rome; that the debtor appearing covered with wounds, made a change in the form of the republick; that the sight of Virginia put an end to the power of the decemvirs; and that the sight of the robe and body of Cæsar enslaved Rome. This is certainly ascribing too much to *spectacles*, without telling what was the reason why such spectacles, in those particular circumstances, had so much influence: for, as he himself excellently observes, if a particular event, as the loss of a battle, be the ruin of a state, there must have been a more general reason why the loss of a battle would ruin it."*

Sir James Mackintosh, in noticing this work, has with his usual felicity of expression, passed on it a high eulogium, accompanied however with perhaps a little more concession to the baron's censurers than ought easily to be allowed. "Montesquieu," says sir

* Priest. Lect. on Hist. 248.

James, "has been, perhaps justly, charged with abusing his advantages, by the undistinguishing adoption of the narratives of travellers of every different degree of accuracy and veracity. But if we reluctantly confess the justness of this objection; if we are compelled to own that he exaggerates the influence of climate, that he ascribes too much to the foresight and forming skill of legislators, and far too little to time and circumstance, in the growth of political constitutions; that the substantial character, and essential differences of governments, are often lost and confounded in his technical language and arrangement; that he often bends the free and irregular outline of nature to the imposing but fallacious geometrical regularity of system; that he has chosen a style of affected abruptness, sententiousness, and vivacity, ill suited to the gravity of his subject; after all these concessions, (for his fame is large enough to spare many concessions,) the 'Spirit of Laws' will still remain not only one of the most solid and durable monuments of the powers of the human mind, but a striking evidence of the inestimable advantages which political philosophy may receive from a wide survey of all the various conditions of human society."*

(*Note* 13.) COUNT DE CATANEO. It is not an ungenerous enthusiasm which sometimes prompts the student to an undue admiration, and incautious reception of the positions of a favourite author. This partiality is most sensible, when these positions are connected into system; and strike us at once by their novelty, and their agreement with an ingenious and

* Mack. Intro. Disco. 28.

plausible theory. There are few to whom this partiality is more pardonable than towards the author of the "Spirit of Laws." It were wonderful, however, if in the range of so many and so various subjects, so happy and profound reflections, he were not sometimes misled by the spirit of systematizing, or seduced by the desire of the specious and the brilliant. Among the many criticks of Montesquieu, few are more celebrated than the count de Cataneo. He has started some objections to the theories of that author, which the student will find well deserving of his investigation; though, to our view, the style, manner, and arguments of this writer are not the most clear and forcible: there is some difficulty in arriving at his meaning in many particular positions, and yet more, perhaps, in comprehending the scope of his work. The volume is a small quarto, very rare in this country. Many of our publick libraries, however, possess it.

(*Note* 14.) Grotius De Jure Belli ac Pacis. Puffendorf De Jure Gentium et Naturæ. The names of Grotius and Puffendorf of themselves carry with them an air of authority. Subsequent writers and commentators have, however, embodied in their works most of what is important in these authors, and by discarding the pedantick and, in such treatises, sometimes unnecessary learning with which they have encumbered their pages, but which was less their fault than that of the times, and by methodising, abridging, and sometimes correcting, have better adapted their treatises to the taste of a modern reader. To these works therefore, with the exception of the selected chapters, which may serve to give the student some

acquaintance with these *venerable* writers on national law, we prefer to recommend his attention; strenuously insisting, however, that these chapters be attentively studied. What legal student, ambitious of deep and solid learning, would be willing to acknowledge an unacquaintance with the treatises "De Jure Belli ac Pacis," and "De Jure Gentium et Naturæ?" The chapters recommended are the most valuable in each, and contain but a small portion of the entire works, yet amply sufficient for the intended purpose; and for their learning alone, independent of all extraneous motives, well merit the student's attention. Of the two, Grotius is decidedly the more learned, especially in the doctrines of the imperial or civil code: his latinity also is purer than Puffendorf's. The work of Grotius was translated by William Evats, in folio, in the year 1682; again in 1715; and lastly in 1738, with the valuable notes of his learned annotator M. Barbeyrac. There have also been several octavo editions of this work. The treatise "De Jure Gentium et Naturæ" has been translated into several languages. Kennet's and Carew's are the only English editions, the latter of which, published in 1749 with M. Barbeyrac's notes, is the most valuable.

The student will require no apology for the length of the following extract, as the name of sir James Mackintosh is a surety for its worth, both of matter and manner.

"The reduction of the law of nations to a system was reserved for Grotius. It was by the advice of lord Bacon and Peiresc that he undertook this arduous task. He produced a work which we now indeed justly deem imperfect, but which is perhaps the most

complete that the world has owed, at so early a stage in the progress of any science, to the genius and learning of one man. So great is the uncertainty of posthumous reputation, and so liable is the fame even of great men to be obscured by those new fashions of thinking and writing which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now perhaps known to some of my readers only by name. Yet if we fairly estimate both his endowments and his virtues, we may justly consider him as one of the most memorable men who have done honour to modern times. He combined the discharge of the most important duties of active and publick life, with the attainment of that exact and various learning which is generally the portion only of the recluse student. He was distinguished as an advocate and a magistrate, and he composed the most valuable works on the law of his own country; he was almost equally celebrated as an historian, a scholar, a poet, and a divine; a disinterested statesman, a philosophical lawyer, a patriot who united moderation with firmness, and a theologian who was taught candour by his learning.

"Unmerited exile did not damp his patriotism; the bitterness of controversy did not extinguish his charity. The sagacity of his numerous and fierce adversaries could not discover a blot on his character; and in the midst of all the hard trials and galling provocations of a turbulent political life, he never once deserted his friends when they were unfortunate, nor insulted his enemies when they were weak. In times of the most furious civil and religious faction, he

preserved his name unspotted; and he knew how to reconcile fidelity to his own party, with moderation towards his opponents. Such was the man who was destined to give a new form to the law of nations, or rather to create a science, of which only rude sketches and indigested materials were scattered over the writings of those who had gone before him. By tracing the laws of his country to their principles, he was led to the contemplation of the law of nature, which he justly considered as the parent of all municipal law. Few works were more celebrated than that of Grotius in his own days, and in the age which succeeded. It has, however, been the fashion of the last half century to depreciate his work as a shapeless compilation, in which reason lies buried under a mass of authorities and quotations. This fashion originated among French wits and declaimers, and it has been, I know not for what reason, adopted, though with far greater moderation and decency, by some respectable writers among ourselves. As to those who first used this language, the most candid supposition that we can make with respect to them is, that they never read the work; for if they had not been deterred from the perusal of it by such a formidable display of Greek characters, they must soon have discovered that Grotius never quotes on any subject till he has first appealed to some principles; and often, in my humble opinion, though not always, to the soundest and most rational principles.

"But another sort of answer is due to some of those* who have criticised Grotius, and that answer might be

* Paley's Prin. of Mor. Philo. pref. xiv.

given in the words of Grotius himself.* He was not of such a stupid and servile cast of mind, as to quote the opinions of poets or orators, of historians and philosophers, as those of judges from whose decision there was no appeal. He quotes them, as he tells us himself, as witnesses, whose conspiring testimony, mightily strengthened and confirmed by their discordance on almost every other subject, is a conclusive proof of the unanimity of the whole human race on the great rules of duty, and the fundamental principles of morals. On such matters, poets and orators are the most unexceptionable of all witnesses; for they address themselves to the general feelings and sympathies of mankind; they are neither warped by system, nor perverted by sophistry; they can attain none of their objects, they can neither please nor persuade, if they dwell on moral subjects not in unison with those of their readers. No system of moral philosophy can surely disregard the general feelings of human nature, and the according judgment of all ages and nations. But where are these feelings and that judgment recorded? In those very writings which Grotius is gravely blamed for having quoted. The usages and laws of nations, the events of history, the opinions of philosophers, the sentiments of orators and poets, as well as the observations of common life, are, in truth, the materials out of which the science of morality is formed; and those who neglect them are justly chargeable with a vain attempt to philosophize without regard to fact and experience, the sole foundation of all true philosophy.

* Grot. Jur. Bel. et Pac. Proleg. § 40.

"If this were merely an objection of taste, I should be willing to allow that Grotius has indeed poured forth his learning with a profusion that sometimes rather encumbers than adorns his work, and which is not always necessary to the illustration of his subject. Yet, even in making that concession, I should rather yield to the taste of others than speak from my own feelings. I own that such richness and splendour of literature have a powerful charm for me. They fill my mind with an endless variety of delightful recollections and associations. They relieve the understanding in its progress through a vast science, by calling up the memory of great men, and of interesting events. By this means we see the truths of morality clothed with all the eloquence (not that could be produced by the powers of one man, but) that could be bestowed on them by the collective genius of the world. Even virtue and wisdom themselves acquire new majesty in my eyes, when I thus see all the great masters of thinking and writing called together, as it were, from all times and countries, to do them homage, and to appear in their train. But this is no place for discussions of taste, and I am very ready to own that mine may be corrupted.

"The work of Grotius is liable to a more serious objection, though I do not recollect that it has ever been made. His method is inconvenient and unscientifick. He has inverted the natural order. That natural order undoubtedly dictates, that we should first search for the original principles of the science in human nature; then apply them to the regulation of the conduct of individuals; and lastly, employ them for the decision of those difficult and complicated questions that

arise with respect to the intercourse of nations. But Grotius has chosen the reverse of this method. He begins with the consideration of the states of peace and war, and he examines original principles only occasionally and incidentally, as they grow out of the questions which he is called upon to decide. It is a necessary consequence of this disorderly method, which exhibits the elements of the science in the form of scattered digressions, that he seldom employs sufficient discussion on these fundamental truths, and never in the place where such a discussion would be most instructive to the reader.

"This defect in the plan of Grotius was perceived and supplied by Puffendorf, who restored natural law to that superiority which belonged to it, and with great propriety treated the law of nations as only one main branch of the parent stock. Without the genius of his master, and with very inferiour learning, he has yet treated this subject with sound sense, with clear method, with extensive and accurate knowledge, and with a copiousness of detail, sometimes indeed tedious, but always instructive and satisfactory. His work will be always studied by those who spare no labour to acquire a deep knowledge of the subject, but it will in our times, I fear, be oftener found on the shelf than on the desk of the general student.

"In the time of Mr. Locke it was considered as the manual of those who were intended for active life; but in the present age, I believe, it will be found that men of business are too much occupied, men of letters are too fastidious, and men of the world too indolent, for the study or even the perusal of such works. Far be it from me to derogate from the real and great merit

of so useful a writer as Puffendorf. His treatise is a mine in which all his successors must dig. I only presume to suggest, that a book so prolix, and so utterly void of all the attractions of composition, is likely to repel many readers who are interested, and who might perhaps be disposed to acquire some knowledge of the principles of publick law."*

PARTICULAR SYLLABUS.

TITLE II.

"Principles, causes, and elements being unknown, the science whereof they are, is altogether unknown."..... FORTES. CH. VIII.

THE ELEMENTARY AND CONSTITUTIONAL PRINCIPLES OF THE MUNICIPAL LAW OF ENGLAND: AND HEREIN,

I. OF THE FEUDAL LAW. (*Note* 1.)

1st. Robertson's State of Europe, introductory to his History of the emperor Charles V.

2d. The 1st. vol. of Hume's History of England, page 216. 298. 397. 467. 2d. vol.

* Vide Mack. Intro. Disco. p. 15. (London, 1799.)

page 1. 398. 3d. vol. page 101. [The octavo edition in 7 vols. London; or Coale and Thomas's octavo edition, Baltimore, 1810.*]

E. 3d. Gilbert Stuart's View of Civil Society. (*Note* 2.)

4th. Dalrymple on Feudal Property. (*Note* 3.)

5th. Sullivan's Lectures.

6th. Lord chief baron Gilbert's Treatise of Tenures, the first part, on the "Origin, Nature, Use, and Effect of Feudal or Common Law Tenures." (*Note* 4.)

II. THE INSTITUTES OF THE MUNICIPAL LAW GENERALLY.

1st. Blackstone's Commentaries on the Laws of England. (*Note* 5.)

2d. Wooddeson's Systematical View of the Laws of England. (*Note* 6.)

III. OF THE ORIGIN AND PROGRESS OF THE COMMON LAW.

E. 1st. Gilbert Stuart's Historical Dissertation concerning the Antiquity of the English Constitution.†

2d. De Lolme on the Constitution of England. (*Note* 7.)

E. 3d. Plowden's Treatise on the Constitution of the United Kingdom of Great Britain and Ireland. (*Note* 8.)

* Vide note 2 on this Title. † Vide note 2 on the second Title.

4th. Eunomus, or Dialogues on the Law and Constitution of England. *(Note 9.)*
5th. Hale's History of the Common Law.
6th. Reeves' History of the English Law, from the time of the Saxons to the reign of Henry VII. *(Note 10.)*

NOTES ON THE SECOND TITLE.

(Note 1.) FEUDAL LAW, WHY THE STUDY OF IT SHOULD PRECEDE THAT OF THE COMMON LAW. The laws like the language of England, are of a very miscellaneous character: nearly every part of this vast system of jurisprudence is somewhat tinctured with feudalism; but the law affecting *real* property has its foundation deeply laid in the rules and principles of that extraordinary code. To acquire a comprehensive and philosophical view of the laws of England, it is very essential to examine the early history of that country and of Europe generally, and to explore the very sources and springs whence these laws originated; for *ignoratis causis rerum, ut res ipsas ignoretis necesse est;* and these are principally to be found in the repositories of the laws and customs of the dark and feudal ages.

If, therefore, the student aspire to a knowledge of something more than mere "expository jurisprudence," which terminates in ascertaining the *ita lex scripta est;* if he desire to contemplate law "censorially," and thereby investigate its spirit and philosophy, in order to determine its justness or what it

ought to be; if his object be to impress on his mind the infinite variety of rules and principles, and to apply them with facility and judgment, as the ever varying circumstances and facts may require; it can only be effected by a familiarity with the feudal institutions, which, though in numerous instances no longer the law of the land, are however the parent of much that is, and still retain so manifest an influence as to render our law extremely obscure, arbitrary, and unphilosophical, to all who have disregarded its feudal relations and dependencies.

It is but reasonable to suppose, that a system of law in active and efficient operation for the space of at least six centuries, would be so radically incorporated in the general law of the land, and would have occasioned such an infinite variety of customs, laws, and institutions, and such numerous modifications and alterations in the original code, as for ever to retain an almost immutable influence. For though the statute 12 Charles II. removed the oppressive and military part of this system; and though the refinements, as well as the necessities of mankind, had introduced, long before, important alterations in the forms of procedures, and the general spirit both of legislation and interpretation, much still remains, and a very considerable portion of the present law has its foundations resting immediately on feudal principles.

It would be no difficult undertaking to enumerate many hundred rules of law, as much in force at present as they ever were, which in the abstract appear unaccountable, if not absurd, until inquiry into their feudal origin dispels the difficulty, removes the aspersion, and imparts that life and dignity, which phi-

losophy and science never fail to afford to subjects apparently the most abstruse and arbitrary. The student, for instance, is informed that a *freehold* cannot commence *in futuro;* that it cannot be put in *abeyance,* but that the inheritance may; that a *contingent* remainder of freehold cannot be limited on a particular estate for *years;* that a *particular estate* and *remainder* must have a contemporaneous inception; that an estate to A. for years, remainder to B. for life, remainder to the right heirs of C. is good; that an estate for life to the ancestor, and a limitation of the *inheritance* to his heirs, coalesce, and constitutehim tenant in fee; that title by *descent* is preferable to title by *purchase;* that a *condition* broken defeats the *entire* estate; that a right of entry for condition broken cannot be reserved to a stranger; that the entire estate in joint tenancy vests in the survivor; that the courts are disposed to presume against cross-remainders; that a remainder must vest in possession *eo instanti* the particular estate determines; that a rent, properly so called, cannot be reserved to a stranger; that in descent the *eldest* son shall *solely* inherit; that the male shall be preferred to the female; that females shall inherit in coparcenary; that by no species of conveyance shall a man be permitted to raise a fee-simple to his own right heirs as *purchasers;* that inheritances shall never lineally *ascend,* &c. &c. These rules, which are very numerous, can make but little useful impression, unless the principles in which they originated be well understood; and let not the student look for these principles *out* of the Liber Feudorum. There are, however, no truths so manifest as to be established without some opposition. This more frequently originates

from prejudice, idleness, or a spirit of contention, than from ignorance. In lord Coke it was certainly prejudice. His little estimation for feudal learning was more the result of an overweening and tenacious opinion of the peculiar excellence and dignity of the laws of his country, than any absence of information as to their real origin. With lord Coke, the admission that English jurisprudence was largely indebted to the code of any other nation, was to detract from its dignity. The fact, however, is that this system is of Roman, Saxon, and feudal origin; and can be well understood only by reference to the principles and genius of those respective codes. As regards that portion of it which is feudal, we are happy to call in corroboration of the opinion advanced in this note, that of professor Sullivan, who insists on a broad foundation of feudal learning being laid, in order to erect a durable, solid, and splendid superstructure of English law. "But, perhaps," says the instructive writer, "it may be thought sufficient to explain and deduce these rules from the feudal ones, as they occur occasionally in the books of the common law; which is the method that, in conformity with the rest of his plan the Oxford professor has adopted; and that the reading through a course of that law, even the shortest, will be attended with an unprofitable delay, and detain the students too long from their principal object. The answer to this objection is short, and, if well founded, perfectly satisfactory. It is, that the real reason of proposing a system of the feudal law to be gone through was to *save time*. The method is so much better, and clearer, and, by necessary consequence, so much easier to be comprehended and retained, that the

delay will be abundantly compensated, and one third at least of Littleton will be understood and known by the students, before they open his book. For the maxims of the common law, as they lie dispersed in our books, often without reasons, and often with false or frivolous ones, appear disjointed and unconnected, and as so many separate and independent axioms; and in this light very many of them must appear unaccountable at least, if not absurd; whereas in truth, they are almost every one of them deducible by a train of necessary consequences, from a few plain and simple rules, that were absolutely necessary to the being and preservation of such kind of constitutions as the feudal kingdoms were. The knowledge of which few, timely obtained, will obviate the necessity of frequent and laboured illustrations, as often as these maxims occur in our law; will reconcile many seeming contradictions, and will shew that many distinctions, which at first view appear to be without a difference, are founded in just and evident reason: to say nothing of the improvement the mind will attain by exercise, in following such a train of deductions, and the great help to the memory, by acquiring a perfect knowledge of the true grounds of those various rules, and of their mutual connexion and dependence on each other."*

(*Note* 2.) GILBERT STUART'S VIEW OF CIVIL SOCIETY.† From the various treatises on feudal institutions and manners here recommended, the reader will discover that the question of the existence of feudalism in England anteriour to the conquest, hav-

* Vide Sulli. Lec. p. 15. † Vide note 12 on the First Title, and the 17th Book of that Title.

ing been dragged into the dispute between the popular and court parties, has, together with some collateral points, been agitated between some of the most distinguished British lawyers and antiquarians with no inconsiderable warmth.

The student's investigation of this point will issue, we imagine, in the opinion of those, who taking a middle course, have allowed among the Saxons some faint vestiges of the feudal law and manners. Among the boldest productions on the side of the popular party is Gilbert Stuart's "View of the Progress of Society in Europe," a work which, in support of the novel theory it sets forth of the origin of chivalry, contains many opinions which an acquaintance with the rise and progress of the British constitution forcibly contradicts, and much learning and research misapplied, or wilfully prostituted by party prejudice. The same remarks apply to his "Dissertation on the Antiquity of the British Constitution." To understand the work on the "Progress of Society," which is written to establish a peculiar theory, and, as mentioned, to strengthen some party notions, it is adviseable that the student should not invert the order here laid down, but previously read the accounts of Robertson and Hume. (When examining Hume it would be well for the student to read 1 vol. page 79, and the 1st. Appendix to that vol. page 169 to 196.) In our notice of Montesquieu's "Spirit of Laws" we have required the student's particular attention to the 28th. 30th, and 31st books. This very sensible writer, who in the first part of his work has so well extracted the spirit of laws in general, has shown in these three books, with what philosophical scrutiny

he can investigate the institutions of a particular people. From the study of those books, in which he has evolved the principles and causes of the feudal system, and traced its changes in the French empire during the early ages, with a singular skill and felicity, we remember to have derived a pleasure but slightly diminished by the obscurity into which his sententious conciseness occasionally betrays him. But we conceive that this part of the work would be read with greater advantage after the works of Robertson, Hume, and Gilbert; or should the student prefer to read it in connexion with the rest of the work, (which in the arrangement of our Course precedes these authors) we advise a subsequent perusal of it.

(*Note* 3.) DALRYMPLE ON FEUDAL PROPERTY. We have had occasion to remark in the Introduction, on the necessity of an acquaintance with the *history* of the law, in order to comprehend the reason of its principles, and the origin of its forms. The work which we now recommend, is a brief and philosophical history of the revolutions of English tenures, and of the gradual alterations produced by the exigences or convenience of successive ages, in the mode of holding and transfering property; of the conflicts between principles anciently recognised, and those which it was found convenient afterwards to adopt; and of the various devices and subterfuges by which, often under a nominal adherence to ancient maxims, a new complexion was given to men's estates, and the modes of defeating, conveying, enlarging, or defending them. The slow amelioration of the services and restraints of the old military feuds; the progress of voluntary and involuntary alienation; the history of entails, with their appurte-

nances, fine and recovery; the introduction and application of other conveyances, together with the original jurisdiction of the several English courts, and their subsequent mutual encroachments or limitations; may be here perspicuously traced by the student; who, unless he contemplates these changes in connexion with the dates and causes of their origin, could conceive of them only as a mass of discordant principles, and frivolous forms. From this and other treatises of a similar nature, the student may discover, indeed, the deficiences of English law, as an elegant and symmetrical system; but he will be no less profoundly impressed with the prudence and sagacity of those legislators and judges, who were content to sacrifice symmetry to strength; and discovered, perhaps, a more happy invention in thus introducing the innovations demanded by times and circumstances, under the shadow and sanction of an ancient and venerable system.

(*Note* 4.) LORD CHIEF BARON GILBERT'S TREATISE OF TENURES. The legal productions of lord chief baron Gilbert are confessedly among the most valuable that we possess. It is a singular excellence of these works, that they uniformly trace legal points to their principles; for no where are the grounds and reasons of the English law more fully illustrated, or more ably pursued to their feudal or other origin, than in the writings of this learned judge. His "Treatise of Tenures" is peculiarly entitled to the student's regard, as it is one of the most elementary, luminous, and satisfactory essays we have on this abstruse learning, and in a short compass removes numerous difficulties, which, without the aid of this little work, nothing

less than great assiduity, and ardour of research could subdue.

(*Note* 5.) BLACKSTONE'S COMMENTARIES. While ample praise has been bestowed on the elegance, taste, and genius which distinguish this splendid production, there are some who have questioned its utility. It has been objected to the commentaries, that they seduce the student from the more weighty and learned writers of the law; and it is doubted whether, under all the embarrassments of his progress, he did not derive a more substantial and durable benefit from his obscure and difficult masters, than from the labours of the more modern commentator; where the great principles of the law are so clearly delineated, and its elementary difficulties so happily solved to the student, as to render him, it is said, less patient and laborious in his future researches; while the subject is treated with an elegance of manner and language, with which the style of other legal writers must hold a very disadvantageous comparison.

While some, under the apprehension of these seductions, are content to follow the old avenues, and grapple with the giant difficulties of the law in the very entrance of the labyrinth, it is a more general errour to neglect too much the ancient sources of learning, and to confine our attention too exclusively to a work, whose object was to incite, to conduct, and extend them. This course will as certainly render us sciolous and superficial, as the proper use of these admirable and scientifick institutes of the law of England will facilitate our introduction to more extensive and profound researches.

The general institutes of a science resemble a general map: they trace the grand outline; they possess us of the leading features; and assist our understanding of the parts, by presenting the arrangement and connexion of the whole. The commentaries exhibit a general map of the English law; yet to hope from them particular and definite knowledge on any of its various doctrines, were a like folly with expecting an accurate draught of St. Peter's in a map of Italy.

It seems unjust to conclude that this elegant production is injurious, because the idle and superficial, collecting knowledge from it with facility, find no occasion for research and exertion; or to imagine it useless, because the laborious and the enterprising have made great, and sometimes more solid acquisitions, without it. In the first case it is probable, that the acquisitions not made by this means, had never been made at all; in the second, that the legal scholars who have been formed by this course, have been generated from the same cause which produced hardy citizens in some ancient commonwealths; where the severity of education and discipline permitted only a constitution of iron to escape. But between these extremes lies the most common and numerous class of students; who do well under a guide, what they never enterprise without one; who travel patiently over the mountain, though they would clamber no unnecessary precipices; and who are willing to dig in the mine, though they cannot fly with the wings of the eagle. To such it seems absurd to doubt the utility of a work which exhibits the general contour of English jurisprudence, its causes, reasons, and rules; and diffuses the interest of science and symmetry on topicks which, contemplated apart, often seem extremely arbitrary

and confused. It seemed wise to the great digester of the Roman law, to arrange and abridge in the Institutes, for the service of the Roman student, the multifarious learning of the Code and Pandects.

That this work is to be regarded and admired merely as an outline of the various and intricate science of English jurisprudence, was the opinion of sir William Jones, who holds the commentaries to be the "most correct and beautiful outline that ever was exhibited of any human science; but they alone," says he, "will no more form a *lawyer*, than a general map of the world, how accurately and elegantly soever it may be delineated, will make a *geographer:* if indeed all the titles, which he professéd only to sketch in elementary discourses, were filled up with exactness and perspicuity, Englishmen might hope at length to possess a digest of their laws, which would leave but little room for controversy, except in cases depending on their particular circumstances; a work which every lover of humanity and peace must anxiously wish to see accomplished."

The learned Mr. Hargrave, in his preface to his Law Tracts xlv, well expresses the opinion we have ever entertained on this subject; and it is much to be lamented that young men of fine talents, fascinated by the perspicuity of the arrangement, and the charms of the style, persist in reading little else than these commentaries, when their time should be devoted to Bacon, Cruise, Fearne, Chitty, Tidd, &c. "Those who are sufficiently acquainted with my devoted respect for this late most eminent commentator on the laws of England," says Mr. Hargrave, "cannot reasonably suspect me of being easily betrayed into any

measure tending to injure his fame. Often have I remonstrated to various persons, for whose opinions I have the highest respect, that, notwithstanding the wonderful merit of that great work, his commentaries, still they were only elements of our law, only written for students, not designed for profound experienced lawyers, such as are either the fixed ornaments of their country, on the elevated seats of justice, or move as shining, though secondary planets, in our juridical world. If the commentaries of Mr. Blackstone have attracted the attention of great judges and eminent counsel, before sufficiently enlightened; have been critically read, and ardently studied by persons of such description; it is the strongest possible proof of a commanding excellence; and though such persons should find blemishes in every page, it will be at once obviated, by reminding them of the nature of the work, and of their unremitting condescension in examining its contents. Such," continues Mr. Hargrave, "is the the point of view, in which I have ever considered these famous commentaries of an almost second Hale."

Lord chancellor Redesdale also, in the case of Shannon *v.* Shannon. 1 Scho. and Lef. 327, in noticing a legal doctrine cited from the commentaries, says "I am always sorry to hear Mr. Justice Blackstone's commentaries cited as an *authority:* he would have been sorry himself to hear the book so cited: he did not consider it such." Judge Tucker, the American editor of the commentaries, thus expresses himself on the subject. "On the appearance of the commentaries, the laws of England, from a rude chaos, instantly assumed the semblance of a regular system. The *viginti annorum*

lucubrationes recommended by Fortescue, it was thought, might be dispensed with, and the student, who had read the commentaries three or four times over, was lead to believe, that he was a thorough proficient in the law, without further labour or assistance. The crude and immethodical labours of sir Edward Coke were laid aside, and that rich mine of learning; his commentary upon Littleton, was thought to be no longer worthy of the labour requisite for extracting its precious ore. This sudden revolution in the course of study may be considered as having produced effects *almost as pernicious* as the want of a regular and systematick guide; since it cannot be doubted, that it has contributed to usher into the profession a great number, whose superficial knowledge of the law has been almost as soon forgotten as acquired."

Judge Tucker has been found fault with for this opinion It is manifest, however, that the judge meant not to censure the work, nor to diminish its merited fame; for he was himself greatly instrumental towards its circulation. He has, no doubt, with regret observed the evil we have been noticing, and warmly censures the folly of relying on the commentaries for solid learning: this is the *"pernicious effect"* which he deprecates, and which has no doubt occasioned the failure of many students of law.

Upon the whole, we strongly urge an earnest perusal of this admirable work, the student always bearing in mind, that its principal object is to present an orderly and systematick view of a science, the outlines of which are not to be found as briefly yet completely delineated, in any other work. Let him also

regard it as a "more beautiful specimen of elegant literature, than has in any other instance been applied to a professional subject, which has greatly facilitated the acquisition of juridical knowledge, while it has improved the judgement of mature experience, and given a convincing proof to the cultivators of general literature, that if the science of English law has not been often presented in an elegant form, the defect has not been occasioned by the nature of the subject." 1. Evans's Pothier. Intro. 75. Such unqualified, disingenuous, and ungrateful remarks as the following, can only be mentioned to be condemned. "The commentaries of Blackstone have met with success, but have not deserved it. At a time when taste and literature are very much advanced in Great Britain, it was necessary its inhabitants should be presented with a *readable* system of law. This judge Blackstone did, and *no more;* we find in it no invention, no philosophy, no erudition; it may instruct a country gentleman, but lawyers receive no benefit from it. These commentaries do not go sufficiently into the history and antiquities of the law; *deep researches did not suit his capacity;* he should all along, where the subject permitted it, have appealed to the Saxon government and policy. More modern usages should have been illustrated by ancient customs, and every point of the constitution should have been traced to its source. He found it a much easier task to deduce his subject from the conquest, and to transcribe, with a few improvements of language, the matter which is heaped together in lord Coke, or in Maddox, than to walk in a path where there was no such genius to direct him: a vast labyrinth presented itself to him; he was *conscious of*

his weakness, and recoiled. A great many ingenious things have been written on the nature and plan of the feudal polity, by sir Matthew Wright: these the doctor found it easier to copy, than communicate any ideas of his own on that very curious and intricate system. The crabbed, rugged, and unequal style of Bacon, Selden, and Spelman disgusts all readers of taste; but it is in these, and in authors that resemble them, that the industrious student must dig for legal knowledge. It is much to be wished, that some lawyer, whose views are enlarged by science, and whose penetration is sharpened by practice, would apply himself to compose a work, on a plan more *original, liberal,* and *extensive* than the Commentaries; which, whenever that is done, *will slide into insignificance and oblivion.*" When this *is* done, that consequence will certainly follow, most enlightened and liberal critick!

(*Note* 6.) WOODDESON'S SYSTEMATICAL VIEW, &c. The transition from the "*Commentaries*" to the "*Systematical View of the Laws of England,*" by professor Wooddeson, will be found natural and very agreeable. Many of the topicks scarcely mentioned, and others more fully treated of by justice Blackstone, have in this work been considered somewhat in detail, so that the student, having attained in the former the elements, welcomes a more particular view of the subjects in the latter.

Dr. Wooddeson was the successor to sir William Blackstone, and the second Vinerian professor. His lectures commenced in Michaelmas term, 1777, and were published in the year 1792, in three volumes octavo. We notice as particularly excellent, part 2d, division 1st, and part 3d, division 2d.

(*Note* 7.) DE LOLME ON THE CONSTITUTION OF ENGLAND. This is deservedly a work of high estimation, and has been much commended, not only in England, but wherever it has been read. Junius recommends it as a deep, solid, and ingenious production; and lords Chatham and Camden have spoken of it in terms of great approbation. It is unquestionably a luminous, candid, concise, yet satisfactory exposition of the British constitution, and is written in a pure and nervous style. John Lewis De Lolme was born in Geneva, where he was for some time a senator. He resided for several years in England, and wrote there on a variety of topicks. He is the author of "Parallel between the English constitution and the former goverment of Sweden," published in 1772; "Essay on the union of Scotland with England," 1787; "Flagellantes;" "Memorials of human superstition;" "Observations on the tax on widows," 1778; (a pamphlet of much wit and good sense;) and "Observations on the late national embarrassments," 1789. He died in his native country, aged and poor, in March, 1807. He is said to have been a man of genius and learning, of sprightly and witty conversation, but rather eccentrick.

By some he has been placed in the splendid catalogue of those to whom the celebrated letters of Junius have been ascribed.

(*Note* 8.) PLOWDEN'S TREATISE, &c. This is a very interesting and clear, though concise history of the civil and ecclesiastical constitutions of Great Britain and Ireland. It presents, in a bird's eye view, every important feature of that wonderful piece of state mechanism, and unfolds its progressive ad-

vancement from its first rude foundations, to its present regularity and excellence.

We presume that neither the writings of the constitutionalists, nor those of the republicans or anarchists, will mislead the student to suppose with the one, that the British constitution is nearly free from defects, nor with the other, that it is vulnerable at all points, and replete with the seeds of its own certain destruction. The productions of each party should be read with the single view of extracting truth, and under the persuasion that entire verity and invariable candour are not to be found in the pages of either. This little volume of Mr. Plowden is written with a laudable and ingenuous spirit, and presents a very pleasing view of the fundamental principles of a government which every good and reflecting mind might reasonably wish to be perpetual.

(*Note* 9.) EUNOMUS. As an institutionary treatise this little volume has much merit. Its main object is the removal of many vulgar prejudices relative to the science of law and its professors, by a liberal and minute inquiry into the origin and spirit of many of its principles. The aspersions usually cast on the constitution and laws of England, both as to principle and practice, are satisfactorily removed, and the excellence and dignity of both ably vindicated.

The difficulties usually encountered in matters of practice, and the numerous apparently unmeaning technicalities of English jurisprudence, are, together with the science generally, illustrated in an able and attractive manner. The intimate connexion of law with history and general literature is displayed, and the student strongly urged to pursue a liberal method

of legal study. It is matter of regret that this work is, with us, so little known. The merited renown of its predecessor, the "Commentaries," has cast it into shade, from which we should esteem ourselves fortunate to rescue it.

(*Note* 10.) REEVES'S HISTORY OF THE ENGLISH LAW. Until the appearance of this inestimable work, a general history of English jurisprudence was no where to be found, and was certainly a great *desideratum*. The connexion between the law and the history of the times in which it originated, advanced, and matured, is very intimate; and, as has elsewhere been observed, must receive an attention commensurate with its great utility. But the history of the science of law itself; its origin, alterations, modifications and maturity; demands a closer inspection, and cannot fail in being regarded as a subject of singular interest to every legal inquirer. A lawyer surely will not content himself with a knowledge of the existing laws, without respect to their origin and primary spirit, but will acquaint himself with the reasons which occasioned their enactment, the causes of their various changes and modifications. He should know what the law has been; why it no longer exists the same; and the cause of the alteration in any of its provisions; for the parts which have been pruned and cast off, still affect the nature and configuration of those which remain: in fine, the law more than any other science, should be known in all the various stages of its progression: its history discloses its philosophy, and as legal writers are generally content with declaring the mere operative law, a juridical history, gradually and chronologically developing the science from its infancy,

through all its struggles to manly and vigorous maturity; designating with certainty and precision the various mutations it has undergone, and the causes which induced them; cannot but be a work of great interest and manifest utility. In this point of light we regard Mr. Reeves's history. The object of this very laborious and judicious author, is the investigation of English jurisprudence, not English antiquities: with this view, every work of established authority of early times has been critically examined; and, as he himself informs us, the whole of Glanville, and the most valuable and interesting parts of Bracton, have been incorporated in this work.

The style of this production is as easy, and the manner of treating the subject as interesting, as the topicks would admit; but notwithstanding their interest and importance, it must be admitted to be a work which should be rather frequently than continuedly in the hands of the student. Like some other works of great value, it fatigues more from the multiplicity of its topicks, than from the dulness either of its matter or manner. The most judicious method, therefore, of reading this work, is to take it up at intervals, and to impress faithfully on the mind the law as it existed at a particular period, before proceeding with it in all its variety of changes. A contrary procedure might engender confusion in a work embracing the revolutions and modifications of the law of England through many centuries. The advantage of this method of reading Mr. Reeves's history is strongly impressed on our mind, from a lively recollection of the pleasure and benefit we received from devoting to it an hour or two a day; from which we have always thought we gained

more useful knowledge of English law than from any other work placed in our hands during our legal novitiate. The propriety of the place assigned it in this Course, viz. between the works of Blackstone and Wooddeson, and the great Commentary upon Littleton, is strengthened by the views of its author. "In pursuing the changes," says Mr. Reeves, "in our laws thus far, it is hoped that if nothing is added to the stock of professional information, something is done towards giving it such illustration and novelty, as may assist the early inquiries of the student. The investigation here made into the origin of English Tenures, the law of real property, the nature of writs, and the ancient and more simple practice of real actions, may, perhaps, facilitate the student's passage from Blackstone's Commentaries to Coke upon Littleton; and better qualify him to consider the many points of ancient law which are discussed in that learned work."

PARTICULAR SYLLABUS.

TITLE III.

"Emisit me mater Londinum, juris nostri capessendi gratiâ; cujus cùm vestibulum salutâssem, reperissemque linguam peregrinam, dialectum barbarum, methodum inconcinnam, molem non ingentem solum, sed perpetuis humeris sustinendam, excedit mihi fateor animus."..... SPELMAN.*

THE LAW OF REAL RIGHTS AND REAL REMEDIES.

I. THE LAW OF REAL RIGHTS. (*Note* 1.)

1st. Coke's Commentary upon Littleton's Tenures. [Hargrave and Butler's edition.] (*Note* 2.)

2d. Cruise's Digest of the Real Law. The following select Titles: (*Note* 3.)

1. Lands, Tenements, and Hereditaments.
2. Incorporeal Hereditaments. The following:
   - Common.
   - Ways.
   - Offices.
   - Franchises.
   - Rents.

(*Note* 4.)

THE OBJECTS OF REAL PROPERTY.

*Vide note 3 to this Title.

3. Estate in Fee Simple.
4. Estate Tail.
5. Estate Tail after possibility of issue extinct.
6. Estate for Life.
7. Estate for Life and Occupancy. *(Note 5.)*
8. Leases and Terms for years. *(Note 5.)*
9. Estate from year to year. } Treated under the same Title.
10. Estate at Will. }
11. Estate at Sufferance.
12. Estate by Curtesy of England.*
13. Estate in Dower.
14. Jointure.
15. Estates upon Condition.
16. Mortgage.†

THE ESTATE OR INTEREST WHICH MAY BE HAD IN REAL PROPERTY.

17. Reversion.
18. Remainder. [Preston on *Cross Remainders.*] *(Note 6.)*
19. Fearne's Essay on Contingent Remainders.
20. Fearne's Essay on Executory Devises. *(Note 7.)*

The time of enjoyment of estates in real property.

* † Vide Section "Miscellaneous," end of this 3d Title, and read the opinions &c. there recommended in the order there set down, and in connexion with the above subjects.

21. Joint Tenancy.
22. Tenancy in Common. } THE NUMBER AND RELATION OF OWNERS.
23. Coparcenary.
24. Descent.*
25. Purchase; and herein of
Title by
Escheat.
Prescription.
Deed.†
Private Act of Parliament.
King's Grant.
Devise. } THE MODES OF ACQUIRING A TITLE TO REAL PROPERTY.
26. Use.
27. Trust. } (*Note* 8.)

II. THE LAW OF REAL REMEDIES. (*Note* 9.)

1st. The 10th and 11th chapters of the 3d vol. of Blackstone's Commentaries.

2d. Comyn's Analysis of Real Actions.‡

E. 3d. Title Assize, 1 Bacon's Abridgment.

4th. Booth on Real Actions. (American edition is preferable.)

LORD COKE'S REPORTS.

[*Select Cases therein on the Law of Real Rights and Real Remedies.*]

[In recommending to the industrious student the earnest perusal, in lord Coke's reports, of certain cases

*†Vide note in the preceding page. ‡Vide 1 Comyn's Dig. p. 140.

on the law of real property, we desire to impress him with the strongest sentiments of respect and veneration for the writings of this distinguished luminary of the law.

The youth who would drink deeply in English jurisprudence, must resort to the fountains; for although the waters of many of the streams which flow from them may be sweeter and more limpid, they are by no means so strongly nutritive: they may allay the thirst of the moment, but leave no very durable or profitable effect.

The writings of lord Coke are to be regarded as a rich and abundant source of legal wisdom, which though strongly tainted with the affectation and pedantry of the age in which he lived, and almost devoid of that lucid order and harmony of style which characterize the legal works of the present day, possess a charm of a more lasting and useful character; and which, perhaps, is somewhat heightened by the very quaintness that so strongly distinguishes them from the productions of more recent times.

It would be no less than ingratitude in the anxious inquirer after legal knowledge, to disregard the labours of this great and estimable *sage* of the law; since he appears to have been ever anxious to simplify, and so elucidate his subject, as to reduce it to the level of the student's comprehension. How much do we find in his learned "Commentary on Littleton," and his prefaces to "The Reports," expressly designed to encourage the desponding student, to relieve his doubts, banish his fears, foster his hopes, and encourage his aspirations! How animating the assurance, and with what paternal anxiety is it given, that *"although he*

may not, at any one time, reach the meaning of his author; yet at some other time, and in some other place, his doubts will be cleared." "Our student," says he on another occasion, "must remember that the knowledge of the law is like a deep well, out of which each man draweth according to the strength of his understanding. He that reacheth deepest, seeth the amiable and admirable secrets of the law, wherein I assure you the sages of the law in former times have had the deepest reach. And as the bucket in the *depth* is easily drawn to the uppermost part of the water, (for *nullum elementum in suo proprio loco est grave,*) yet if taken from the water, it cannot be drawn up but with great difficulty; so, albeit, the beginning of this study seems difficult, yet when the professor of the law can dive into the depth, it is delightful, easy, and without any heavy burthen, so long as he keeps himself in his own proper element."

But notwithstanding we are thus grateful for the useful labours of this *Hercules* in the law, and thus friendly to his works, we would by no means carry our veneration so far as to sacrifice our Blackstone,* Fearne, Hargrave, Butler, Powell, Cruise, Jones, &c. to "The Reports," or the pages of the "Institutes." We must not so prefer the undigested mass of learning of my lord Coke, as to neglect "The Essay on Contingent Remainders and Executory Devises;" the valuable notes of the editors of the "Commentary on Littleton," or the learned, lucid, literary and legal "Essay on the Law of Bailments," whose illustrious author, as Gibbon remarks, "was, perhaps, the only

* Vide Black. Com. page 5.

lawyer equally conversant with the Year Books of Westminster, the Commentaries of Ulpian, the Attick Pleadings of Isæus, and the Sentences of the Arabian and Persian Cadis." Nor should we be faithful to the object of our undertaking, were we to recommend the entire perusal of my lord Coke's Reports, or other writings; for although our admiration be strong, yet an attentive examination of the whole has convinced us, that there are very many cases which would be of little or no utility to an American lawyer; and others, for various reasons, scarce worth the labour and time of perusal. It is our object, therefore, carefully to select for the student such as are most worthy his attentive study; and in order to render this selection as valuable as possible, we have, with no little care and labour, given a very concise abridgment of most of the cases recommended, and subjoined references to such leading and distinguished cases, and sources of information on the points contained in my lord Coke, as might present in one connected view the entire learning of all that is particularly valuable in the law transmitted to us by this illustrious reporter.

The cases recommended in this and Title IV. are scarce *one sixth* of the whole number contained in "The Reports." Our anxiety that the student should profit by our careful and laborious selection, induces us to state our confidence that this selection will be found judicious, and prove highly valuable to him. Let not the student, however, suppose that all the omitted cases are useless; this is far from being the case; our selection embracing only those of singular excellence.]

RULES TO BE OBSERVED IN READING LORD COKE'S REPORTS.

1st. Where the cases are preceded by the pleadings, read the pleadings with great attention; examine the points raised by them, and set these carefully down: the case should then be read, and the questions of law thus collected, should be compared with those litigated before the court.

2d. As lord Coke is generally desultory and diffuse, frequently blending points of law, neither raised by the pleadings nor agitated before the court, but suggested solely by his lordship, the student should attentively discriminate between the questions actually at issue, and the *obiter dicta*, the opinions of counsel *arguendo*, and those of the reporter; so that, in citing from these reports a point of law, as there *judicially* established, it may not prove to have been merely an *obiter dictum*, the opinion of the litigants, or the idea of the reporter.

3d. Where the cases are followed by *Nota*, give such *nota* a cursory reading, in order to judge of the necessity of a more attentive perusal. If important, (as many of them are,) read them again with attention.

4th. The leading cases in lord Coke's Reports being often referred to, and cited with distinguished respect, and being reported very much in detail, and with but little attention to method; so that the points adjudicated are not easily ascertained, but in order to arrive at them, require frequently an attentive perusal of the whole case; the student would be profitably employed in concisely abridging some of these difficult and

shed an interest and air of novelty on it, which we do not meet with in any other essay on that doctrine.] Vide also Co. Litt. 376, Butler's note.

Particular References. Bagshaw *v.* Spencer, 1 Collec. Juri. 378. Wright *v.* Pearson, Ambler, 358. Austen *v.* Taylor, Ambler, 376. Jones *v.* Morgan, 1 Bro. Rep. 206. Hodson *v.* Ambrose, Doug. 337. Doe *v.* Fenneroe, Doug. 487; and the very able notes of the reporter. Pybus *v.* Mitford, 1 Vent. 372. Loddington *v.* Kine, 1 Ld. Ray, 203. Jus. Blackstone's argument in Perrin *v.* Blake, Hargrave's Law Tracts, 487.

References to American Cases. We find this important rule to have excited considerable attention in the courts of this country; and to have been argued with no less ability and learning than in the courts of Westminster. The student will find the following cases to be distinguished by great research. Smith and Wife *v.* Chapman, 1 Hen. and Mumf. 240. [This is the most valuable case to be found in the American Reports.] Brandt *v.* Gelston, (an able case,) 2 John. Rep. 384. M'Ginnis and Wife *v.* M'Peake, Penn. Rep. 291. Bishop *v.* Selleck, 1 Day's Rep. 299. Dott *v.* Cunningham, and Dott *v.* Wilson, 1 Bay's Rep. 453. 457. Shermer *v.* Shermer's Exs. 1 Wash. Rep. 267. Roy *v.* Garnett, 2 Wash. Rep. 9, (a good case.)

References on the other resolutions in Shelly's case. On the first resolution, vide 5 Cru. Dig. p. 358, from sec. 5 to 14, both inclusive, as to the *relation* of the judgment; and as to the suing of execution against the issue in tail, where tenant in tail had died before

execution awarded, v. 5 Cru. Dig. p. 428, § 13, 14. Co. Litt. 361. b.

Cruddleigh's Case. 120. a.

This case is important, as fully arguing and establishing the doctrine of *scintilla juris*, and of the destruction of contingent uses, by divesting this *possibility of a seisin*.

References. Vide Butler's note, 1 Co. Litt. 273. a. Butler's edition of Fearne, 291, (y) where this case is abridged; also in the same work, appendix No. 8; lord chief baron Gilbert's remarks on the doctrine of *scintilla juris*, or Gilbert on Uses and Trusts, p. 127.

E. The Rector of Chedington's Case. 153. a.

In this case held that a lease to A. for eighty years, if she so long live, and if she die or alien within the said term, then to B. for as many years as should remain after A.'s death, for and during the residue of said *term* of eighty years, was void as to B. on the principle that there could be no remainder of a term after a previous estate *for life;* also that it was a mere *possibility;* and that it was void for uncertainty of commencement.

References. That a remainder of a *term* after a limitation for life is now held good, vide Manning's case, 8 Co. 95, and references: and that "*term*" not only signifies *interest* but *time*, and that such a remainder is valid, v. Plowden *v.* Cartwright, 1 Burr. 282. 2 Black. Comm. 144.

E. Mildmay's Case. 175. a.

Of the consideration requisite to raise an use in a covenant to stand seized, or a deed of bargain and sale.

References. Vid. the doctrine of Mildmay's case fully considered in 2 Fonbl. on Equi. 25, § 2. Rob. on Sta. Frauds, 119, note. 4 Cru. Dig. tit. xxxii. ch. xvii. § 60, 61, 62. 2 Black. Comm. 296. Ward *v.* Lambert, Cro. Eliz. 394. Anonymus 2 Vent. 35. Fisher *v.* Smith, Moor 569. Bolton *v.* Bish. of Carlisle, 2 Hen. Black. 259. Hudson *v.* Chapman, 3 John. Rep. 484. Ware *v.* Carey, 2 Call. Rep. 263.

SECOND COKE.

E. Manser's Case. 1. a.

A deed should be read to an *unlettered* man, if he require it, before he be compelled to sign it, and if in a language unknown to him, it must be translated to him: but if one be bound that another shall execute a deed, the person so bound must see, at his peril, that the deed be executed by this third person. The pleading in this case was bad for uncertainty.

References. On the 1st. *resolution* vide references to Thorogood's case, 2 Coke 15. a. On the 2d *resolution* v. 1 Ba. Abr. 667. Co. Litt. 308. On the insufficiency of the pleading, v. 2 Ba. Abr. 89. 5 Ba. Abr. 411. 2 Wms. Saund. 49. No. 1.

GODDARD'S CASE. 4. a.

That a deed takes effect only from delivery; so that if it want date, or have a false or impossible one, it is good; and the delivery ascertains the time from which it takes effect: only three essentials to a deed; viz. *writing*, *sealing*, and *delivery*.

References. As to *date* of a deed, v. Jacob's Law Dic. title "Date." As to *delivery*, v. Goodright *v.* Strahan, Cowper 204. Hall *v.* Cazenove, 4 East 477. As to pleading that a deed was in fact made on a day different from its date, and that plaintiff is not estopped to plead thus, v. 4 East 477. As to *sealing*, v. the very able opinion of judge Haywood in Jugram *v.* Hall. Haywood's Rep. 193. That a *scrawl* of a pen is a seal in Virginia, v. Jones *v.* Logwood, Wash. Rep. 42: not so in New-York. Warren *v.* Lynch, 5 John Rep. 239. But a deed made in Pennsylvania, and sealed with such a scrawl, which in that state is sufficient, may be sued upon as a sealed instrument in New-York. Meredith *v.* Hinsdale, 3 Caine's Rep. 362.

THOROGOOD'S CASE. 5. a.

Fraud in the execution or obtaining of a deed vitiates it. Deed must be read to obligor, if required, and in the very words of the deed, and, if required, the very effect and purport must be declared.

References. Fraud in the *consideration* of a deed cognizable only in chancery; al. as to fraud in the *execution*. 3 Dun. and Ea. 428. Hayne *v.* Maltby. Bridgman *v.* Green, 2 Vez. 445. 627. Vid. the opi-

nion of judge Rush on the 4th. reason assigned for a new trial, in the case of Wright *v.* Tower. Appendix to American edition of Douglas's Rep. 2d. vol. Vrooman *v.* Phelps, 2 John. Rep. 177. But in Pennsylvania, fraud either in the *consideration* or *execution* of a deed, may be taken advantage of under the plea of payment, &c.

E. Buckler's Case, 55. a.

A. tenant for life, remainder to B. in fee. A. leases for four years to C. A. then granted *tenementa predicta* to D. *habendum* from the next feast, for life: after the feast C. attorned, and his lease expired: D. then entered, and made a lease at will to E. to whom A. levied a fine *come ceo*, &c. B. the tenant in fee in remainder, entered and leased to the plaintiff, who brought ejectment against E. who had entered on the premises. Judgment for plaintiff and *resolved*,

1. That the grant to D. was void, as being an estate of *freehold* to commence *in futuro*.

2. That the grant being *ab initio* void, was not rendered good by the attornment.

3. That as D. entered under colour of a void grant, he was a disseisor.

4. That if the fine had been levied to D. himself, B. might have entered.

5. That the fine levied to E. is a forfeiture, and B. might enter.

References. That a *freehold* cannot be granted *in futuro*, vide 3 Wilson's Bac. Abr. 148. Sasser *v.* Blyth, 1 Haywood's Rep. 259. (a very good case.) 1 Cru. Dig. tit. i § 47, 48. 4 Cru. Dig. tit. xxxii.

§ 26, 27. Wallis *v.* Wallis, 4 Mass. Ter. Rep. 135. Frawbridge *v.* Dunbaugh, 1 John. Ca. 91. Swift's system of Connecticut law.

THIRD COKE.

Boraston's Case. 19. a.

Devise to A. for eight years, remainder to testator's executors for the performance of his will, until such time as B. his son should accomplish his full age of twenty-one years; and *when* said B. shall attain to his full age, *then* to said B. in fee. B. died before twenty-one. Held that B. took a *vested* remainder; that the adverbs of time, *when* and *then*, only related to the vesting of the *possession*, and not the *interest*, and that the executors took an absolute estate until B. would have attained his full age.

References. 2 Cru. Dig. tit. xvi. ch. i. § 69, 70, 71, 72. vid. an able opinion by Fearne in his posthumous works, p. 191. Wheedon *v.* Lea, 3 Dun. and Ea. 41. Hayward *v.* Whitby, 1 Burr. 228.

Walker's Case. 22. a.

Debt lies against lessee, for rent accruing after assignment; *first*, because lessee cannot by his own act deprive lessor of that remedy which is given by the contract of lease; *secondly*, the lessee may assign the term to one unable to pay; and *thirdly*, there is a privity both of contract and estate, between lessor and lessee, notwithstanding the assignment.

References. Marsh *v.* Brace, Cro. Jac. 334. Marrow *v.* Turpin Cro. Eliz. 715. Taylor *v.* Shum 1 Bos. and Pull. 21. 1 Fonb. on Equi. 359, § vi. Thursby *v.* Plant, 1 Wm. Saund, 237, and notes 3, 4, 5. (A very valuable case.) Devereux *v.* Barlow, 2 Wms. Saund. 182. As to the difference between an *assignee* and an *under lessee*, vide Holford *v.* Hatch, Doug. 183, and the opinion of judge Tucker, 3 Hen. and Mumf. 468. Note.

E. Butler and Baker's Case. 25. b.

This case is important, principally as it contains much valuable learning on the doctrine of *relation*. There is also much good matter *arguendo* on the construction of the statutes of devises: the whole is entitled to a studious reading.

References. Read 18 Viner's Abridg. title *"Relation,"* 285 to 294. Jacob's Law Dic. title *"Relation."* Thomson *v.* Leach, 2 Vent. 200. Jackson ex dem. Rensselear *v.* Ball, 1 John. Ca. 81. Jackson ex dem. Griswold *v.* Bard, 4 John. 230.

As to the power of devising vid. Goodtitle *v.* Otway, 1 Bos. and Pull. 576. (A case of great learning.) Whether a *right of entry* be devisable vid. an excellent case in 1 Taun. Rep. 577. Swift ex dem. Neal *v.* Roberts, 3 Burr, 1488.

E. Fermor's Case. 77. a.

This is a very valuable case, illustrative of the odium attached by the law to every species of fraud. Its importance may be exemplified by comparing it

in the *real* law to what *Twine's* celebrated case is in the *personal* law.

References. Read 5 Cru. Dig. tit. xxxv. ch. xi. § 19, 20. Englefield *v.* Englefield, 1 Vern. 443. "Fraud," Jacob's Law Dic.

FOURTH COKE.

E. Vernon's Case. 1. a.

Of jointures within the statute 27 Hen. 8. ch. x. § 6. and of collateral satisfaction in bar of dower within this statute; since the statute of devises 32 Hen. 8.

References. 1 Cru. Dig. tit. vii. ch. i. § 1, 2, 3, 4. 30, 31, 32. Ch. iii. the whole. Tit. vi. ch. v. § 22. to the end. Larabee *v.* Van Alstyne, 1 John. Rep. 307. Birmingham *v.* Kirwan, 2 Scho. and Lef. 444. (A very good case.) The opinion of C. J. M'Keane in Kennedy *v.* Nedrow, 1 Dall. 415. Webb *v.* Evans, 1 Binney's Rep. 565.

E. Forse and Hembling's Case. 61. a.

Feme sole devises to B. in fee, whom she afterwards married. During her coverture she had often declared, that B. should not have the premises. Devisor died without issue. B. enfeoffed the defendant on whom C. entered, as heir to feme, who leased to the plaintiff.

Resolved. 1. That the making of a will is but an inception of it, and it is contrary to its nature to be irrevocable; and as feme during coverture cannot

countermand it, being *sub potestate viri*, her marriage shall be a revocation in law.

2. That if it were otherwise, it would be very detrimental to women, since after marriage they cannot, for any cause, countermand their will.

3. That if the law permitted a woman to continue or revoke her will in such case, it would virtually be the will of her husband, since he might constrain her to continue or revoke at his pleasure. Judgment for the plaintiff.

References. Read Roper on Revocation, p. 19, 20. Doe. *v.* Staple, 2 Dun. and Ea. 684. Brett *v.* Rigden, Plow. 384, a. that will revives, if husband dies leaving the wife. Sed vid. Mrs. Lucas's case, 4 Burn's Eccl. Law, 48 contra. Hodson *v.* Lloyd, 2 Brown's Ch. Rep. 524. Vid. References to Herstead's case, 5 Co. 10. b.

E. Herlackenden's Case. 62. a.

This is a leading case on the law relative to waste, which though, in this country especially, and in no small degree in England, has been altered and ameliorated since lord Coke's time, is an important doctrine, and must not be neglected.

References. Read lord Bacon's excellent argument on the case of "Impeachment of Waste," Bacon's Law Tracts, 203. As to the operation of the clause "Absque impetitione vasti," that it does not merely exempt the tenant from a *suit*, but vests a *property* in him, read the 7th resolution in 11 Co. 83. 3 Woodd. Lectures 401. 1 Du. and Ea. 56. 1 Cru. Dig. iii. § 61 to 71. As to the erections which an outgo-

ing tenant may carry from the premises, read 2 Selwin's Nisi Prius Law 1148, and note 5, 1150, and note 6; also 1 Wm. Saund 323. b. No. 7. 2 vol. 259. No. 11, for a learned and perspicuous view of the law of waste.

Noke's Case. 81. a.

A. leased a house to B. by the words *demise, grant* &c. and *covenanted* that B. should enjoy it without eviction by lessor, or any claiming under him, and likewise that he would perform all agreements, articles, &c. in the indenture. B. assigned his term to C. from whom, in ejectione firmæ, the premises were recovered by D. In debt by B. against A. it was on demurrer resolved,

1. That the words *demise* and *grant* created a covenant in law which might be sued on by assignee.

2. That the obligation extended to covenants in law, as well as to covenants in deed.

3. That although the recovery was by verdict, plaintiff ought to have shewn that D. had an elder title, otherwise the covenant in law was not broken; and for this, judgment was given for defendant.

4. That the express covenant qualified the generality of the covenant in law, and so restrained it, by the mutual consent of the parties, that it should not extend further than the express covenant.

References. That a *particular, express* covenant restrains a *general* covenant *in law,* vid. 1 Wms. Saund. 60. No. 2. Hale *v.* Deering, 11 Modern, 113. Hayes *v.* Bickerstaff, Vaughan 126. Co. Litt. 332 No. Kent *v.* Welch, 7 John. Rep. 258. Frost et al. *v.*

Raymon, 2 Caine's Rep. 188. That this doctrine of implied covenants is confined to *real* property, v. 3 Comyn's Digest, tit. Covenant, A. 4. 2 Selwin's Nisi Prius, 402. No. 12.

E. Dumpor's Case. 119. b.

A. leased to be B. with a proviso that B. or his assigns should not alien the premises without special license. A. afterwards, by deed, licensed B. to alien or demise the whole or part to any person or persons. B. assigned the term to T. who devised it to his son, upon whose death it was assigned by the administrator to the defendant. A. entered for condition broken. *Resolved*, that the condition was *finally* determined by the license to B. for lessor cannot dispense with an alienation for a time, and afterwards make the same estate subject to the proviso; for the condition is entire.

References. Read 2 Cru. Dig. tit. xiii. ch. i. § 32 to 48. Morgan *v.* Slaughter, 1 Day's Espinasse's Nisi Prius Rep. 8. 2 Selwin's Nisi Prius, 408, § 5.

FIFTH COKE.

Clayton's Case. 1.

A lease was dated 26th May for three years *from henceforth*, but not delivered till the 20th of June, at four o'clock in the afternoon. *Resolved*,

1. That *henceforth* shall be accounted from the *delivery*.

2. That the lease determined the 19th of June in the third year; for no fraction of a day is regarded in law.

3. That the day of delivery is *included*. But if a lease is to begin from the day of the making, or from the day of the date, the day is *excluded*. From the date, and from the day of the date, is all one.

[The decision in the third resolution has excited considerable legal controversy, some holding with lord Coke, that *"from the date,"* and *"from the day of the date,"* mean the same thing, while others contend that the former includes, the latter excludes the day: some hold that the authorities are contradictory and irreconcileable, and that these expressions may be construed either inclusive or exclusive, as is best adapted to effectuate the intention of the parties, and others have rejected the doctrine of inclusion and exclusion according to the supposed intention of the parties, and assert that the authorities are not at variance with each other.]

References. Read Pugh *v.* duke of Leeds, Cowper's Rep. 714. [Lord Mansfield, in a very able opinion, decided in this case, that a power to lease in *possession* was well executed by a lease to commence *from the day of the date*, and that *"from"* may operate either inclusively or exclusively, according to the context and subject matter.] Powell on Powers, 433 to 541. [In this very learned and elaborate examination of this subject, Mr. Powell has with great industry and skill investigated and arranged all that has been advanced from the earliest times on this point, and, as we conceive, fully vindicated the authorities from the charge of contradiction; and has shewn that all these apparently variant cases are re-

concileable, on a ground of distinction running through the whole current of authorities. This *very* admirable argument well merits an attentive reading. Should the student, however, decline reading it, he will find a concise abridgment of it by Mr. Evans in his "View of lord Mansfield's Decisions," vol. i. 221 to 229.] The King *v.* the inhabitants of Gamlingay, 3 Du. and Ea. 573. Castle *v.* Burditt, p. 623.

E. Jewel's Case. 3. b.

Resolved, That a lease of a *Fair*, being an *incorporeal* hereditament, is not a lease within the statute, 1 Eliz. ch. xix. and that such lease, though good by way of contract between lessor and lessee, is avoidable by the successor of the bishop who made the lease.

References. Read the Dean and chapter of Windsor *v.* Gover, 2 Wms. Saund. 302, and notes. 3 Wilson's Rep. 32. Co. Litt. 44. b. note 3.

E. Justice Windham's Case. 8. a.

Where, by construction of law, *joint words* may be taken *respectively* and *severally*. This is a very celebrated case on that doctrine.

References. Read Veal *v.* Roberts, Cro. Eliz. 199. Cook *v.* Gerrard, 1 Wms. Saund. 181. Vid. Slingby's case, 5 Co. 18, and references, where words *several* in their usual operation were disregarded, and the obligation containing them held to be *joint* in its effect, in respect to the *joint interest* to which it referred.

HENSTEAD'S CASE. 10. b.

If feme lessor or lessee at will take husband, the lease is not thereby determined, for this might prejudice the husband, and feme after marriage cannot determine the estate herself.

References. Read 1 Wilson's Bac. Abr. 483. Co. Litt. 55. 1 Salk. 117. pl. 9.

E. IVES' CASE. 11. a.

A. leased to B. for thirty years, *except all woods and underwoods* growing on the manor; then made a second lease to him of all the woods and underwoods for sixty-two years, *absque impetitione vasti;* and afterwards made a third lease of the *manor* for thirty years, to commence from the expiration of the first lease for thirty years. The thirty years expire, and B. cut down trees. In waste it was resolved,

1. That by the exception of the woods, &c. the soil itself is excepted.

2. That notwithstanding this exception, the woods and underwoods passed by the lease of the manor.

3. That by acceptance of the third lease, though to commence *in futuro,* the second lease was immediately surrendered, for the lessor's ability to lease is thereby affirmed, and the trees being thus joined to the the land, lessee was liable. Judgment for plaintiff.

References. As to the first resolution, vid. Rich. Lifford's case, 11 Co. p. 49. b. 50. a. The opinion on the second objection made in that case. As to the nature of an *exception* in a deed, read Shepherd's

Touchstone, 78. On the kind of interest which a grantee of trees has, read Clap *v.* Draper, 4 Mass. Rep. 266. On the third resolution read Doe ex dem. Earl of Berkley *v.* Abp. of York, 6 East, 100, the opinion of lord Ellenborough. Read also Davison *v.* Stanley, 4 Burr. 2210. Smith *v.* Maplebank, 1. Du. and Ea. 441. 1 Wms. Saund. 236. b. note.

THE COUNTESS OF SHREWSBURY'S CASE. 14. a.

The countess brought case against her *tenant at will* of a house, which had by accident burnt down. *Resolved,* that plaintiff could not maintain her suit because at *common law* lessee for life or years was not responsible for voluntary or permissive waste, as they came in by the act of the lessor; and so tenant at will is not answerable for permissive waste, not being within the statute of Gloucester, which gave remedy for waste committed by tenant for life or years. But lessee at will is liable in trespass for *voluntary* waste, for this is a determination of the will, and lessor may sue without entry.

References. Read Hargrave's note 1. Co. Litt. 57. a. 1 Wms. Saund. 323. b. No. 7. 1 Cru. Dig. p. 78, § 59, 60, p. 257, § 11, p. 272, § 15. [This case is sometimes called the countess of Salop's case.] Phillips *v.* Covert and Covert, 7 John. Rep. 1.

SPENCER'S CASE. 16. a.

This is a very leading and distinguished case on the rights and responsibilities of assignees to the covenants, expressed and implied, in an indenture of lease.

Read Bally *v.* Wells, 3 Wilson's Rep. 25. Churchwardens of St. Saviour's, Southwark, *v.* Smith, 3 Burr. 1271. Tatem *v.* Chaplin, 2 Hen. Black. 133. Espinasse's Nisi Prius, Gould's edi. vol. i. part ii. p. 145 to 155. Webb *v.* Russell, 3 Du. and Ea. 210. Mayor of Congleton *v.* Patison, 10 Ea. 130, and the following American cases. Nesbit *v.* Nesbit, Taylor's Rep. 82; (a very good case.) Lot *v.* Thomas, 1 Pennington's Rep. 407. Pollard *v.* Shaaffer, 1 Dallas's Rep. 210. Devisee of Van Rensselear *v.* exrs. of Platner, 2 John. Ca. 24. Moale *v.* Tyson, 2 Harris and M'Henry, 387.

THE LORD CHENEY'S CASE. 69. a.

Resolved in this case, that no averment out of a will shall be received; for a will concerning lands, &c. ought to be in writing, and the construction should be collected from the words of the will, and not by any averment out of it. But if a man has two sons named John, an averment in such case may be received, in order to shew which of them the devisor meant.

References. There are few doctrines in the law of greater importance, or attended with more difficulty, than the admissibility of parol and extrinsick testimony to affect written instruments. There has been much written on the subject, and innumerable cases of great learning on it are reported. We pre-

sume that we cannot do better than to refer the student to Mr. Roberts's very able chapter on this subject, in his Treatise on the Statute of Frauds, page 10 to 90; and the following valuable cases which Mr. Roberts has strangely omitted to notice. Freeland *v.* Burt, 3 Du. and Ea. 474. The king *v.* inhabitants of Scammonden, 474. The king *v.* inhabitants of Laindon, 3 Du. and Ea. 379. And for the cases which have occurred in the American courts, v. Randall's edi. of Peake's Evidence p. 117, No. 5; or Bayard's Digest of American Cases on the Law of Evidence, p. 78 to 94, in both of which works the cases are concisely abridged and well arranged.

Oland's Case. 116. b.

If A. holding lands *durante viduitate,* sows them, and then takes husband, she is not entitled to the *emblements,* for although her estate be uncertain, yet as it was determined by *her own act,* the emblements belong to him to whom the lands belong: but if baron and feme are lessees during coverture, and baron sow the lands, and they are divorced *causa præcontractus,* baron shall have the emblements, for *judicium redditur in invitum.*

References. Read 2 Black. Com. 122. 145. Jacob's Law Dic. tit. "Emblements." Latham *v.* Atwood, Cro. Car. 515.

SIXTH COKE.

E. Treport's Case. 15. b.

A. tenant for life, and B. remainder-man in fee, leased to C. who in ejectione firmæ declared on a *joint demise* by A. and B. *Resolved*, that this was the lease of A. during his life, and the confirmation of B. and after the death of A. that it was the lease of B. and the confirmation of A. and therefore the declaration on a joint demise was ill. It was further held that the deed, though *indented*, was no *conclusion*, as it enured by way of passing an interest.

References. On this case *generally*, v. 2 Bac. Abr. 574, and on the point of *estoppel*, v. Co. Litt. 45. a. 47. b. 2 Wms. Saund. 418. No. 1. Blake *v.* Foster, 8 Dun. and Ea. 487. 1 John. Ca. 91. 2 Selwin's Nisi Prius, 456.

Collier's Case. 16. b.

Devise to A. paying B. twenty shillings, is a devise in fee simple: for the law intends a devise to be beneficial to the devisee; and here he may after payment die without satisfaction; but if the payment is to be out of the *profits* of the land, devisee has but a life estate.

References. Read 6 Cru. Dig. tit. xxxviii. ch. xi. § 49 to 71 inclusive. Id. ch. xiii. § 26 to 34 inclusive. Denn *v.* Mellor, 5 Du. and Ea. 558. Doe *v.* Allen, 8 Du. Ea. 497. Doe *v.* Clark, 5 Bos. and Pul. 343. (These are very leading cases.) That devisee does

not take a fee, if the *estate* be plainly indicated, as he may reject it, read Cowper's Rep. 410, and Willis *v.* Bucher, 2 Binney's Rep. 463, opinion of C. J. Tilghman on the first question. Townsend *v.* Bull, 10 John. Rep. 148. (Very good cases.)

E. WILD'S CASE. 17. a.

Devise to baron and feme, and *after their decease* to their children, or *remainder* to their children: whether they have or have not children at the time, this is but an estate for life in baron and feme, remainder to their children. But if lands are devised to A. and his children or issue, he having none at the time, A. takes an estate tail; but if he have children at the time, he and his children take a joint estate for life.

References. Read Hodges *v.* Middleton, Doug. 431. Powell on Devises, 505. Seale *v.* Barter, 2 Bos. and Pull. 485. [That devise to A. and his *issue*, he having children at the time, is an estate tail, and not a joint estate to A. and his issue for life, read Lampley *v.* Blower, 3 Atk. 397; for since Coke's time the word issue has become as proper a word of limitation, as the expression "heirs of the body."]

MARQUIS OF WINCHESTER'S CASE. 24. a.

That the law does not merely require a testator, at the time of making his will, to be so possessed of memory as to be able to reply to familiar and usual questions, but he must have a *disposing memory*, so that he may devise his lands with reason and understanding; and this is what the law calls perfect memory.

References. Read 1 Fonb. on Equ. 69, and note (x.) 7 Wilson's Bac. Abr. 301, 302.

E. Sir Anthony Mildmay's Case. 40. b.

This is a great case on the subject of *perpetuities*, repugnant and void conditions, and particularly on the illegality of such provisos and conditions as destroy the incidents to an estate tail.

References. Read Butler's Fearne, 252 to 262. 1 Wils. Bac. Abr. 647. (L.) and Fearne's posthumous works, 335.

SEVENTH COKE.

E. Bedel's Case. 40. b.

This is a noted case as to the *consideration* requisite in a covenant to stand seized. A use will arise to a wife without expressing any consideration in the covenant, and though the consideration which is expressed, runneth not to the wife, yet a consideration which stands with the deed may be *averred.* What is a covenant to stand seized, and what a bargain and sale.

References. On the covenant to stand seized to uses, read 7 Bac. Abr. 94 to 103. 2 Fonb. on Equ. 26 No. (h.) That sometimes a deed which cannot operate in one way, may in another, and sometimes either way, at the election of the party, read 2 Wms. Saund. 97. No. 1. Jackson *v.* Dunsbaugh, 1 John. Ca. particularly the opinion of Lewis J. p. 69, that in the state of New-York, a deed from a father to his

son, with a *pecuniary* consideration, may operate as a covenant to stand seized, as was the case in England prior to the statute 27 Hen. 8. ch. xvi. of enrolments, as that statute is *local* in its provisions, and consequently inoperative in that state.

EIGHTH COKE.

E. Fox's Case. 93. a.

A deed may operate as a bargain and sale, though the words bargain and sell be not used. An actual seisin in the bargainor is not requisite. A chattel interest in land cannot be conveyed by bargain and sale, though one who is seized may bargain and sell for years.

References. Read 4 Cru. Dig. tit. xxxii. ch. xi. § 4, 5, 6, 7. 15, 16. 21.

E. Matthew Manning's Case. 96. a.

This and Lampet's case, 10 Co. 46, established the law, that after a previous devise of the *use and occupation* of a term, or the term itself, for *life*, a limitation over is good, by way of executory devise. In this case there were five points resolved, after which sir William Cordell's case, in part, is subjoined, and, in the note, Welden's case, the most important resolution in which was, that vendee under a lawful judgment and execution, has a good title, although the judgment be afterwards reversed.

References. On the 1st, 3d, and 4th resolutions, viz. as to the executory devise of chattels, real and

personal, read Butler's Fearne, p. 40 1to 415, and p. 421. § 3. 6 Cru. Dig. tit. xxxvii. ch. xix. § 1 et seq. As to the 5th resolution, and Cordell's case, read Cro. Eliz. 316, and White *v.* Simpson, 5 Ea. 162, where this point in Cordell's case is fully considered. As to the title of vendee under a lawful judgment and execution, although judgment be reversed, read 2 Wils. Bac. Abr. 505. 740. "Execution," (Q.) Carter *v.* Simpson, 7 John. Rep. 535. Burnley *v.* Lambert, 1 Wash. Rep. 308.

NINTH COKE.

Thoroughgood's Case. 136. b.

A deed cannot be delivered as an *escrow* to the party to whom it is made; delivery must be to a stranger. Delivery of a deed of feoffment on the land does not amount to livery of seisin, but, if delivered in the name of seisin, this has *eo instanti* a twofold operation, viz. as livery of seisin, and a delivery of the deed.

References. Of an escrow, read 4 Cru. Dig. tit. xxxii. ch. ii. § 54, 55, 56, 57, 58, Wheelwright *v.* Wheelright, 2 Mass. Rep. 447. Pect *v.* Goodwin, Kirby's Rep. 64. Babcock *v.* Steadman, 1 Root's Rep. 87.

TENTH COKE.

E. LAMPET'S CASE. 46. b.

Termor for five thousand years devised the term to A. for life, and made him his executor, remainder to B. and the heirs of her body. B. and her husband release to A. who demises to C. the defendant. B.'s husband dies, and A. dies, and B.'s second husband demised to the plaintiff. Judgment for the defendant, and resolved,

1. That a devise of the *use* of a term for life, remainder for life, is good by way of executory devise.

2. That such a devise of the *term itself* is good.

3. The executory devise is not defeasible by any act of the first devisee.

4. A.'s assent, as executor, to the devise to him, enured to B.

5. That if the executor in such a devise enters *generally*, he takes it as executor, which is his first and general authority, and not as legatee, unless there be some further act of assent.

6. That B.'s executory interest was not assignable.

7. That such executory interest might be granted or released to him in possession.

8. That by the release A. had an absolute estate in the residue of the term.

9. That A.'s assent to take the term as legatee, was sufficiently evidenced by the request and acceptance of the release.

References. On the 1st, 2d, and 3d resolutions, in addition to the 3d and 4th resolutions in Matthew

Manning's case, 8 Co. 96, and the references thereto stated by us, read Mr. Hargrave's very learned and able historical view of the rise and progress of executory devises, in his argument in Thelluson *v.* Woodford, 4 Vez. Jun. 247. If Mr. Hargrave's Juridical Arguments be accessible to the student, he will find the argument in Thelluson's case more fully reported in that work.

On the 5th and 9th resolutions, read Holmes *v.* Young, 1 Strange, 70. 4 Espinasse's Nisi Prius Cases, 154. Say and Sele *v.* Guy exr. Same parties, 3 East, 120.

On the 6th resolution, read 1 Fonb. on Equ. p. 212 to 228, and Butler's Fearne, p. 548, § 19, and note 1.

On the 7th resolution, read 5 Ba. Abr. 704. (H.)

E. Edward Seymor's Case. 96. a.

Tenant in tail with reversion in fee, after remainder in tail to B. *bargained and sold* to C. in fee, and a year after levied a *fine* to him with general warranty. C. enfeoffed D. who died, leaving E. his heir. B. died, leaving issue F. Tenant in tail died without issue, and in ejectione firmæ by E. as heir of feoffee, against F. claiming as heir to the remainder in tail, judgment was given for defendant, and resolved,

1. That C. the bargainee, had by the bargain and sale, an estate descendible to his heirs, during *the life* of the bargainor; that of this his wife might be endowed, and also that he had the reversion in fee expectant upon B.'s remainder in tail.

2. That the *fine* to the bargainee created no discontinuance, as tenant in tail, at the time it was levied,

had no estate of freehold, but that it merely confirmed the bargainee's estate.

3. That the *warranty* did not bar the remainder.

4. That a warranty cannot operate by way of enlargement of an estate.

5. That the *feoffment* of C. was no discontinuance of B.'s remainder, as none can discontinue but tenant in tail himself.

6. That the warranty, if it bound, might, if not pleaded, be given in evidence.

References. Read Doe ex dem. Odiarne *v.* Whitehead, 2 Burr. 702. Goodright ex dem. Tyrrel *v.* Mead and Shelson, 3 Burr. 1703. Took *v.* Glascock, 1 Wms. Saund. 260 and notes, in which the doctrines in Seymor's case are fully considered.

William Clun's Case. 127. a.

This is a good case on the subject of the reservation and apportionment of rent.

References. Read 2 Fonb. on Equ. 383. § ix. and notes. Glover *v.* Archer, 4 Leonard's Rep. 247. 2 Wms. Saund. 288. a. note 17.

ELEVENTH COKE.

E. Richard Liford's Case. 46. a.

This case is full of useful learning as to the interest of lessor and lessee in the trees on the demised premises; the operation of an exception of the trees in the lease, and the interest which an assignee of the

reversion has in such excepted trees. (This case should receive a very attentive reading.)

References. Read Co. Litt. 57. a. No. 2. 1 Wms. Saund. 322. No. 5. Berry *v.* Heard. Cro. Car. 242. Bewick *v.* Whitfield, 1 Cox's Peer William's Rep. 267.

NOTE. The remaining *twelfth* and *thirteenth* books contain no cases on the law of real property which merit a place in the above selection.

MISCELLANEOUS.¶ (NOTE 13.)

E. * Read (at this time) Buckworth and Thirkill, on the question whether baron is entitled to curtesy in the case of a devise to feme in fee, and if she die before twenty-one without leaving issue, limitation over. She has issue which dies. 1 Collectanea Juridica, 332.

E. † Opinions of three eminent counsel on the doctrine of tacking prior and subsequent securities, and upon the statute 4 and 5 William and Mary, ch. xvi. which respects frauds by clandestine mortgages. 2 Collectanea Juridica, 241.

* Sir William Jones's translation of the speeches of Isæus concerning the law of *succession* to property at Athens, with a prefatory discourse, notes, critical and historical, and a commentary. Vid. vol. ix. of sir William Jones's works.

† The opinion of Luther Martin esq. on the question of the proper rule or measure of damages in covenant on warranty. 4 Hall's Law Journal, 129.

¶ Vide ante pp. 100, 101.

NOTES ON THE THIRD TITLE.

(*Note* 1.) OBSERVATIONS ON THE STUDY OF THE REAL LAW. Some may be inclined to suppose that too much stress has been laid on the study of the intricate and abstruse doctrines of real rights, and real remedies; and perhaps may be disposed to condemn the extent to which we have recommended an attention to the ancient law generally. If there be such among those who may resort to these pages, we would remind them of the fallacy of that expectation which looks for a vigorous and manly expansion of the intellect as the result of juvenile pursuits; we would interrogate them in the language of Horace,

Amphora cæpit
Institui; currente rotâ cur urceus exit?

The reply is obvious: the workmanship of the potter is inevitably inferiour, if the plastick qualities of the clay, and the power of the moulding hand, be not nicely and fully regarded; so if the student expect to become a great and enlightened lawyer, by attention to detatched portions, regardless of the many nice connexions and intimate dependencies which the law continually presents; if, in the vast gothick structure of that science, he hopes to become the secure tenant of those cheerful and commodious apartments, which, with infinite labour, have been accommodated to modern and daily use, through any other approaches than the moated ramparts and embattled towers,* like

* 3 Blac. Com. 268.

some ancient knight, he may take "Disappointment" for his motto. That which gave the promise of a great and valuable piece of workmanship, terminates in an ordinary bauble.

We are too sensible of the inestimable value of time, especially to a student of law, to advise the perusal of a single page, without the deepest conviction of its utility; and in no instance has any thing been recommended without mature deliberation. We feel assured that the only certain avenue to legal pre-eminence is through the abstruse learning of the real law; that he who aspires to fame in this science must explore all its devious windings; must with cheerfulness proceed, whether accompanied by the faint light of a taper, or the effulgence of noon day; and, finally, that he who desires a thorough knowledge of the modern and practical law must, as his predecessors in fame have done, content himself with elaborately separating ore from dross: for no modern lawyer ever attained an eminence at any bar, who neglecting the mysteries of ancient law, (simple indeed when properly studied,) derives his knowledge from by-paths, and culls the showy, but perishable flowers which spring up in profusion from the shallow soil on their borders. Such students may close this book; to those who rest satisfied with elementary attainments, we ingenuously declare that this volume can be of little service; as its object is to facilitate the formation of learned and accomplished lawyers.

Justice Blackstone is very explicit in his opinion on this subject. "We shall have occasion," says he, "to search pretty highly into the antiquities of English jurisprudence; yet surely no industrious student will

imagine his time misemployed, when he is led to consider that the obsolete doctrines of our laws are frequently the foundation, upon which what remains is erected; and that it is *impracticable to comprehend many rules of modern law*, in a scholar-like and scientifical manner, without having recourse to the *ancient:* nor will these researches be altogether void of *rational entertainment* as well as *use;* as in viewing the majestick ruins of Rome or Athens, of Balbec or Palmyra, it administers both pleasure and instruction, to compare them with the draughts of the same edifices in their pristine proportion and splendour."

Indeed, in taking even an exteriour view of the great system of English jurisprudence, we cannot but be surprised that any could be found willing to advocate a doctrine opposite to that which we have advanced; for so manifest is its truth to us, that we must suppose such contrary opinion to be confined to the sciolous alone; to those who from idleness, necessity, want of talent, or other causes, have but glanced at the surface of this august system.

The scheme of English jurisprudence, as we have before taken occasion to remark, is not the well digested code of an enlightened prince, nor the grand result of the simultaneous deliberations of a body of learned and scientifick lawyers; but the slow and progressive work of ages, suffering many and various alterations, and gradually matured by time and experience into a vast, well proportioned, and sublime structure. A system of such infinite combinations, the great *chef d'œuvre* of the jurisprudential skill and wisdom of ages, cannot but present much, the origin and motives of which are now involved in obscurity or

doubt, and the present utility of which may not be obvious; but the links of that vast chain which unites the whole, in order to its full comprehension, must be examined separately, and in connexion,—each link in proportion to its strength and influence in the great whole; and though some of them may not have retained their primary force and operation, they all serve for connexion; and the power of *all* is only to be fully comprehended by an examination of their divisions. The student, when he has walked thus far in the path we have prescribed, will be well aware that a great portion of the law has its foundations in feudal learning; and that this learning is nearly as much the object of research, as if he lived in the midst of feudal times: so likewise, in his further progress, he may read much law, where not only the causes, but the law itself have ceased to operate: but let him not hence infer that he has employed his time in useless matter, for, in many instances, though the very law be not at present in force, he has however acquired principles; and has treasured up much that will cast a pleasing light on what were otherwise obscurities in the present law of the land. On this subject we have the additional testimony of Mr. Hawkins, the learned author of the "Treatise on the Pleas of the Crown," and the "Abridgment of the First Institutes." In his preface to the latter work he says, that "many have been discouraged from laying the foundation of their studies in those excellent books," alluding to books of *ancient law learning*, "because a great part of them is not law at this day; and they cannot easily persuade themselves to read so much obsolete learning, with that attention which is necessary to the perfect under-

standing of it. But whoever considers how great a coherence there is between the several parts of the law, and how much the reason of one case opens and depends upon that of the other, will, I presume, be far from thinking *any of the old learning* useless, which will conduce so much to the perfect understanding of the *modern*."

It is at once conceded that the practical use of the doctrines of the real law is not of as frequent recurrence as many others; and for a very manifest reason. Real property, more permanent in its character than any other. is less frequently the subject of contract or disposition, and of consequence is less often the subject of judicial litigation; but as this law relates to the most valuable species of property, and as it is a more elaborate and refined system, and more difficult to be vividly and durably impressed on the mind. we are from these circumstances, if from no other, furnished with a strong reason for making this law a subject of devoted and earnest inquiry; for it is the experience of all, that what we have once thoroughly learned, seldom or never forsakes us; that when its practical application is required, though comparatively but seldom, we feel a cheering confidence in the abundance of our stores, and solve the questions proposed with little or no difficulty: whereas, if contented with a superficial knowledge of this law, we rely on our ability to investigate these questions of abstruse real learning, as they occur in practice, we will certainly find our errour to be radical, perhaps incurable, as our time has then become too valuable, and too much occupied to be devoted to long and severe study. On the other hand, the other branches of the law are generally more

simple and easy of acquisition, and not difficult to be retained in the memory: much may be treasured up in the course even of an extensive practice; and as it is of daily recurrence, it is less likely to fade from the memory, though not very carefully or profoundly studied at first. The *real* law, therefore, should at once, if practicable, be acquired in the detail; and so strongly impressed on the mind of the student, that, like his alphabet, it should be incapable of being forgotten, or like the incidents of early youth, be so incorporated with his mind that, although the direct occasion to revive its recollection should not very frequently happen, yet when it does occur, this law should at once present itself in all its original vivacity. Let me therefore, under the assurance of ample recompense, urge my young friends to accord their devoted attention to this learning; and let me reassure them that, if they would gain a mastery over this subject, nothing more is requisite than an attentive study of the course of real law here prescribed.

(*Note* 2.) COKE'S COMMENTARY UPON LITTLETON'S TENURES. Littleton's Treatise on Tenures is a neat and perspicuous view of the general doctrines of the real law, on which numerous and deserved encomiums have been passed. The *Commentary* on this Treatise by lord Coke, though greatly defective in arrangement and method, though interlarded with much useless learning, and much other idle, and some absurd matter, and infected with the general pedantry and quaintness of the times, is however the Bible of the Law. The profound and extensive law learning which is to be found in this work, the numerous authorities, the many cases proposed and solved, with

their nice, acute, and well founded distinctions; the carefulness of the author to exhibit and trace the great principles of law under all their modifications; the tendency even of his redundancy and quaintness to plant these in the memory, continue imperatively to urge this Commentary to the student's regard, notwithstanding the more condensed and regular Digests of a latter day. It is entirely out of the question to lay this work on the shelf, for we know of no other which can fully supply its place. The notes of Hargrave and Butler are highly learned and useful.

Hawkins' Abridgment of Coke upon Littleton may be read contemporaneously with the larger work; the student reviewing in the former, in one day, what he had read in the latter on the preceding. This method we have found very serviceable.

(*Note* 3.) CRUISE'S DIGEST OF THE REAL LAW. The feelings of sir Henry Spelman at his first entrance upon the study of law, so naturally described in the extract which we have placed as the motto to this third title or division of our Course, were by no means peculiar to that distinguished man, but must have been felt by every student of those days, however pre-eminent his talents. At that period there was no treatise on the doctrines of the municipal law, and especially on that difficult portion of it embraced by this title, which was in any way calculated to remove or illumine the difficulties so feelingly lamented by Spelman. The legal dialect was foreign and barbarous, and the subjects were often destitute of any method. The novice was left to grope his way in darkness. This, however, is at present by no means the case. The most abstruse doctrines, even of the

real law, are now simplified and satisfactorily explained; and no future Spelman, surveying the luminous pages of Cruise and Fearne, will ever have occasion to despond, or exclaim, *"excedit mihi fateor animus."* Mr. Cruise's Digest is a masterly production, especially as to arrangement and method.

(*Note* 4.) INCORPOREAL HEREDITAMENTS. We here very particularly recommend to the student's attention, an ingenious and learned essay on the true import of the word *hereditament* by Mr. Fearne, published in his posthumous works. This little tract presents on the subject, a distinction entirely new, and the whole essay is so replete with learning and genius, that every lover of these subjects will no doubt willingly bestow the time requisite for its perusal.

(*Note* 5.) "LEASES AND TERMS FOR YEARS." There is no such title in Cruise. The seventh title in that work is *"Estate for years,"* and contains only twenty pages. This is by no means sufficient on so important a branch: we therefore recommend the admirable treatise on this subject in Bacon's Abridgment, which is decidedly the best that has been written. The subject is there treated much in detail; but its importance, and the luminous manner in which it is presented, entitle it to a very attentive reading. "Estate for Life and Occupancy" will be found in Bacon's Abridgment.

(*Note* 6.) PRESTON ON CROSS REMAINDERS. Mr. Preston is a very distinguished essayist on most of the knotty points in the learning of real estates. In all his productions he has shewn much talent, united to deep research, and a very luminous pen. We have here recommended his essay on Cross Remainders.

It is contained in a little volume of about eighty pages, entitled "Preston's Tracts." The essay on cross remainders occupies about twenty-four of these pages. There are six other tracts, all of which are highly worthy of perusal. They are on the following subjects: "Fines and Recoveries by Tenants in Tail;" "Difference between Merger, Remitter, and Extinguishment;" "Estates executed, executory, vested, and contingent;" "Contingencies with a double aspect;" "The succession by a parent to a child;" "The Language of Powers." These tracts were published in 1797.

(*Note* 7.) FEARNE'S ESSAY, &c. This work, modestly denominated an "Essay," is a masterly production on a doctrine, generally admitted as one of the most abstruse in the whole system of English law. The enlightened and scientifick manner in which this difficult topick has been treated by Mr. Fearne, has imparted to it an interest before unfelt, and strongly illustrates the infinite importance of a progressive and strictly analytical method in the discussion of dry and abstruse doctrines. The law of "Remainders and Executory Devises," is proverbially the most recondite of all legal topicks; but in the luminous pages of the "Essay," all is unembarrassed, clear, and almost simple.

The edition of this work, published in 1809, by the distinguished annotator on Coke upon Littleton, Charles Butler, esq. is an inestimable accession to the Bibliotheca Legum, and cannot fail in holding an elevated rank in the estimation of every student really in pursuit of this species of knowledge.

(*Note* 8.) USE AND TRUST. This intricate, though pleasing branch of law, is treated by Mr. Cruise in his *tenth* and *eleventh* titles with uncommon perspicuity. It is highly gratifying to find the dark clouds which usually encompass some subjects, evanesce before the torch of genius, and present to us views clear and uninterrupted, where the mind of the student had before been wearied by indefinite and unprofitable contemplation. The full force of this observation, however, is not intended to apply to Mr. Cruise's treatment of the subject of Uses and Trusts, as it had been freed of most of its difficulties by several preceding writers: but still we think it is no where presented to us so perspicuously and satisfactorily as in the pages of the Digest.

(*Note* 9.) THE LAW OF REAL REMEDIES. Formerly all disputes relative to the title of real property were decided by *real actions:* most of these, however, both in England, and generally, in this country, have been superseded by a more facile and efficient mode of determining the right, viz. by actions *personal* and *mixed.* The use of the action of *trespass and ejectment* has, in most of the states, taken place of the ancient remedies by writ of right, writ of assize, writ of entry, formedons, &c. but still some acquaintance with these is essential, and no one can be deemed an accomplished lawyer, who contents himself with a knowledge of the remedies in actual use. The books neither of ancient nor modern times, can be understandingly read by those who have neglected the law of real remedies: in this point of view therefore, if for no other reason, it is adviseable to devote a portion of time to this subject, as in the end it will certainly

prove not only highly beneficial, but an economy of time, as it will facilitate the acquisition of other useful knowledge. But in most of the states, as well as in England, several of these real actions are in constant use, and in the states of Massachusetts and New-York, most of the real remedies have been preserved with but little modification. The writs of right, dower, waste, assize, formedon, in *remainder*, *descender*, and *reverter;* of entry in the *per*, *cui*, and *post*, &c. are, in Massachusetts particularly, in daily use, with all their concomitants of *voucher* and *counter-plea of voucher*, *counter-plea of warranty*, *imparlances*, *sole tenure*, *non-tenure*, *disclaimer*, *aid*, *view*, *defaults*, *distress*, *summons*, and *severance*, &c. &c.

Let it, therefore, be distinctly impressed on the mind of every American student of law, that his legal education will be very imperfect without some acquaintance with this ancient system of remedial law; and let those students, who design to practise their profession in states which have retained the use of real actions, study this law with earnestness, and acquaint themselves as intimately with Booth on Real Actions, as they will, no doubt, with Espinasse's Digest.

If this subject be taken up at the proper season, when the mind has been matured by familiar acquaintance with the law of *real rights*, the student, if assiduous, could acquire in *one month* a minute knowledge of it.

(*Note* 10.) THE MODE OF REFERRING TO LORD COKE'S REPORTS. Although the Year Books and the Reports of lord chief justice Dyer and Mr. Plowden are of great merit, those of lord Coke have attained a celebrity which has nearly obscured the labours of

his predecessors, for it is comparatively but seldom that we are referred to the pages of Plowden, Dyer, or the Year Books; yet when these works are cited, it is with great respect for their authority. The Reports of lord Coke have, at all times, been highly valued, and as an indication of permanent merit, are usually cited as 1, 2, 3 Rep. the author ever being understood. The work is divided into *thirteen* books, which are cited by Coke himself, as Lib. 1, 2, 3, &c. The first *eleven* books were published by lord Coke, and of their authenticity there never was a doubt. The *twelfth* part was published some time after his death, and is certified by Bulstrode as the genuine production of lord Coke. The *thirteenth* book is represented in a preface by J. G. to be from the same distinguished reporter.

(*Note* 11.) "RESOLVED." In the rules which we have given the student, to be observed by him in reading lord Coke's Reports, we have cautioned him to discriminate between the extrajudicial opinions of the court, those of counsel, and the reporter, and the points expressly decided. In the case of Yates *v.* the people, 6 John. Rep. 441, the chancellor observes that the word *"Resolved"* imports an express adjudication, not an *obiter dictum.* This is a technical legal word, made use of appropriately to distinguish the opinions of the court, (through the whole of Coke's Reports, and several other reporters,) from loose sayings of their judges, which have not the weight or authority of strict judicial decision.

(*Note* 12.) AMERICAN REPORTS. In examining the history of knowledge and learning in *this country,* nothing is more remarkable than the rapid advance-

ment which has been made in publick and municipal law. If literature and many of the sciences and fine arts have advanced but slowly, the science of jurisprudence has been carefully and assiduously cultivated by us, and with a talent and zeal no way inferiour to what are displayed in the trans-atlantick world. The philosophy of *government* has been unfolded, theoretically and practically, and more advantageously displayed than perhaps in any other nation. Private or municipal law has been fostered and improved to such a degree, that the liberal minded and learned men in the land of our progenitors will shortly, no doubt, resort to the decisions of our courts with confidence and pleasure, and find in them all the evidences of deep thought and profound research, which the pages of Coke, Burrow, Douglas, Cowper, East, &c. so amply afford.

Notwithstanding law has been studied and practised in this country with the most brilliant success for the last forty years, and the bench and the bar have been ornamented by legal talents and learning of the most distinguished order, it is only within the last few years that this science has been written upon, or the decisions of our courts of justice been preserved by printed reports. Five hundred years have passed since the first publication of judicial decisions took place in England, and from that period to the present time, with but few chasms, we have a regular history of the law, as evidenced by the decisions of the various courts of that country.

The unwritten or common law, and the various applications and constructions of the statute law, are chiefly derived from this source. We therefore have

no cause of surprise, that this branch of the English law occupies at least five hundred and thirty volumes of reports, one hundred and eighty of which are large folios. To this copious source, until lately, was the American lawyer compelled to resort for instruction; for we had no reports until Pennsylvania set the example in the year 1790, in the reports of Alexander James Dallas, esq. From that time until 1803, there were only a few books of reports published; but from that period to the present, the catalogue has been increasing almost monthly. We doubt not that an enumeration of the American books of reports will prove useful and acceptable to our student, for which we refer him to the title "Legal Biography and Bibliography," of this Course.

(*Note* 13.) MISCELLANEOUS. Under this head, which is annexed to most of the titles in this Course, are embraced such essays, pamphlets, opinions of eminent counsellors, &c. as are well entitled to a place in this work, but which, on account of the ephemeral form in which they have been given to the world, and the consequent difficulty of obtaining them, and their being chiefly censorial or speculative, we have placed rather as an appendage than an integral part of this Course.

It is certain, however, that legal essays and opinions of the learned, frequently display the genius and entire strength of their authors, unfold in a clear, solid, and learned manner the true merits of a subject; and are often better entitled to be resorted to, than the regular treatise or deliberate judicial opinion. In the selection we have made of this species of matter, we have been especially cautious; the student, therefore,

if zealous in the pursuit of knowledge, will never pretermit any essay, &c. under the division Miscellaneous, but, if practicable, obtain and read it with suitable attention.*

PARTICULAR SYLLABUS.

TITLE IV.

In *tutelis, societatibus, fiduciis, mandatis, rebus emptis, venditis, conductis, locatis,* quibus vitæ societas continetur; in his *discipuli* est *intelligere,* quid quemque cuique præstare oporteret. CIC. DE OFF. LIB. III. § 17.

THE LAW OF PERSONAL RIGHTS, AND PERSONAL REMEDIES.

I. The Law of Personal Rights. *(Note 1.)*

1. The following chapters in 1st volume of Blackstone's Commentaries. *(Note 2.)*
   - The 1st. chap. "Of the absolute rights of Individuals."
   - The 14th chap. "Of Master and Servant."

* For further remarks on this subject, vide note 7 on the 13th Title.

The 15th ch. "Of Husband and Wife."
The 16th ch. "Of Parent and Child."
The 17th ch. "Of Guardian and Ward."
The 18th ch. "Of Corporations."

2. The second volume of Blackstone's Commentaries, from the twenty-fourth to the thirty-second chapters, both inclusive.
3. The following select chapters in Bacon's Abridgment:
   1. Marriage and Divorce.
   2. Baron and Feme.
   3. Bastardy.
   4. Guardian.
   5. Infancy and Age.
   6. Idiots and Lunaticks.
   7. Aliens.
   8. Ambassadors.
   9. Prerogative.
   10. Corporations.
   11. By-Laws.
   12. Statutes.
   13. Wills and Testaments.
   14. Executors and Administrators.
   15. Legacies.
   16. Agreement.
   17. Obligations.
   18. Assignment.
   19. Authority.

20. Bailment, [and Jones on Bailments.]
21. Fraud.
22. Duress.

[After this inquiry into the law of personal *rights*, and previously to an investigation into the various *remedies* established by law for their enforcement, the student's attention should be directed to the organization of the various tribunals or courts, whose peculiar province it is, in order that right and justice may be rendered to all who have a claim to the protection of the laws, to ascertain and define these rights, to judge of the propriety of the selected remedy, and finally to execute their judgments. On this subject we recommend the following chapters in Bacon's Abridgment.]

COURTS.

1. Courts and their jurisdiction in general.
2. Court of Parliament.
3. Court of King's Bench.
4. Court of Common Pleas.
5. Court of Exchequer.
6. Court of the Justices of Assize and Nisi Prius.
7. Ecclesiastical Courts.

OFFICERS OF COURT.

8. Attorney.
9. Sheriff.
10. Coroner.
11. Constable.

12. Attachment.
13. Fine and Amercement.
14. Habeas Corpus.
15. Prohibition.
16. Certiorari.
17. Mandamus.

} POWERS OF COURTS.

II. THE LAW OF PERSONAL REMEDIES.

1. The third volume of Blackstone's Commentaries, from the 18th to the 26th chapter, both inclusive.

2. The following titles in Bacon's Abridgment:

1. Actions in general.
2. Action of Account.
3. Debt.
4. Covenant.
5. Detinue.
6. Trover.
7. Replevin & Avowry.
8. On the Case.
9. Trespass.
10. Ejectment.
11. Slander.
12. Libel.
13. Assault and Battery.
14. Qui Tam.

} Actions ex delicto.

15. Actions local and transitory.
16. Venue.
17. Abatement.

} Actions ex contractu.

nue." As the jurisdiction may have been mistaken, or the party sued under a wrong name, or the addition of his estate, degree, or mystery may have been omitted, or an improper one used, or as there may have been a nonjoinder or misjoinder of the proper parties, whether plaintiffs or defendants, or some disagreement or variance between the declaration and writ, or the the form of action itself may have been misconceived, all of which matters are or were remedied by plea in "*abatement,*" the learning on this subject and that of "*misnomer and addition,*" follow in regular order, and serve as an introduction to the more extensive and important doctrine of "*Pleas and Pleadings.*" Connected with this are the subjects of "*Amendment and Jeofail,*" "*Nonsuit,*" "*Summons and Severance.*" If the defendant be taken, he may escape or be rescued, or he may yield and give bail; thus the law of "*Escape,*" "*Rescue,*" and "*Bail*" succeeds. The various kinds of "*Juries*" and "*Trials,*" the "*Evidence*" offered by the respective parties to these juries or on these trials, the doctrine of "*Verdicts,*" "*Damages,*" and "*Costs,*" are introduced in the order in which they arise. If in the course of these proceedings any irregularity has taken place, with respect to the law or fact, "*New Trials,*" "*Bills of Exception,*" and "*Writs of Errour*" present themselves as the appropriate remedies; or if a party is otherwise aggrieved by the verdict or judgment, or, owing to some supervenient cause, has a legal ground for delay of the execution, the writs of "*Supersedeas,*" *Scire Facias,*" "*Audita Querela,*" and "*Injunction,*" occur as the suitable means of redress. If, however, none of these circumstances obtain, the plaintiff, in the regular pro-

gression of his suit, resorts to an "Execution," which in all cases is favoured by the courts, as it puts him in possession of the right for which he prosecuted, and is the very aim, life, and effect of the law; *"fructus, finis, et effectus legis."*]

3. Espinasse's Digest of the Law of Actions and Trials at Nisi Prius. (Gould's American edition.)*

E. 4. Chitty's Practical Treatise on Pleading.

5. Peake's Compendium of the Law of Evidence.

6. Sergeant Williams's edition of sir Edmund Saunders' Reports of several pleadings and cases in B. R. Tem, Car. II. Note.

E. 7. Ord on Usury.

E. 8. Sergeant's Law of Attachment. (*Note* 5.)

[*If the student has industriously read the chapters recommended in Bacon's Abridgment, he will no doubt be possessed of a general and tolerably comprehensive view of the law of personal rights, and the various remedies provided by law for their enforcement. This, however, is by no means sufficient for our purpose, nor should it satisfy the student. We should be happy, could we with propriety close the labours of the student in this branch of our Course, with the chapters in Bacon; but we are assured that these will not effect the object of strongly impressing on his mind this very important department of our sub-

ject. The works, which we now in addition recommend, are among the most valuable in our law libraries; and must be read with that earnestness and attention to which their important contents, and the masterly manner in which the subjects have been treated in them, so justly entitle them.*]

LORD COKE'S REPORTS.

[*Select cases therein on the Law of Personal Rights and Personal Remedies.*†]

NOTE. The *first* and *second* books contain no cases on the law of personal rights and remedies.

THIRD COKE.

E. SIR WILLIAM HARBERT'S CASE. 11. a.

This case points out what things, by the common law, were liable to execution in personal actions at the suit of the king, or a private person, and the alterations introduced by several statutes. Cases, at common law, are stated of *contribution* in execution; and several errours in the record are noticed.

References. Read 2 Bac. Abr. 685, "Execution." (A.) 2 Wms. Saund. 68. a. No. 1, p. 7, No. 4, p.

* Vide note 6 "On the reading of Books of Reports."

† For a similar enumeration of the most important cases in lord Coke's Reports, on the law of Real Rights and Real Remedies, and for our observations on lord Coke's Reports, vide ante page 101.

9, No. 10. Deering *v.* the earl of Winchelsea et al. 2 Bos. and Pull. 270, in which the general doctrine of *contribution* has been learnedly treated by ld. ch. baron Eyre.

Twine's Case. 80. b.

This case may be considered the *polar star* on the law of *fraud,* in the disposition of *personal* property. It is constantly referred to as a standing authority or leading case on this subject, and may be regarded as a comprehensive decree or decision, in which the *principles* were fully established, leaving to future cases little else than the application of those principles.

References. Read Bac. Abr. title "Fraud," (C.) where most of the law on the subject of fraudulent conveyances to defeat creditors and purchasers within the statutes 13 Eliz. ch. v. and 27 Eliz. ch. iv. is briefly, but perspicuously stated. Read with attention the following cases: Worsley *v.* Mattos, 1 Burr. 467. Edwards *v.* Harben, 2 Du. and Ea. 587. Paget et al. *v.* Perchard, 1 Espi. Cases 205. Wardell *v.* Smith, 1 Campbell's Rep. 333. Cadogan *v.* Kennet, Cowper 432. Kidd *v.* Rawlinson, 2 Bos. and Pull. 59. Hamilton *v.* Russell, 1 Cranch 309. Fitzhugh *v.* Anderson, 2 Hen. and Mum. 289. Barrow *v.* Paxton, 5 John. 230. Wilt *v.* Franklin, 1 Binn. 502. Osborne *v.* Moss, 7 John. 161.

FOURTH COKE.

Actions for Slander.

[Note. The observation made by us on Twine's case, applies with great force to these cases of slander. In them the student will find nearly all the rules and the principles of law on the subject of slander. Legal writers, counsel in their arguments, and judges in their decisions, constantly resort to these cases, as the certain and abundant repository of the soundest doctrines on this subject. The substance of these cases has been collected and well digested by Mr. Espinasse in his admirable Digest of the Law of Actions and Trials at Nisi Prius, but still, not in such a manner as by any means to supersede the original reports. He who aspires to a masterly knowledge of his profession, must not rest satisfied with summaries or abridgments. On this subject, lord Coke, in his 5th Rep. p. 25, has given the following advice: "Take heed, reader, of *all abridgments*, for the chief use of them is as of tables, to find the book at large. But I exhort every student to read and rely only on the books at large." Again, in his preface to the 4th Rep. p. x. he further observes, "This I know, that abridgments in many professions have greatly profited the *authors* themselves; but, as they are used, have brought no small prejudice to *others;* for the advised and orderly reading over of the books *at large*, in such manner as I have elsewhere pointed out, I absolutely determine to be the right way to *enduring* and *perfect knowledge*, and to use abridgments as *tables*, and trust only to the books at large;

for I hold him not discreet that will *sectari rivulos*, when he may *petere fontes*."

That the science of English law in particular, has been much systematized and simplified by the numerous digests, abridgments and rudimental works, which have been presented to the legal world within the last half century, cannot be questioned; and that readers have largely participated with authors in the benefit, is equally certain. Whilst, therefore, with lord Coke, we admonish the student by no means to content himself with summaries, far be it from us to proscribe them. Some abridgments are to be preferred to their originals, and others are so full, as nearly to supersede the necessity of resorting to the work at large. In fine, we strongly recommend that the student, in the perusal of digests and abridgments, should, on all occasions of *doubt*, resort to the originals, and also refer to, and read with attention, all those cases which are admitted to be *leading*. No one was ever made a lawyer by confining himself to the Digests of Espinasse, Cruise, Selwin, and similar works; the fountains, viz. the books of reports, must be frequently resorted to. We therefore urge upon the student, not to rest satisfied with the little summaries given of these and other cases of lord Coke by Espinasse, &c. but diligently to read the originals.]

LORD CROMWELL'S CASE. 12. b.

Read Herver *v.* Dawson, Buller's Nisi Prius, 8. Dunham *v.* Bigg. Camp. 267, 269. 1 Wms. Saund. 131, No. 1.

CUTLER *v.* DIXON. 14. b.

Read Lake *v.* King, 1 Wms. Saund. 131. Astley *v.* Younge, 2 Burr. 807. Curry *v.* Walter, 1 Bos. and Pull. 525. M'Millan *v.* Birch, 1 Binn. 178. Barband *v.* Hookham, 5 Espi. Nisi Pri. Ca. 108.

BUCKLEY *v.* WOOD. 14. b.

In addition to the cases referred to in Cutler *v.* Dixon, read Thorn *v.* Blanchard, 5 John. 508; a valuable case, in which the student will find most of the learning on this subject, stated with all that clearness which so strongly distinguishes these very excellent reports.

STANHOPE *v.* BLITH. 15. b.

Read Holt *v.* Scholefield, 6 Du. and Ea. 691. Ward *v.* Black, 2 John. 10. M'Claughry *v.* Witmore, 6 John. 82. Pelton *v.* Ward, 3 Caine's Rep. 73. Shaffer *v.* Kintzer, 1 Binn. 537. Hamilton *v.* Dent, 1 Haywood's Rep. 116.

BIRCHLEY'S CASE. 16. a

Read Stanton *v.* Smith, 2 Stra. 762. Fiese *v.* Linder, 3 Bos. and Pull. 372. Backus *v.* Richardson, 5 John. 476. Oakley *v.* Tarrington, 1 John. Ca. 129.

HEXT *v.* YEOMANS. 15. b.

Read Beavor *v.* Hides, 2 Wils. 300. Rex *v.* Kinnersly and Moore, 1 Stra. 193. 3 Christian's Black. Com. 125, note.

STUCKLEY *v.* BULHEAD. 16. a.

Read Aston *v.* Blagrave, 1 Stra. 618. Dole *v.* Van Rensselear, 1 John. Ca. 380.

WEAVER *v.* CARIDAN. 16. a.

Read Hally *v.* Stauton, Cro. Car. 268.

SNAG *v.* GEE. 16. b.

Read Wilner *v.* Hold, Cro. Car. 489. Peake *v.* Oldham, Cowper, 276.

EATON *v.* ALLEN. 16. b.

In addition to the references to Hext *v.* Yeomans read Lewknor, *v.* Cruchley, Cro. Car. 140. Stevenson *v.* Hayden, 2 Mass. Rep. 406.

DAVIS *v.* GARDINER. 16. b.

Vid. Anonymous, Salk. 696, where this case is denied to be law. Graves *v.* Blanchet, id. p. 696. 3 Christian's Black. Com. 125, note. Matthew *v.* Crass. Cro. Jac. 323. Hunt *v.* Jones, id. 499.

JAMES *v.* RUTLECH. 17. b.

Of the use of an *averment, colloquium and innuendo*, vid. Van Vechten *v.* Hopkins, 5 John. 211. (A very good case.)

OXFORD AND WIFE *v.* CROSS. 18. a.

In New-York, words charging adultery or fornication are held not to be actionable, unless some special damage be alledged and proved, vid. Buys and wife *v.* Gillespie, 2 John. 115. Brooker *v.* Coffin, 5 John. 188.

GERARD *v.* DICKINSON. 18. a.

Read Earl of Northumberland *v.* Burt, Cro. Jac. 165. Vaughan *v.* Ellis, id. 213.

BITTRIGE'S CASE. 19. a.

Read Bellamy *v.* Barker, 1 Stra. 303. Betts *v.* Trevaman, Cro. Jac. 536. Green *v.* Lincoln, Cro. Car. 318.

BARHAM'S CASE. 20. a.

In addition to James *v.* Rutlech, 4 Co. 17, b. and references, vid. 1 Wms. Saund. 243. No. 4, on the office of an innuendo.

End of the actions of slander.

SLADE'S CASE. 92. b.

[NOTE. This very celebrated case was the first which established the use of the action on the case upon assumpsit, in the place of debt on implied contract: Much has been said as to the propriety of this decision, some strongly advocating it, others equally reprobating it. C. J. Vaughan says that it is an *illegal resolution, grounded upon reasons not fit for a declamation, much less for a decision of law.* Mr. Wooddeson on the other hand, justifies it, and expresses surprise that the case should have taken so much deliberation.] The case was in substance this. Slade brought case on assumpsit for sixteen pounds, for a growing crop of corn sold by him to the defendant. The jury found that the defendant had bought the crop *modo et forma,* but that there was no promise and assumption, but only the said bargain. It was moved that this action was not maintainable, for

1. An action of *debt* was the *ordinary* remedy, and when that does not fail, there shall be no recourse to an extraordinary one, as this action is, *et nullus debet agere actionem de dolo, ubi alta actio subest.*

2. That the defendant, by this action, is deprived of the benefit of waging his law.

And because the justices of the C. B. held the action not maintainable, and the justices of the B. R. held the contrary, for the settlement of the point, the case was argued before *all the judges of England,* and by them *resolved,*

1st. That the action on the case was maintainable:

1. Because of the great number of precedents in which judgments in such cases had been recovered.

2. Because the judgments and books, which allow of this action, were in cases in which the party might have sued in debt.

3. Because every *executory* contract does of itself import an assumpsit.

2d. That in such actions on the case damages are recoverable, as well for the debt as for the special loss, and the recovery is a good bar in debt, and *vice versa*.

3d. That in many cases it would be inconvenient were it otherwise; for if A. bargain with B. to deliver to him yearly during his life twenty quarters of barley, *debt* is not maintainable till all the days have expired, but *case* may be brought on every breach; and as to wager of law, it encourages perjury, and it is therefore better to have matters tried by jury.

4th. The Register contains as well the forms of a writ of trespass on the case, as a writ of debt, and where a man by the Register can have two writs in the same case, he has his election to chuse either.

References. Read 3 Reeves's His. Eng. Law, p. 244. 394. 4 vol. p. 171. 380. 527, where the history of the action of assumpsit is clearly and satisfactorily traced. Vid. also 3 Wood. Lec. 169, and note (c.) a good note. Barry *v.* Robinson's Adm. 4 Bos. and Pull. 293, and 1 Evans's Pothier on Oblig. 306, note (b.) and 2 vol. 398. 406, where the author traces the resemblance between our *Indebitatus Assumpsit* and the *Pactum constitutæ pecuniæ* of the Civil Law.

FIFTH COKE.

Slingby's Case. 19. a.

This is a very leading case on the doctrine, that covenants follow the nature of the interest to which they relate; and that express *several* words will not make that several which before was joint: so *e converso* if the interest be *several*, a covenant, though in joint terms, is in effect several.

References. Read Chitty on Pleading, p. 6, 7, and note (z.) Eccleston and wife, exs. of Castle *v.* Clipsham, 1 Wms. Saund. 153 and notes, in which the law of Slingby's case is ably treated. Scott *v.* Godwin, 1 Bos. and Pull. 66, and Phillips *v.* Bonsal, 2 Binn. Rep. 138.

Laughter's Case. 22. b.

Resolved in this case, that if a bond consist of two parts in the disjunctive, both of which were possible at the time the bond was made, and by the act of God one of them becomes impossible, the obligor is relieved from the performance of the other; for the condition is for his benefit, and he may at election perform either; so that if deprived by the act of God of one, he is not compelled to perform the other. *Actus Dei nemini facit injuriam.*

References. Read Studholme *v.* Mandell, 1 Ld. Ray. 279, and Anonymous 1 Salk. 170, in which the ground of Laughter's case is denied to be universal; also 1 Fonb. on Equ. 221, note (q.)

E. Mathewson's Case. 23. b.

If several are bound, ex. gr. in a charter party, but they covenant separately; if the seal of one is broken off, the deed is not avoided as to the others, for the covenants are several deeds written on one piece of parchment. But if a rasure is made, the deed is avoided as to all. So where they are jointly bound, if the seal of one be broken off, the entire deed is avoided.

References. Vid. Pigot's case 11 Co. 26, and our references.

Read's Case. 34. a.

The student, in this case, will find the general rules with respect to what constitutes a man an executor *de son tort.* The case is a very *leading* one on this subject.

References. Read Paget *v.* Priest et al. 2 Dun. and Ea. 97. Edwards *v.* Harben, id. 587. Mountford *v.* Gibson, 4 Eas. 441. Hall *v.* Elliot, Peake's N. P. Cases 86. Curtis *v.* Vernon, 3 Dun. and Ea. 587. 1 Wms. Saund. 265. No. 2, 2 vol. 137. a. No. 2.

E. Gooch's Case. 61. a.

In debt on an obligation by A. against B. as heir to his father C. defendant pleaded *riens per descent.*— Plaintiff maintained assets at D. and gave in evidence that C. died seized in fee of lands in D. which descended to B. This was admitted, but B. gave in evidence, that before the impetration of the writ he had aliened them in fee, which was likewise conceded; but A. pro-

ved that the conveyance was made to defraud him and other creditors, and therefore void by statute 13 Eliz. ch. v. It was insisted that this matter should have been pleaded; but it was resolved, that upon an issue joined on the plea of *riens per descent*, the plaintiff might give in evidence, and need not plead that the land in dispute was conveyed by the defendant fraudulently to defeat creditors, and therefore void by statute 13 Eliz. ch. v. Wray, C. J. said, that although a purchaser *had notice* of the fraud in a prior conveyance, yet he could avoid such conveyance by statute 27 Eliz. ch. iv.

References. Read 1 Fonb. on Equ. p. 270, § 12, 13, 14. Roberts on Fraud. Conv. 596, ch. v. § 5. 2 Wms. Saund. p. 7, No. 4.

Sparry's Case. 61. a.

In an action of *trover* defendant pleaded the pendency of another action upon the case in the B. R. for same trover, and conversion of the same goods. On demurrer, adjudged a good plea, because no one shall be twice vexed for one cause. But if debt be brought in an inferior court, and the plaintiff for the same cause sues in C. B. this shall not abate by reason of the pendency of such prior suit.

References. Read Ludfield *v.* Warden Fitzgib, 313, and the following American cases: Embree and Collins *v.* Hanna, 5 John. 101, that a foreign attachment pending in another state, before suit brought, is a good plea in abatement. Commonwealth *v.* Churchill, 5 Mass. T. Rep. 174, a good case as to the *time* to which such a plea refers. Marston *v.* Lawrence, 1

John. Ca. 397, that after plea of pendency of another action, plaintiff, without leave of court, or payment of costs, may, before replication, enter a *nihil capiat per breve* in the first suit. Clifford *v.* Cony, 1 Mass. T. Rep. 495. (Burnell *v.* Martin, Doug. 417.)

E. The Case of Market Overt. 84. a.

[Although the doctrine of market overt, as far as we have been able to ascertain, has not been sanctioned in any of the states, it so frequently becomes the topick of discussion, that every lawyer should be familiar at least with its principles. We refer the student to a few *short select* cases, which, if read with attention, will afford him all requisite information.]

References. Read Horwood *v.* Smith, 2 Du. and Ea. 750. Williamson *v.* King et al. 2 Camp. Rep. 335. Miller *v.* Bace, that *bank notes*, though stolen, become the property of him who receives them *bona fide*, and for value; but not on the principle of *market overt*. Wheelwright *v.* Depeyster, 1 John. Rep. 471, that this doctrine is not recognized in the state of New-York. Heacock *v.* Walker, 1 Tyler's Rep. 338. 3 Binn. Rep. 228, note (*); in which is concisely stated the Spanish law on this subject, ascertained by commission to New-Orleans.

Semayne's Case. 92. a.

[This is a distinguished case as to the authority of a sheriff in doing execution, and serving other process, and particularly of his right of breaking doors. No

case is more frequently resorted to for law on this subject than Semayne's.]

References. Read Park *v* Evans, Hob. 62, that if sheriff raps at the door, and rushes in on its being opened, the arrest is illegal. Howson *v.* Walker, 2 Bla. Rep. 823, that if another arrest be served on one who is under such illegal custody, it is good. Lee *v.* Gansel, Cow. 1, that sheriff, in serving mesne process, may break open an inner door of a lodger's apartment, if he has gained peaceable entrance at the *outer* door. Ratcliff *v.* Burton, 3 Bos. and Pull. 223, that sheriff cannot, under civil process, break an inner door, without a previous demand of admittance; and the following American cases: Williams *v.* Spencer, 5 John. 352, and Fitch *v.* Loveland, Kirby's Rep. 380, as to the breaking an inner door. Nicholls *v.* Ingersoll, 7 John. 145, that *bail* may break open the *outer* door, in order to take the principal.

Baker's Case. 104. b.

That if demurrer be offered to written evidence, the adverse party must join in demurrer, or waive his evidence. *Secus* in case of viva voce testimony, but in this case he *may* join if he will.

References. Read Gibson *v.* Hunter, 2 Henry Black. 187, in which C. J. Eyre has ably considered the doctrine of Baker's case; and the nature of a demurrer to evidence, 3 Tucker's Black. Com. 372, Note 26.

Wade's Case. 114. b.

Resolved, 1. That if A. to save an estate, be bound to pay twenty-five pounds *lawful money of England*, on 1st of November, a tender any time before sunset on 1st of November, is sufficient.

2. That a tender of foreign money made current by king's proclamation is good.

3. That a tender of more than is due is good.

4. That a tender of money, though in bags, is good, and payee must count it.

[The case of Vane and Studley is cited in Wade's case. It holds that if lessee, to save condition of re-entry, pays his rent to lessor, who receives it and puts it in his purse, he cannot, upon discovering it to be counterfeit, enter for condition broken.]

References. As to the plea of tender, read 1 Wms. Saund. 33, No. 2. Spybey *v.* Hide, 1 Camp. Rep. 181. Douglas *v.* Partrick, 3 Dun. and Ea. 683. Lancaster *v.* Killingworth, 1 Ld. Ray. 686. Black *v.* Smith, Peake's N. P. Ca. 88. Grigby *v.* Oakes, et al. 2 Bos. and Pull. 525. Downman *v.* Downman's ex. 1 Washington's Rep. 29. As to the point in Vane and Studley's case, read Markle *v.* Hatfield, 2 John. 455.

Pinnel's Case. 117. a.

Resolved, 1. That payment and acceptance of part, before the debt is due, in satisfaction of the whole, is a good plea.

2. Secus, if made *on the day*.

3. But the acceptance of a horse, robe, or any collateral thing on the day, is a good plea.

4. That if twenty pounds be due at A. and creditor agrees to accept ten pounds at B. in satisfaction of the whole, it is good.

5. The defendant, in pleading *accord* and *satisfaction*, must state that he paid the less sum, or performed the collateral matter in full satisfaction of the demand, and that plaintiff accepted it as such.

6. The manner of the tender and payment shall be directed by him who made the tender or payment, and not by him who accepts it.

References. Read Cumber *v.* Wane, 1 Stra. 426. Fitch *v.* Sutton, 5 Ea. 230. Steinman *v.* Magnus, 1 Camp. Rep. 124. Payne *v.* Masters, 1 Stra. 573. Scholey *v.* Mearnes, 7 Ea. 148, and Harrison and Close *v.* Wilcox, 2 John. 448. Johnson *v.* Brannan, 5 John. 268. Watkinson *v.* Inglesey and Stokes, id. 386. On the *sixth* resolution, read Brett *v.* Marsh, 1 Vern. 468. Manning *v.* Western, id. 606, 1 Evans's Pothier on Oblig. 368 to 376, and Mann *v.* Marsh, 2 Caine's Rep. 99. Huger's ex. *v.* Boquet, 1 Bay. 497. and Mayor and Commonalty of Alexandria *v.* Patten et al. 4 Cranch 419.

Whelpdale's Case. 119. b.

This is a very noted case on the plea of *Non est Factum*, and of joinder in action.

References. Read 1 Wms. Saund. 291. b. No. 4, where the subject of nonjoinder, and the mode of taking advantage of it, is treated in a very masterly manner. On the plea of *non est factum*, read the following cases: Allwood *v.* Clark, Taylor's Rep. 281, (an

excellent case.) Stoytes *v.* Pearson, 4 Espi. N. P. Cases, 255. Samuel *v.* Evans, 2 Du. and Ea. 569.

SIXTH COKE.

Ferrer's Case. 8. a.

[There is no case better known in the law than Ferrer's case, as to the plea of a former judgment in bar of a subsequent action. This is a point of considerable difficulty, and must be studied with attention.]

References. Read Kitchin *v.* Campbell, 3 Wils. 308. Lechmere *v.* Toplady, 2 Vent. 169. Laicon *v.* Bernard, Cro. Car. 35. Brook *v.* Smith, 1 Salk, 280. Seddon *v.* Tutop, 6 Du. and Ea. 607. Martin *v.* Kennedy, 2 Bos. and Pull. 69, and the following American cases: Kent *v.* Kent, 2 Mass. T. R. 342. Snider *v.* Croy, 2 John. 227. Brockway *v.* Kennedy, id. 210. Rice *v.* King, 7 John. 20.

Bellamy's Case. 38. a.

Lessee upon condition not to assign without license by deed, obtains the license, and assigns the lease to the plaintiff, who pleads the license without *profert*, and held good. *Resolved*, 1. That a deed *ex institutione legis* must be pleaded with a *profert*, though it concerns a collateral thing, and though he who pleads it claims no interest under it. 2. That a deed *ex provisione hominis*, as is the present, need not be pleaded with a *profert*.

References. [We refer the student to Dr. Leyfield's case, 10 Co. 88, and our references.

SEVENTH COKE.

CALVIN'S CASE. 1.

[To induce the student to an earnest reading of this case, it cannot be necessary to dwell on its importance, as it has acquired a celebrity by no means confined within the limits of legal readers. The politician and statesman, the historian and general inquirer, resort to it as the most authentick and abundant source of information on the subject of the reciprocal duties of *allegiance* and *protection*, of *alienage* and *denization*, and generally of the relation subsisting between the state and people.

"This case of *postnati*," says lord Coke, "is, I confess, longer than the rest, and that for three causes; first, that it was an exchequer-chamber case, for deciding whereof, all the judges of England, as the law requireth, did argue openly and at large. Secondly, for that never any case within man's memory was argued by so many judges in the exchequer-chamber as this was; there having argued the lord chancellor and fourteen judges. Thirdly, for the variety as well of the important matter, as of the several kinds of *excellent learning* delivered in the arguments of this case." Vid. Pref. to 7 Co. p. 11, and afterwards in the report of the case, p. 7, he adds "This case was as elaborately, substantially, and judicially argued by the lord chancellor, and by my brethren the judges, as *I ever read or heard of any;* and so, in mine opinion, the weight and consequence of the cause, both in *præsenti et perpetuis futuris temporibus*, justly deser-

ved; for though it was one of the *shortest* and *least* that ever was argued in this court, yet it was the *longest* and *weightiest* that ever was argued in any court; the shortest in *syllables*,* and the longest in substance; the least for the value, and yet not tending to the right of that least, but the weightiest for the consequent, both for the present, and for all posterity."

Notwithstanding the affectation of great method this case is but confusedly reported, and replete with the quaintness and pedantry of the age. Every student, however, emulous of accurate information of this celebrated case, must not content himself with receiving its doctrines from the various digests and abridgments of the law, the pages of the historian, or the disquisitions even of the most learned among the political pamphleteers. An infinitude has been written on the various points in this case; but as our sole object is to present to the student the choicest sources of information, and such as we feel assured he will studiously read, we limit ourselves to a very few references.]

References. On the doctrine of the perpetuity of allegiance read Vattel, 166 to 178. Ch. xxii. of Du Ponceau's Bynkershoek. (This may be found in 3 Hall's Law Journal, p. 174 to 180.) Talbot *v.* Janson, 3 Dall. 133. 1 Wilson's Works, 311 to 317. Isaac Williams's case, 4 Hall's Law Journal, 361. Tucker's Blac. Com. vol. 1, part 2, Appendix, p. 90, "the right of expatriation considered," no. (k.) M'Ilvaine *v.* Cox's lessee, 2 Cranch 280. 4 Cranch 209. As to the rights of American and British *ante-*

* Alluding to the pleadings in the case.

nati, read Lamberton's lessee *v.* Paine, 3 Cranch 97. Dawson's lessee *v.* Godfrey, 4 Cranch 321, and the very able and luminous opinion of judge Roan, in Reed *v.* Reed, 1 Munford's Rep. Appendix 1.

EIGHTH COKE.

Sir Edward Crogate's Case. 132.

To an action of trespass defendant justified as servant under the command of the plaintiff, who had a right of common in the *locus in quo*. Plaintiff replied *de injuria sua propria, et absque tali causa*. Upon demurrer to this replication it was resolved,

1. That *absque tali causa* refers to the entire plea, and not merely to the command, as plaintiff supposed.

2. That when a defendant, either in his own right or as servant, claims an interest in the land, or in any common, or rent, or way, &c. in or out of the land, there *de injuria*, &c. is not a good replication.

3. If defendant derives any authority from the plaintiff himself, or if it be given him by law, here, though no interest be claimed, the plaintiff should answer it, and not reply generally *de injuria*, &c.

4. All the *parts* of this plea make but one issue; for if this replication were allowed, the plea would be multifarious and double.

References. Read 1 Wms. Saund. 244. a. No. 7, where this replication is fully considered, and the law on this subject concisely and luminously stated; also White *v.* Stubbs, 2 Wms. Saund. 294, and notes. Hyatt *v.* Wood, 4 John. 150. Lytle *v.* Lee and Ruggles, 5 John. 112. (On the last resolution, that a va-

riety of facts, constituting one entire defence, does not amount to duplicity, read Robinson *v.* Bailey, 1 Burr. 316. Botts *v.* Purvis, 2 Blac. Rep. 1022. Travelain *v.* Seccomb, Carthew 8, and Waddams *v.* Burnham, 1 Tyler's Rep. 233. Strong *v.* Smith, 2 Caine's T. R. 160.

The six Carpenters' Case. 144.

[As to what constitutes a trespasser *ab initio*, the case of the six carpenters may be regarded as a very leading case, indeed the original fountain of the law on this subject.]

References. Read Bagshaw *v.* Goward, Cro. Jac. 148. Taylor *v.* Cole, 3 Du. and Ea. 292. Winterbourne *v.* Morgan et al. 11 East. 394. Messing *v.* Kemble, 2 Camp. 115. Anscomb *v.* Shore, 1 Camp. 283.

NINTH COKE.

E. The Poulterers' Case. 56. a.

This is a well known case on the *questio vexata* whether, or to what extent, a conspiracy must be executed to be the subject of an indictment. [This case might with more propriety have been introduced in the seventh title of this Course, being a *criminal* case; but as we have not recommended the perusal of any other of lord Coke's cases on criminal law, we have deemed it adviseable that the student should read this case at the present time.]

References. Read Rex *v.* Kinnersley and Moor, 1 Stra. 193. Hawkins's Pleas of the Crown, 189 to 191. 6 Mod. 99. 1 Vent. 304. 1 Levintz 125. 1 Keble 203. [To those who can procure the report of the trial of the journeymen cordwainers of New-York, we strongly recommend its perusal, as it contains nearly all the law which has been decided on this subject. There is in it much irrelevant, and perhaps some foolish matter; but the case is valuable, as being the first in which this doctrine was elaborately considered in this country, and one in which this law has been more fully investigated than in any other with which we are acquainted.]

TENTH COKE.

Doctor Leyfield's Case. 88. a.

On pleading with a *profert* and *giving colour*, no case is more distinguished than Dr. Leyfield's It is at all times referred to as a leading authority on those subjects; and though the rigidity of the rule there laid down, with respect to *profert*, has been departed from in modern times, this case should be resorted to for the principles upon which the doctrine of *profert* is founded, and also for much excellent matter on the subject generally, and on the law of *giving colour*.

References. Read 1 Chitty on Pleading, 348 to 351, pp. 400. 415. Read *v.* Brookman, 3 Du. and Ea. 151, that a deed may be pleaded as *lost by time and accident*, without a *profert*. This is a very celebrated case, in which the student will find nearly all the law on the subject of *profert*, from lord Coke's

time to that of lord Mansfield. In connexion with this great case, read Smith *v.* Woodward, 4 East, which held that although a deed may be pleaded as *lost* or *destroyed*, yet if pleaded with a *profert*, nothing can dispense with the production of it; the *profert* should have been omitted, and the matter of excuse pleaded. Hendy et al. *v.* Stephenson et al. 10 East 55, that a defendant in trespass cannot, by way of justification, plead that he was possessed of a right of common over the *locus in quo*, under a deed of grant by a former owner, alleged to be since lost or destroyed, and therefore not proffered in court, if the *date and names of the parties to such deed are unknown.*

ELEVENTH COKE.

Sir John Heydon's Case. 5. a.

From this case the student should commence his investigation of the law relative to the assessment of damages in the case of joint trespassers, and of election *de melioribus damnis.* This is a subject not a little involved in contrariety of decision, and in practice has generally been attended with difficulty. "In it is perspicuously expressed," says Coke in his preface to 11 Co. p. 6, "where damages shall be severally assessed by jurors; and where the first jury between the plaintiff and one of the defendants, shall assess damages for all the defendants, and where not: whereby all the books are well reconciled, for want of right understanding whereof, many judgments have been arrested, many that have been given, have been overthrown by writ

of errour, to the great charge, delay, and vexation of the party grieved."

This subject has been ably discussed in a few cases in this country, and to these we shall principally refer the student.

References. Livingston *v.* Bishop, 1 John. Rep. 290. Ammonett *v.* Harris, 1 Hen. and Munf. 488. Wilkes *v.* Jackson, 2 Hen. and Munf. 355. Hill *v.* Goodchild, 5 Burr. 2790. Brown *v.* Allen, 4 Espi. N. P. Cases, 158.

Henry Pigot's Case. 26. a.

In this case, among other things, it was resolved,

1. That if a lawful deed be rased, obligor may plead *non est factum*, and give the matter in evidence.

2. That if a deed be altered by the obligee or a stranger, in a material part, the deed is thereby avoided.

3. That any alteration by the obligee, though in a place not material, avoids the deed.

4. That if a deed consist of several parts, not dependent on each other, some lawful, others not, the deed is good in part, and void in part.

5. If any of these parts be erased, the whole deed is avoided; or if the seal of one be broken off, the entire deed is avoided.

6. If several bonds be written on one piece of parchment, and obligor, who is an unlettered man, seals the deed, it is good for that which was read to him, and void *ab initio* for the remainder.

References. Read Master *v.* Miller, 4 Du. and Ea. 320. This is the most celebrated case on the sub-

ject of avoiding instruments by rasure, &c. Henfrere *v.* Bromley, 6 Ea. 309, and the following American cases: Smith *v.* Crooker, 5 Mass. T. Rep. Woolley *v.* Evans, 4 John. 54. Steele *v.* Anthony, 1 Hayw. 98.

Metcalf's Case. 38. a.

In all discussions as to the *kind* of judgment on which a writ of errour lies, this case is appealed to as the *first* authority on the point. It determined that errour lies only on a *final* judgment, or an award in the nature of a judgment, and therefore that it does not lie on the judgment *quod computet* in an action of account; and that the record in such case shall not be removed till the final judgment.

References. Read Baker *v.* Bulstrode, 1 Vent. 255. Jaques *v.* Nixon, 1 Dun. and Ea. 279. Richardson *v.* Backus, 1 John. 493; and the very celebrated case of Yates *v.* the People, 6 John. 337. The opinions of Yates J. p. 394, Spencer J. 398, and Kent C. J. 416, are worthy the student's particular attention. [In this valuable and interesting case, the doctrine of Metcalf's case is discussed with much ability and research. Sixteen to twelve judges held, that a writ of errour will lie on a judgment of the supreme court of the state of New-York on a *habeas corpus*. But though errour regularly lies only on a final judgment or award, yet the writ may be sued out before the judgment is given, provided it be rendered prior to the return of the writ of errour.]

THE CASE OF THE TAILORS OF IPSWICH. 53. a.

Resolved in this case, that a by-law prohibiting any one from working at his trade of tailor in the town of Ipswich, until he had presented himself to the company of tailors of that place, and proved that he had served seven years as an apprentice, according to the requisition of the statute 5 Eliz. and been *admitted by them* to be a sufficient workman, was an unreasonable and void by-law, as to all which said by-law imposed, beyond the requisition of the statute.

References. As to what restraints on trade are admitted, and what condemned as illegal, the student will find nearly all the cases on the subject luminously arranged by C. J. Parker, in the famous case of Mitchell *v.* Reynolds, 1 P. Wms. 181 If the student is not possessed of P Wms. he will find C. J. Parker's opinion transcribed in 2 Comyn on Contracts, 467. Read also 2 Wms. Saund. 156, No. 1, and Davis *v.* Mason, 5 Dun. and Ea. 119.

JAMES BAGG'S CASE. 94. a.

In this noted case the student will find, 1. What are deemed sufficient causes for the amotion or disfranchisement of a corporation. 2. How and by whom this right is to be exercised. 3. As to the remedy which the party grieved has in such case, either by writ of mandamus, or action on the case. 4. As to the sufficiency of the return to the writ of mandamus.

This case presents the first instance of a judicial mandamus; and as the subject of disfranchisement, and its remedy, were more fully considered than in any

preceding case, it is always referred to as a valuable decision on this doctrine. As to the point that corporations possess the power of amotion, *only* when it is given by their *charter* or prescription, it has long since been determined otherwise; and it is now held as undoubted law, that this power is impliedly incident to every corporation, as much so as the power of making by-laws.

References. Read Rex *v.* Richardson, 1 Burr. 517, a great case on this subject. Rex *v.* Lime Regis, Douglas's Rep. 149. Rex *v.* the Corporation of Doncaster, 2 Burr. 740. The Commonwealth *v.* St. Patrick Benevolent Society, 2 Binn. 441.

NOTE. There are no cases in the *twelfth* and *thirteenth books* particularly worthy the attention of the American student of law.

MISCELLANEOUS.

The following numbers in Evans's Pothier on Obligations, second volume:

E. Num. IV. "Of the rule that a person can stipulate only for himself."

E. Num. X. "Of Alternative Obligations."

E. Num. XI. "Of Joint and Several Obligations.

E. Num. XV. "Of the Statutes of Limitation, and of the presumption founded on length of time."

E. Num. XVII. "Of the distinction between Law and Fact, and of the effect of Usage upon the Law."

Num. XVIII. "Of Mistakes of Law; with the learned Dissertation of M. D'Agues-seau on this subject, and the opinions of Vinnius on the question, whether money paid under a mistaken idea of legal obligation be subject to repetition."

3 Hargrave's Observations on the "Effect of sentences of the courts ecclesiastical in cases of marriages, pleaded or offered in evidence in the temporal courts." Vid. his Law Tracts, 449.

OF PRACTICE, AND PARTICULARLY OF BOOKS OF ENTRIES AND PRECEDENTS.

As there are in constant use, in the various stages of an action, certain established forms or precedents, which either in the first instance have been drawn up by able and experienced lawyers, or have attained great excellence, by the judicious corrections of time and observation, in many cases entitling them to be resorted to as authorities or evidences of the law; the books of entries and precedents, both ancient and modern, should claim a considerable portion of that student's attention, who, to the theory or science, desires to unite a knowledge of the practice of his profession. There is often so intimate a connexion between the theory and practice of a science, that its philosophy is unfolded only to those who pay especial attention to its practice. This is strikingly the case with the science of jurisprudence, which never yet disclosed its beauties and excellencies, its deformities and absurdi-

ties, to the closet student, who contemplated it merely as a speculative science. The routine of legal practice, therefore, should at all times receive a respectful attention; and not a little may be effected in this, during the entire course of the student's reading. As this branch of his duty is confessedly much less interesting than most others, we are strongly desirous of suggesting to him a plan, and earnestly recommend it to him, by which, in a very short period, and comparatively with little labour, he may obtain an ample fund of practical knowledge, anteriour to his actual engagement in the career of professional duties.

As the books of entries and precedents contain the most approved forms which may be required in a very long and extensive practice, if the student should early habituate himself to the perusal of these forms and precedents, he would become intimately acquainted with most of the practical proceedings; and in the future prosecution of his professional business, would seldom or never, if informed of the *law*, be unacquainted with the *modus operandi*. It cannot be questioned, but that the *forms* constitute a great portion of that practice which it is the student's aim, by a long and tedious apprenticeship in an office, to attain. As the object of this volume is to present every mode in which he may abridge his labours, without detracting from the solidity of his acquirements, we strongly recommend a familiar acquaintance with the most approved books of precedents, as a means of nearly superceding this service in an attorney's office. On this point we state with confidence, arising both from experience and observation, that a greater fund of useful and practical knowledge may be acquired in a *few months* from these books, than

most students attain by the performance of the customary duties of an office, in as *many years*. But let it not be supposed that we would place these volumes of entries and precedents in his hands to be read continuedly, and in the usual mode of reading other works: for it is without hesitation admitted, that books of forms, both as to matter and style, are exceedingly dull and uninteresting; certainly too much so to be perused in the ordinary manner. That, however, which the mind rejects in one shape, may be received with pleasure in another: like a chemical menstruum it may be saturated with one species of matter, and imbibe with avidity what is of a different nature. In this nice art of supplying it with various food, and at suitable times; of courting or commanding it; consists the principal difficulty to be encountered by a student. He will, therefore, easily perceive the propriety of reading such books of practical forms, as we recommend, in a manner different from the usual mode of studying. Most men, however industrious or judicious in the occupation of their time, have periods of leisure which are not embraced by their *settled hours of study*. Let some of these little vacancies of time be devoted to this species of reading: let the student occasionally take up a book of forms, and read a half, or a quarter of an hour, noting with a paper his gradual progress through the volume; let him never fatigue himself with this species of reading, but frequently resort to it as a short repast, which is to occupy the fragments of time, and not to interfere with the hours of study, rest, and relaxation. By this practice much time will be usefully saved, which would otherwise be lost; the student slowly,

and almost imperceptibly, gains a very useful species of knowledge; practice is thus united to theory, and if he has been otherwise studious, he appears, as it were *per saltum*, before the world, not merely the closet lawyer, but the practitioner and the man of business. We further advise the student, if the publick records be accessible to him, to read occasionally the entire record of a case carried from an inferiour tribunal to the supreme court: the perusal of a few records of this kind would impress on his mind a distinct view of the whole routine of an action, from the impetration of the original writ, through perhaps a hundred different forms or entries, to the return of the executory process.

We have ever deplored the great consumption of time arising from the custom of long apprenticeships in an attorney's office, commenced before even the rudiments of law have been acquired. Many young men, on leaving college, at once place themselves in a law-office; and are frequently made mere drudges to copy long declarations, pleas, bills in chancery, deeds, letters, &c. which the proprietor of the office was either too much engaged, or too indolent to copy himself; and which neither improve the student's hand writing, nor add one mite to his legal stores. Others are suffered to grope through the Dœdalean intricacies of the law without torch or clue, and destitute of all method. Left to self-direction, they essay the perusal of some black-lettered folio, as the Herculean task alone necessary to be surmounted: the difficulties of this widely diffused science are then to vanish, and this musty and ponderous folio is to be the avenue through which they are to pass, as by enchantment, into smooth and

uninterrupted paths. Disappointment, however, is the certain reward of such students. Their minds are not prepared for so vast an undertaking. The first beams of legal knowledge have not been felt, when they ignorantly and temerariously fly, like Icarus, into the very face of the sun, and meet with the same inevitable and ruinous fate. Some, again, are contented with the *scraps* and *bits* of knowledge, gleaned from writing deeds and declarations; from listening to the protracted narratives of clients to their counsel, and the hasty advice which the former receive from the latter; or from an occasional attendance on courts of justice; whilst the remainder of their *office hours* are dedicated to politicks and pamphlets, or the ephemeral and amusing productions of the day. In this round of *time-slaughtering*, the three or four years originally appropriated as the period of legal study, have elapsed; and the student must now embark in the practice of a profession, the very rudiments and general contour of which have never been fully presented to his mind.

This is by no means a picture of too high colouring, but a faithful sketch of the history of many students of law. We, therefore, earnestly entreat the student to devote three fourths of the period allotted for his legal apprenticeship, to private study, and by no means to enter an office until the year previous to his entering into the practice of his profession. This year (especially if the previous time has been judiciously and industriously employed) is amply sufficient for the acquisition of all the practical knowledge requisite for a young lawyer; and indeed, besides the knowledge which may be attained during this year,

but little more could be acquired by a protracted stay, as most of the nice and difficult business is usually conducted by the master of the office himself, and the young lawyer can hope to acquire this species of knowledge only as it shall occur to him in his future business; at which time, as his mind has been gradually maturing, he will encounter little or no difficulty in its acquisition. On the subject of this note we recommend the following works, which, if travelled through in the manner prescribed, cannot fail to impart gradually and almost imperceptibly, a fund of practical knowledge, which can otherwise be acquired only by long experience, much labour, and considerable vexation.

ENGLISH.

1. Tidd's Practical Forms.
2. Williams's Original Precedents in Conveyancing, with notes, and the opinions of eminent counsel upon intricate cases.
3. The 2d volume of Chitty's Treatise on Pleading.
4. Montefiore's Commercial and Notarial Precedents.

AMERICAN.

E. 1. American Precedents of Declarations.*

E. 2. Hening's American Pleader and Lawyer's Guide.

E. 3. Story's Pleading's in Civil Actions.

* This work was published in Boston in 1802. It is a production of great excellence, and particularly adapted for the use

NOTES ON THE FOURTH TITLE.

(*Note* 1.) THE LAW OF PERSONAL RIGHTS AND PERSONAL REMEDIES. The student having mastered the extensive and intricate doctrine of the realty, proceeds naturally to the examination of what are denominated personal rights and remedies. This branch of the law being less abstruse than that from the study of which he has just emerged; having fewer obsolete doctrines, and antiquated forms, and being withal that fund from which practitioners, and particularly the young, find most frequent occasion to draw, will be examined with more interest, as well as comprehended with more ease. We trust, however, that the extensive reading, recommended on the doctrine of the realty, will recompense the inquirer for the research expended on it; and, independently of its own intrinsick importance, will furnish innumerable lights and aids to the subject on which the student is entering, in consequence of that relation and connexion manifest in all sciences, and in none more evidently than the system of jurisprudence.

(*Note* 2.) CHAPTERS IN BLACKSTONE'S COMMENTARIES. In the fifth note on our second title, we have expressed our opinion of the excellent commentaries of justice Blackstone. The work, generally, merits more than one attentive reading, and several chapters

of students. It is preceded by a digest of the law of declarations, which has been ascribed to the late chief justice Par ons; be this as it may, this digest, and the notes accompanying the various forms, are evidently the productions of a sound lawyer. The work is comprised in a small volume of 300 pages.

may perhaps claim a further notice; but still we consider as highly prejudicial the practice indulged in by many students, of having this work almost constantly in hand, to the exclusion of more solid and learned works. If our Course be strictly followed, we think that one studious reading of this work, together with a second perusal of the chapters, designated by us under the different titles, will prove amply sufficient.

(*Note* 3.) PLEAS AND PLEADING. Pleading, in its most extended sense, signifies the formal exposition of such facts as the plaintiff and defendant reciprocally conceive to be necessary to evince the legal sufficiency of the claim of the one, and the defence of the other. In this point of view it is obvious that the science of pleading embraces the law and the *modus operandi* or formal mode in which the matter in litigation is stated, in order that it may be decided on, either by the jury upon an issue of fact, whether general, special or common, or by the court, on an issue or demurrer in law, in which the facts are conceded, but the law contended for, is denied by the demurrant. Hence the student will readily agree with lord Coke, that the "*usual pleading*" must be "*the sure oracle of law*," and that "*good pleading is the lapis lydius, or touchstone of the true sense and knowledge of the common law.*" 2 Co. 68. 3 Co. 9. 10 Co. 29. Evidence and pleading are the pillars which mainly sustain the august fabrick of law; their foundations, breadth, and altitude must be familiarly known; for it may with truth be said, that he who has mastered the philosophy of evidence, and the logick of pleading is already, or certainly may soon become an accomplished lawyer; but that his know

ledge of the law will prove *"stale and unprofitable,"* who is not well instructed in this *"most honourable, laudable and profitable knowledge of well pleading in actions real and personal,"** and that admirable system founded on reason and philosophy, which has for its object the manifestation of truth.

It is not sufficient to know the law, if we are uninformed as to the formal mode of stating our case for adjudication, and the requisite evidence to support our statement, if legally made; for although we may say, *"Turpe esse causas oranti, jus in quo versaretur ignorare,"* yet we should know, that "Sunt jura, sunt formulæ de omnibus rebus constitutæ, ne quis aut in genere injuriæ aut ratione actionis errare possit: expressæ sunt enim ex uniuscujusque damno, dolore, incommodo, calamitate, injuria, publicæ a Prætore Formulæ, ad quas privata lis accommodatur."†

The science of pleading has been much ridiculed by some; but what is there, in nature or morals, good or excellent, which has not been thus assailed? It, in common with every thing which has the stamp of humanity, possesses faults, but the system, in the main, is wonderfully free from important or mischievous defects. The raillery and cavils of the witty, though generally sciolous objectors to this learning, are little to be regarded, when such luminaries as Littleton, and Coke, and Mansfield, and Jones, have testified its worth in the strongest language of admiration. "The substantial rules of pleading," says lord Mansfield, "are founded in *strong sense* and the *soundest and*

* Litt. § 534. † Cic. pro. Rosc. § 8.

closest logick; and so appear, when well understood and explained, though by being *misunderstood* and *misapplied,* they are often made use of as instruments of chicane." So likewise sir Wm. Jones, in his preface to his translation of the speeches of Isæus, says, "When we consider the multitude of lawsuits with which Athens abounded, it must appear strange how six or seven magistrates, even with their assessors, could have time to conduct the altercation of so many litigants, and to perform the other important duties of their office. At Westminster a similar plan would be found impracticable; nor shall I be easily induced to wish for a change of our present forms, how intricate soever they may seem to those who are ignorant of their utility. Our science of special pleading is an excellent logick; it is admirably calculated for the purposes of analyzing a cause, of extracting, like the roots of an equation, the true points in dispute, and referring them, with all imaginable simplicity, to the court or the jury; it is reducible to the strictest rules of pure dialectick; and if it were scientifically taught in our publick seminaries of learning, would fix the attention, give a habit of reasoning closely, quicken the apprehension, and invigorate the understanding as effectually as the famed peripatetick system, which, how ingenious and subtle soever, is not *so honourable, so laudable, or so profitable,* as the science in which Littleton exhorts his sons to employ their courage and care. It may unquestionably be perverted to very bad purposes; but so may the noblest arts, even eloquence itself, which many virtuous men have for that reason decried; there is no fear, however, that the contracted fist, as Zeno used to call it, or the expanded palm,

can do real mischief, while their blows are directed and restrained by the superintending power of a court."

What need we more on this subject? The good sense of the student, we feel assured, will occasion him to ponder well the sentiments of these great masters, and make the law of pleading one of his favourite and chief studies.

(*Note* 4.) EVIDENCE. The doctrines of evidence and pleading are the massive pillars which support the main fabrick of English jurisprudence. No two branches of this august science are so replete with the logick and philosophy of sound sense, and none so imperatively demand of the practising lawyer an intimate acquaintance. On these subjects the student must be content to dwell with persevering and unwearied application, till not only their principles, but the infinitely various applications of them be so identified with his mind, that the law, and the reason of it, shall instantly present themselves, with scarcely an exertion of the memory.

Evidence, in forensick gladiation, is the principal weapon of attack and defence: it must ever be in hand, unsheathed and polished; for very often, in the combat, no time can be allowed to seek the particular sword, or to sharpen and brighten its edge: to drop the metaphor; in the conduct of a cause it frequently happens that a variety of questions on the law of evidence unexpectedly arise, and require an immediate discussion. In this case the mind must not only be deeply imbued with principles, but must be familiar with *judicial authorities* to shew the application of these principles to the points in litigation. This perfect acquaintance is not entirely as necessary on the

subject of pleading, as the questions there generally arise out of the record, and by a little attention to the state of the pleadings, the points of probable disputation may be anticipated, or the discussion often, in various ways, be postponed.

The law of evidence has been much treated of, and, by some authors, with great ability. We have been particularly attentive in our selection on this subject, and have no doubt that if the works on the common and civil law of evidence, recommended by us, be read with the attention due them, the student, when he becomes a practitioner, will but seldom have occasion to revise them, or to examine the pages of more recent authors.

As this doctrine is of the first importance, no apology need be made for seeking light from the production of one, who, though by profession no lawyer, is by learning and genius very well qualified to give instruction on any subject that should engage his pen. We have derived so much pleasure, and such useful hints from the perusal of Dr. Gregory's pamphlet in reply to Dr. James Hamilton, jun. published at Edinburgh in 1793, that we, without hesitation, warmly recommend it to the legal student, as an admirable specimen of a very ingenious, solid, and conclusive argument, founded solely on *intrinsick* and *circumstantial* evidence. The great variety of facts which are evolved, lucidly stated, and philosophically connected, the inferences deduced from the relation of circumstances, the opinions derived from latent evidences, combined with the beauty, ease, and simplicity of the narrative and style, form, altogether, an argument no less surprising and interesting, than irresistible, and would

reflect lasting honour on any lawyer who ever pleaded in Westminster Hall. The object of this pamphlet is to prove that either Dr. James Hamilton, his father, or both, were the authors of a certain obnoxious production signed "J. Johnson, esq." which was conceived by Dr. Gregory to be detrimental to the University, and to merit academick censures. Having failed in supporting, by legal proof, his accusation of Dr. Hamilton before the *Senatus Academicus*, he published this pamphlet in order to justify himself to the world for this unsuccessful arraignment. No inconsiderable motive for reading this pamphlet is derived from our wonder and admiration at the creative powers of genius, which, from materials comparatively so trifling, can raise a fabrick of so much beauty, order, and solidity.

The pamphlet no doubt, in this country, is scarce. It is, however, to be found in several of our publick libraries, and in many of the libraries of gentlemen of medical science.

(*Note* 5.) SERGEANT'S LAW OF ATTACHMENTS. The proceeding by attachment against the property of the debtor, where he is not an inhabitant of the state, or being an inhabitant, has withdrawn from its jurisdiction, is known to the jurisprudence of perhaps every state in the union. Each state has legislated on this subject, but they have all derived the leading principles and general forms of proceeding from the same original source, the custom of London. A treatise, therefore, which displays the general learning on this topick, with the various additions and modifications introduced by the local law of any state, will be found eminently useful in all: Mr. Sergeant's treatise, there-

fore, may be studied with a certainty of finding information almost equally beneficial to the student of any state, and to this source he will the more readily apply, when he learns that this is the only ample and systematical treatise on the subject. Neither in this country, nor in England, with the exception of the chapter in Bohun's Privileges of London, (an ancient and rare work,) and those in Viner and Comyn, is there any arrangement of the law on this doctrine, and these are far from satisfactory. In this country the subject is highly important, and our students will evince their gratitude for Mr. Sergeant's endeavours, by giving to his book an industrious reading.

(*Note* 6.) ON THE READING OF REPORTS, AND PARTICULARLY OF LEADING CASES. The source of the purest and most accurate legal information lies in the various books of reports of cases argued and determined in the different courts of judicature. To these reports the authors of abridgments and digests of the law are almost solely indebted; but as these digests purport to contain the substance of an infinitude of reported cases, we can expect from them neither fulness nor accuracy of information. These digests and elementary works, therefore, are to be considered merely in the light of well arranged note-books; and are to be read rather for the clearness of their definitions, and the methodical and luminous exposition of principles, than for plenitude, certainty, and precision of knowledge. Those who are in the practice of frequently refering to reports, have occasion to remark how often the authorities advanced by legal writers are extended or contracted by them, either from negligence, misapprehension, or in support of their

particular doctrines. They find other cases irrelative to the propositions, in aid of which they are cited, and not unfrequently, precisely the reverse: hence the necessity of sometimes unlearning what has been acquired in these digests and rudimental works, by a critical and minute scrutiny into the books of reports. Students thus employed in precisely defining their knowledge and correcting their mistaken views, derived from the errours of law-writers, their generality of expression, or the vague manner in which cases are often stated by them, finally arrive at the useful conclusion, that abridgments are to be regarded with a suspicion of their accuracy; and that the writer who abridges least is most to be relied on: hence Viner, as the repository of certain and ample information, is of all others, except the books of reports, the safest for reference. As the books of reports contain the law in the precise phraseology in which it was administered by the judges, they necessarily furnish the most satisfactory and accurate information on expository jurisprudence; and as the arguments of counsel, and frequently of the court, present all the motives or reasons why a point should, or should not, be established as law, these books likewise contain a rich and abundant fund of censorial jurisprudence. The decisions of courts are seldom mere naked judgments or opinions on points drawn from the arguments of counsel; but are more frequently lucid, ample, and learned investigations of the previous authorities on the subject; with a chronological and minute examination of each, and a clear exposition of the very reasons upon which the judgment is predicated. But, in the digests and abridgments, the student cannot

expect to find the arguments for or against, or that close chain of reason and authority, by which the rules of law, or the principles stated in them, were originally decided.

These are, with us, sufficiently weighty reasons for strongly urging the student frequently to refer to the reports. But as indiscriminate reference would lead to boundless research, and absurd waste of time, we submit for his guidance the following rules.

1. Where the point in the digest, &c. is important, and has been or continues to be a *questio vexata*, read with attention the case in which it was *first* agitated or decided, and also the case in which it was, if it has been, *finally* settled; and note, in both cases, the arguments of counsel, and the reasons stated by the court. It is not often that the intervening cases need be particularly examined.

2. If a point be indistinctly stated, so that a doubt rests on the mind as to the meaning, or if it be intelligibly stated, but appears to be at variance with the common notions of right, or with the analogy of the law; read the cases referred to, until the doubt be removed. The proper time to dissolve such doubts is when they are excited. The student, in these researches, will find that there is a *legal reason* in contradistinction to *natural reason*; that many points which appear at variance with the latter, are in strict conformity with the former; and that points which *prima facie* seem not to be justified by analogy and principle, are upon examination ascertained to be fully correspondent to both.

3. The *ancient* reports should be read principally by way of reference, for, with the exception of lord

Coke's reports, there are none which are worthy a continuous perusal. The ancient reports, likewise, should be more frequently referred to than the modern, as it is a principle that the science should be studied chronologically. From this mode of investigation, uniting the aid of juridicial, and even general history, the student will find much advantage. This mode is also preferable for other reasons: generally, the ancient reports are less methodical, in style more rugged and dry, and altogether less interesting in their matter and manner, than the modern. If the student then (at a time when he is zealously devoted to the study of ancient doctrines, and when his mind is deeply imbued with their principles,) should neglect to search into these repositories of the ancient law, he certainly will not resort to them after he has indulged in the more lucid, harmonious, and pleasing pages of such reporters as sir James Burrows, Mr. Douglas, Mr. Cowper, and Messrs. Dunsford and East, of England; and Mr. Johnson, Mr. Binney, and Messrs. Hening and Munford, of this country. We would remark besides, that the ancient reports generally contain the cases in which points of law were first either established or agitated; and the modern cases are, very often, little else than different illustrations of these ancient points or principles, by applications of them to different statements of facts. They are frequently repetitions of precisely the same law, or with some little modification; or are, (upon full consideration of all the ancient cases on the particular points,) full denials of them. In these ancient cases, therefore, as they first agitated or settled the various doctrines, we may expect to find the *rea-*

sons or *motives* which induced these decisions. The modern reports, moreover, are in such constant and daily use, that a knowledge of their contents is necessarily, and almost imperceptibly acquired; and if the ancient cases have been duly attended to, many of the modern cannot but be familiar to the student, whilst they present to him a constant opportunity of exercising his mind in a similar way with the judge who has decided them, viz. by examining the bearings and analogies of cases, applying principles to facts, and modifying or reversing these decisions, as the change in times and circumstances sometimes imperiously requires. This self-investment of the office of a judge, in this particular, will be found a highly profitable exercise, which every student will insensibly glide into, if he has been in the practice of tracing legal points from their infancy, to their full establishment or final decay.

4. In order that the student may not consume too much time, or be so frequently interrupted by his references as to lose sight of the object and method of the subject under perusal, we suggest three modes. *First*, to read the case referred to immediately, in all cases where the present doubt or difficulty interferes with the due comprehension of the subsequent matter. *Secondly*, to note down the names, book, and pages of such cases as are deemed important and necessary to be read, but which are nevertheless improper to be referred to immediately, either because they are on isolated points, not interfering with the full comprehension of the main subject, or because, upon looking into the report, they are found to be too long for present perusal. Such cases, thus

noted down, should be read as soon as the student has finished the volume or chapter in which he was engaged. *Thirdly*, to read such cases only as are intended to remove existing doubts, or such as are known to be what are denominated *leading cases*. An indiscriminate reference would require too much time, and, in numerous instances, prove an absolute waste of it, because upon examination of these cases, they will be frequently found to contain the precise words of the work by which they are cited. In order, then, to profit by reference, we know of no better mode than to limit this reference, as stated, to such cases as are examined to satisfy *doubts and difficulties*, and secondly to those which, on account of their peculiar learning, or other cause, are denominated leading cases. We shall close this note with a few observations on the great utility of according an especial attention to leading cases.

Those cases are considered leading, in which a point of law was *first* in an especial manner judicially noticed, or an important and pervading principle, after a series of contrariant decisions, finally settled; or in which a long received doctrine was reversed; or a dubious one established or modified, after an elaborate and thorough examination of the point in all its plenitude of analogies and bearings. Such cases are unquestionably entitled to more than ordinary attention from the student, who, by treasuring them in his mind, lays the foundation of an extended and durable superstructure of legal knowledge.

Chronology and geography have, with great propriety, been denominated the eyes of history. They enable the historian to take a comprehensive view of a

long and infinitely varied series of events, which, like the differently formed links of an extended chain, are obviously *designated* from each other, yet *connected* by ties equally manifest. They likewise impart a fixity and locality to our ideas, which impress them indelibly on the mind; so that disconnected events are, by the aid of chronology, united and fixed in the memory; whilst geography is no less instrumental, by giving to such events, all those interests and sympathies which belong to place.

So is it in the science of law. Leading decisions establish *resting places* for the mind, they form so many *epochas* in juridical history; and, if attended to, render a service to the legal inquirer, similar to that which is afforded to the historian by chronology and geography.

The undivided infinity of time, in common with the boundless and trackless regions of space, bewilders and wearies the mind; and for steady and useful contemplation it is essential, that there should be fixed periods and determined places whence to compute time and measure space: so in the interminable regions of jurisprudence, the mind would soon be confused and exhausted, were it not for those great and learned cases on which it occasionally is allowed to repose, and from which the various relations and dependencies of this august science may be contemplated.

It is scarcely necessary to attempt an illustration of the practical utility of a knowledge of these leading cases, by whom best reported, and even the pages where they are to be found, which is a matter of much less difficulty than may at first be imagined. The memory is a very improvable and docile faculty, and

after principles are impressed, such minutiæ as the names of cases, their reporters, and even the pages, should not be neglected, as they afford much facility in the course of an extensive practice. A knowledge of one or more leading cases on most of the great doctrines of this science, is of infinite utility, as by reference to them, the inquirer is at once furnished by the marginal or other citations with a comprehensive view of the law on the particular subject. As for example: On the various species of bailments, and the respective duties of bailees, the great case of Coggs *v.* Bernard, 2 Ld. Raymond 909, may be referred to. If the point of inquiry be the conclusiveness of a sentence in a foreign court of admiralty, the case of Hughes *v.* Cornelius, 2 Show. 232. As to the authority of domestick judgments, Moses *v.* M'Farlane, 2 Burr. 1005. On the necessity of pleading with a *profert*, Reed *v.* Brookman, 3 Dun. and Ea. 151. The distinction between case and trespass *vi et armis*, Scott *v.* Shepherd, 2 Black. 892. As to the right of a *feme covert* to sue or be sued, Marshall *v.* Rutton, 8 Dun. and Ea. 545. The legality of agreements in restraint of trade, Mitchell *v.* Reynolds, 1 Peer. Wms. 181. On the effect of a demurrer to evidence, Gibson *v.* Hunter, 2 Hen. Black. 187. Whether money paid under a mistake be subject to repetition, Bilbie *v.* Lumley, 2 East 469. As to legacies *in terrorem*, Scott *v.* Tyler, 2 Dick. Rep. 712. The dependence and independence of covenants, Kingston *v.* Preston, Doug. 684; or Pordage *v.* Cole, 1 Wms. Saund. 320. The validity or nullity of the deeds of infants, Zouch *v.* Parsons, 3 Burr. 1794. As to fraud in the sale of personal property, Twine's case, 3 Co. 80. The personal

responsibility of agents to the persons contracted with, Macbeath *v.* Haldiman, 1 Dun. and Ea. 172, or Hodgson *v.* Dexter, 1 Cranch. 345. As to variance between the *allegata* and *probata*, Bristow *v.* Wright, Doug. 664. As to the validity of a deed by feme on the eve of marriage, defeating the marital rights of her future husband, Carleton *v.* Earl of Dorset, 2 Vernon 17; King *v.* Cotton, 2 P. Wms. 674; or Countess of Strathmore *v.* Bowes, 2 Brow. Ch. Rep. 345. As to the extent of the consideration of marriage to validate deeds against the claims of subsequent purchasers, under statute 27 Eliz. White *v.* Stringer, 2 Lev. 105. Jenkins *v.* Keymis, 1 Lev. 150. That an agent must perform the authorised act in the *name of his principal*, Combe's case, 9 Co. 76. Wilks *v.* Back, 2 East 142. Appleton *v.* Binks, 5 East 148. Fowler *v.* Shearer, 7 Mass. T. Rep. 14.

In this way should the student treasure in his mind a *governing* case on every interesting doctrine of the law. As his mind matures, he will find no difficulty in retaining the names of most of the important cases which will lead him directly into the channel in which the law of a subject may be found at large. The subject of *note books* we have treated much in detail. Vid. post. It may, however, be well in this place, to advise the student to preserve, in a book for the purpose, a *list* of all such cases as in the course of his reading he may ascertain to be distinguished and leading; which should be placed under the heads to which they belong. The titles should be alphabetically arranged, and the cases only of great learning or importance should be inserted, without a comment, except where best reported. This kind of note book

will consume but little of the student's time, will prove of great utility in the prosecution of his future inquiries, and will be found eminently serviceable, when the pressing and multifarious duties of a counsellor will so occupy his time, as to render highly important every means, which is calculated to abridge his labours.

PARTICULAR SYLLABUS.

TITLE V.

"Habeant curiæ prætoriæ potestatem tam subveniendi contra rigorem legis, quam supplendi defectum legis. Si enim porrigi debet remedium ei quem lex præteriit, multo magis ei quem vulneravit."..... BACON DE AUG. SCIENT. LIB. VIII. CAP. III.

THE LAW OF EQUITY.

1. A Succinct Account of the Origin of Chancery Jurisdiction. 1 Reeves's History of English Law, p. 59. 2 vol. p. 250. 3 vol. p. 188. 273. 379. *(Note 1.)*
2. History of Equity Jurisdiction. 6th book of the 2d vol. of Swift's Law of Connecticut.

3. Of Proceedings in Courts of Equity. 27th chap. of 3d Black. Com.
4. Of the Court of Chancery. 2 Bacon's Abridgment, p. 134.
5. Of the Practical Proceedings of Courts of Equity. 3 Wooddeson's Lect. pt. 3. lec. 55.
6. Fonblanque's Treatise of Equity. (*Note* 2.)
7. Newland's Treatise on Contracts, with the Jurisdiction of Courts of Equity. (*Note* 3.)

E. 8. Sugden's Practical Treatise of the Law of Vendors and Purchasers.

E. 9. Barton's Treatise of a Suit in Equity.

10. Cooper's Treatise of Pleading on the Equity side of the High Court of Chancery. (*Note* 4.)

MISCELLANEOUS.

E. 1. Norburie's Observations on the *abuses* and *remedies* of Chancery. Hargrave's Law Tracts, p. 426.

2. Arguments before lord chan. Loughborough in the case of Middleton *v.* lord Kenyon and others. Hargrave's Juridical Arguments, p. 293, or 2 Vez. jun. 391.

3. Arguments before lord chan. Thurlow in the case of Scott and wife *v.* Vernon and others. Hargrave's Juri. Argu. p. 22.

[There is a report of this case in 2 Dickens's Chan. Rep. 712, and 2 Brow. Chan. Cas. 431. Vid. also Cooper's edition of Justinian's Inst. 528.]

NOTES ON THE FIFTH TITLE.

(*Note* 1.) REEVES ON CHANCERY JURISDICTION. The history of the gradual establishment of chancery jurisdiction is essential to the acquisition of a definite idea of the nature and extent of chancery powers; a subject of some difficulty, and for a long time of much disputation. The limits or criteria which distinguish equity from common law, are not very certain, as may be seen by consulting the pages of lord Kaims and justice Blackstone. It is manifest that the history of equity jurisdiction must be of great service in ascertaining the principle which distinguishes the duties of a chancellor from those of a common law judge; for in this history, the full extent of the powers of the latter is unfolded; and as their inadequacy was progressively discovered, we perceive the origin and growth of the former. It is, perhaps, not very practicable to give a rule which shall fully distinguish equity from law. Judge Swift, in his Treatise on the Law of Connecticut, expresses himself on this subject much to our mind. "A court of equity" says he, "acting according to the dictates of conscience, and aiming at the attainment of abstract right and perfect justice, has power to abate the rigour, correct the injustice, and supply the deficiency of positive law, where such ri-

gour, injustice, or deficiency, result as an indirect and collateral consequence and operation of law; and where it is apparent that such effect was not the design and intent of the law. But where the matter complained of, flows as a direct and necessary consequence from the principle of law, adopted upon a calculation to promote the general good, a court of equity has no power to interfere. This limitation is a proper restraint upon the boundless discretion given to that court, by the general terms used by lord Kaims, and at the same time gives it an equitable power which is denied by justice Blackstone."

We have strongly recommended Mr. Reeves's admirable history of English law in our tenth note on the second title: the student, however, is requested, at this time, to re-peruse the pages which we have designated.

(*Note* 2.) FONBLANQUE ON EQUITY. The original of this celebrated work was published anonymously, in the year 1737. It was then very small, being nothing more than an essay. It was entitled "A Treatise of Equity," and was much and deservedly admired. In the year 1794, it was ushered into the world, in a new and highly enlarged and improved form, by John Fonblanque, esq. Few works have attained such universal approbation, or been more generally read. The notes are copious, perspicuous, and learned, and the authorities are full and pertinent.

In reading this treatise the student will of course frequently refer to the reports of Peere Williams, which have ever been esteemed among the most valuable and authentick sources of chancery law. It would be scarcely possible to speak too favourably of

Mr. Cox's excellent edition of this work; but it has already received the warmest praises of the profession; and the learned, both of the bench and the bar, have strongly testified their unqualified admiration of his editorial labours.

(*Note* 3.) NEWLAND ON EQUITY CONTRACTS. The principal authors, who have treated of contracts &c. cognizable in equity, are Powell, in the 2d. vol. of his Essay on Contracts and Agreements; Fonblanque, in his Treatise of Equity; Sugden, in his Practical Treatise on the Law of Vendors and Purchasers of Estates; Roberts, on Voluntary and Fraudulent Conveyances; and the late excellent treatise of Mr. Newland on Contracts within the jurisdiction of Courts of Equity. This is a work which will be particularly acceptable to the student, as the decisions of the law are often contrasted with those of equity, and the subject of *every species* of contract cognizable in that court, is treated with singular perspicuity and ability.

(*Note* 4.) COOPER'S EQUITY PLEADING. The matters cognizable in a court of equity are not as distinct from those of a court of law, as is the mode of proceeding: the practice, therefore, and the system of pleading adopted by this court, are no less important to the student than the subjects embraced by its jurisdiction. After an acquaintance with the principles and extent of this jurisdiction, whether exclusive of, concurrent with, or auxiliary to the powers of the courts of common law, our student will hasten to inform himself of the pleading and practice of this court: on this subject, after an attentive reading of that beautiful little outline by Mr. Barton, we would place in

his hands Cooper's Treatise of Equity Pleading, as the most comprehensive, methodical and learned which has appeared on the subject. With the exception of lord Redesdale's work on the same subject, which, until the late American edition by chancellor Kent, was scarcely known in this country, there is no other *regular* treatise on this learning: for although Harrison and other writers on the practice of the court of chancery, have considered the law of pleading in equity, they are by no means scientifick or comprehensive, so that this work is the only complete treatise which we possess on this subject. It is entitled to a decided preference to the works of lord Redesdale, Harrison, &c. as it comprehends all the later English and Irish chancery decisions down to the year 1809. The last English edition of lord Redesdale's treatise appeared in 1787, and consequently contains none of the cases reported by Vesey, jun. (of which there are now nineteen volumes,) of Brown, Ambler, Anstruther, Schoales and Lefroy, part of Dickens, &c. In addition to the few chancery precedents which the student has read in Barton's Suit in Equity, we advise him occasionally to consult Harrison's Chancery Practice.

PARTICULAR SYLLABUS.

TITLE VI.

"The *Law of Merchants* not being founded in the particular institutions, or local customs of any particular country, but consisting of certain principles which general convenience has established to regulate the dealings of merchants with each other in all countries, may be considered as a branch of publick law."....MARSHALL.

"*Non erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes, et omni tempore una eademque lex obtinebat.*".....CICERO.

THE LEX MERCATORIA. *(Note 1.)*

1. The title "Merchant and Merchandise," 4th vol. of Wilson's Bacon's Abr. p. 595.
2. Abbot's Treatise on the Law of Merchant Ships and Seamen. Story's American ed.

E. 3. The second book of Molloy de Jure Maritimo et Navali.

E. 4. Caine's Lex Mercatoria Americana.

5. Marshall's Treatise on the Law of Insurance. Condy's American edition.

E. 6. Ingersoll's translation of Roccus.

7. Chitty's Treatise on the Law of Bills of Exchange and Promissory Notes. Story's edition.

8. The following titles in the second volume of Evans's View of the decisions of lord Mansfield in Civil Cases.

1. Insurance Marine.
2. Insurance on Lives.
3. Insurance from Fire.
4. Bottomry.
5. Bills and Notes.
6. Lien.

E. 9. Rodman's translation of the Commercial Code of France, or*

E. 10. The translation of the same Code, published in 2 American Review, 359.

11. The following cases in Douglas's Reports. American edition, 1807.

1*st Vol.* Beane *v.* Stupart, p. 11.
Woolridge *v.* Boydell, p. 17.
Milford *v.* Mayor, p. 55.
Lilly *v.* Ewer, p. 72.
Mills *v.* Fletcher, p. 230.
Dungwall *v.* Dunster, p. 247.
Planche *v.* Fletcher, p. 251.
Johnson *v.* Sutton, p. 254.
M'Dowell *v.* Fletcher, p. 260.
Lavabre *v.* Wilson, p. 284.

* Vid. note 3 on the seventh title.

Mason *v.* Hunt, p. 296.
Barber *v.* Fletcher, p. 305.
Thelluson *v.* Fletcher, p. 314.
Earle *v.* Harris, p. 356.
Hoare *v.* Daws, p. 371.
2d Vol. Noble *v.* Kinnoway, p. 510.
Russell *v.* Langstaff, p. 514.
Lorain *v.* Tomlinson, p. 585.
Peacock *v.* Rhodes, p. 633.
Archer *v.* Bank of England, p. 638.
Ruston *v.* Aspinal, p. 679.
Eden *v.* Parkinson, p. 733.
Bernon *v.* Woodbridge, p. 737.

13. The following cases in Sir James Burrow's Reports. *(Note 2.)*

1st Vol. Pelly *v.* Royal Exchange Assurance Com. p. 341.
Miller *v.* Race, p. 451.
Godin *v.* London Assurance Com. p. 489.
2d Vol. Heylin *v.* Adamson, p. 669.
Goss *v.* Withers, p. 683.
Luke *v.* Lyde, p. 883.
Gardiner *v.* Crosdale, p. 904.
Hamilton *v.* Mendes, p. 1198.
Edie *v.* East India Company, p. 1216.
3d Vol. Price *v.* Neale, p. 1354.
Glover *v.* Black, p. 1394.
Grant *v.* Vaughan, p. 1517.

Pillans *v.* Van Meirop and Hopkins, p. 1663.

Carter *v.* Boehm, p. 1905.

14. The following cases in Cranch's Reports. *(Note 3.)*

1st Vol. Bailey E. Clark *v.* Robert Young & Co. p. 181.

Wilson & Lenox *v.* Maitland, p. 194.

Mandeville & Jamesson *v.* Joseph Riddle & Co.; and the very *learned* and *valuable* note A. in the Appendix to this volume.

There is no case, in the second volume, on the Lex Mercatoria, particularly worthy of the student's attention.

3d Vol. Marine Insu. Com. of Alexandria *v.* Tucker, p. 357.

Lawrason *v.* Mason, p. 492.

4th Vol. Rhinelander *v.* Pennsylvania Insu. Com. p. 29.

United States *v.* Willings & Francis, p. 48.

Alexander *v.* Baltimore Insu. Com. p. 370.

5th Vol. Mandeville & Jamesson *v.* Wilson, p. 15.

Hodgson *v.* Marine Insu. Com. of Alexandria, p. 100.

Violett *v.* Patten, p. 142.

6th Vol. Maryland Insu. Com. *v.* Woods, p. 29.
Livingston & Gilchrist *v.* Maryland Insu. Com. p. 274.

NOTES ON THE SIXTH TITLE.

(*Note* 1.) OF THE LEX MERCATORIA. The student, no doubt, will find some difficulty in ascertaining the origin, and defining the limits of this system. As a body of law he will, perhaps, be unable to comprehend why it should be considered as a branch of the law of nations.* So likewise he may not agree with the learned commentator, who classes it under that part of the English *Lex non scripta,* denominated *"Particular Customs."*† By some he will find it defined as the *general usages or customs of merchants in mercantile negotiations;* whilst others would have that to be the law of merchants in any place, which is the usage of that place. It is not for us, in such a work as the present professes to be, to enter into legal discussions or to solve for the student his numerous legal doubts. How far the *lex mercatoria* may be derived from the general usages of merchants of all nations, and thus far claim a place in the law of nations, as being *quasi publici juris;* how far *general usage* among the merchants of England constitutes the lex mercatoria of that country; or how far *local usage* may become law, or the entire system be ranked with particular customs, the inquiring student will no doubt

* 4 Black. Com. 67. † 1 Black. Com. 75.

duly inform himself. We would, however, remark that this general mode of expression, relative to the origin or limits of this system of law, is calculated to mislead the student. The lex mercatoria of any particular country, as for example England, may perhaps be defined, a system of principles or rules peculiarly regulating mercantile transactions, derived principally from the customs of merchants in different nations, from the usages, either general or local, of the merchants of England, which customs or usages of foreign or English merchants have been judicially sanctioned; and lastly from express legislative provision. Hence this system, whether we regard its extent, or the sources of its origin, cannot with propriety be classed with *"Particular Customs;"* for a particular custom affects only the inhabitants of a *particular district*, whereas the lex mercatoria is not restricted within any defined limits, but extends over the whole realm, and operates every where, over *certain transactions*. So likewise, this law need not be specially pleaded, as particular customs must generally be, nor is this law to be tried by a jury as customs are. The student may consult the distinctions taken in 2 Burr. 1226. 1228, Edie *v.* East India Com. 2 Doug. 654, end of the note. 1 Ld. Raymond, 175. Pinkney *v.* Hall. 4 Du. & Ea. 208. 210. 6 East 202, Parr *v.* Anderson. 2 John. 327, Frith *v.* Baker. 1 Caines 43, Smith and Stanley *v.* Wright. Story's Abbott on Shipping, 417.

(*Note* 2.) SELECT CASES IN BURROW'S REPORTS. Sir James Burrow has recorded with a faithful and able pen the decisions of that living voice and oracle of English jurisprudence, the earl of Mansfield. The

substance and style of these reports have attached to them a reputation and value, of which scarce any other repository of legal decisions can boast. The material facts of the cases are luminously detailed; the arguments of counsel circumstantially, but not tediously reported, and the opinions of the court, accurately and satisfactorily stated. On the principles of the lex mercatoria these volumes may be considered an exuberant and original fountain. In fine, Burrow is to be regarded as, of all other reporters, the most elementary and methodical, and perhaps the best suited to impart instruction to the student.

(*Note* 3.) SELECT CASES IN CRANCH'S REPORTS. Cases argued and adjudged in the supreme court of the United States, if faithfully reported, command our confidence, and are appealed to as authoritative and decisive of the law. To a repository of such cases the student resorts with pleasure and the utmost reliance, as they are almost necessarily supposed to be cases, no less important in principle, than sound in decision, because few else than cases of legal importance reach this tribunal, and they generally receive, both in the inferiour and supreme tribunal, an elaborate discussion by counsel, and a serious judicial consideration.

Judge Cranch's Reports embrace cases from August term, 1801, to February term, 1810, comprehended in six volumes. The cases are generally important and well reported. Our selection from these volumes, on the *mercantile* and *constitutional* law, will be found to include most of the important cases. For cases on constitutional law, and important constructions of the United States laws, vid. Particular Syllabus, Title XI. § 16.

PARTICULAR SYLLABUS.

TITLE VII.

"It was necessity which forced men to give up a part of their liberty. It is certain then, that every individual would choose to put into the publick stock the smallest portion possible; as much only as was sufficient to engage others to defend it. The aggregate of these, the smallest portions possible, forms the right of punishing; all that extends beyond this is abuse, not justice."..... MARQUIS BECCARIA.

THE LAW OF CRIMES AND PUNISHMENTS.

1. The Marquis Beccaria's Treatise on Crimes and Punishments. *(Note 1.)*

E. 2. The following chapters in Bentham's Introduction to the Principles of Morals and Legislation.*

Chap. XII. "Of the consequences of a mischievous act."

Chap. XIII. "Cases unmeet for punishment."

Chap. XIV. "Of the proportion between punishments and offences."

* Vid. note 2 to this title.

Chap. XV. "Of the properties to be given to a lot of punishment."

Chap. XVI. "Division of offences."

Chap. XVII. "Of the limits of the penal branch of jurisprudence.

3. Bentham's Theory of Punishments and Rewards. *(Note 2.)*
4. Eden's Principles of the Penal Law.

E. 5. Dagge's Considerations on the Criminal Law.

E. 6. Letters of Beccaria Anglicus on Capital Punishments.

7. East's Crown Law.
8. Mac Nally's Rules of Evidence on the Pleas of the Crown.

STATE TRIALS.

[We are somewhat apprehensive that the very *name* of this voluminous and extensive work may excite some alarm. We should not, however, feel justified in pretermitting it: for though it must be admitted that it contains many dull, unnecessarily prolix, and perhaps unimportant cases, yet it is certainly entitled to be considered the most authentick and satisfactory record of the pleas of the crown which has yet appeared.

Most of the important doctrines of the crown-law were either advanced, illustrated, or fully established in the cases there reported; so that, independent of the useful knowledge as to the mode of conducting

criminal proceedings, during the times, and in the respective courts in which they occurred, furnished to us by the rigid minuteness with which the cases are reported; and likewise the information which may be gained as to the genius of the times, and the character of the distinguished personages who in many cases were the subjects of them, evidenced either by the *fact* of their prosecution, or the manner of conducting their trials; the student is to regard this work as the depository of much useful law, and consequently entitled to a portion of his attention.

As this publication is quite too extensive to be generally perused, and yet quite too valuable not to be read at all, we have endeavoured to select some of the most important cases, many of which should be studiously read, and the remainder at least cursorily perused; as to this, the student will exercise his own judgment on the cases which we have pointed out.

The first eight volumes of this work have been well abridged by Mr. Salmon, who has added sensible, copious, and satisfactory remarks of his own. His work is entitled "A new Abridgment and Critical Review of the State Trials, and Impeachments for High Treason." Mr. Salmon had previously favoured the publick with a new edition of the State Trials at large.

Emlin's edition of the State Trials in six volumes, published in 1742, and Hargrave's in eleven volumes, which appeared in 1776, are the best. If Salmon's abridgment be accessible to the student, we recommend him to read in that work the following cases marked *: the remainder should be read in the work at large.]

SELECT CASES IN THE STATE TRIALS.

Year.

1534. Sir Thomas More, for high treason. *Beheaded.* 1 vol. State Trials, 59. Salmon's Abr. 10.

1605. Robert Winter and others, for high treason. *Executed.* 1 vol. State Trials, 232. Salmon's Abr. 57.

1615.* Richard Weston, Ann Turner, sir Jervis Elvis, James Franklin, Frances countess of Somerset, Robert Carr earl of Somerset; for the murder of sir Thomas Overbury. 1 vol. State Trials, 324. Salmon's Abr. 61.

1620.* Francis Ld. Bacon. Proceedings against him in parliament for bribery and corruption. *Fined* 40,000*l.* 1 vol. State Trials, 375. Salmon's Abr. 75.

1631. Mervin Ld. Audley, for a rape and sodomy. *Beheaded.* 1 vol. State Trials, 388. Salmon's Abr. 122.

1634. John Ld. Balmerino, for a treasonable libel. *Pardoned.* 1 vol. State Trials, 429. Salmon's Abr. 129.

1640. Thomas, earl of Strafford, for high treason, *Beheaded.* 1 vol. State Trials, 723. Salmon's Abr. 164.

1643.* William Laud, archbishop of Canterbury, for high treason. *Beheaded.* 1 vol. State Trials, 824. Salmon's Abr. 198.

1648.* Charles I. king of England, for high treason. *Beheaded.* 1 vol. State Trials, 986. Salmon's Abr. 218.

1656. James Naylor, for blasphemy. *Pilloried, &c.* 2 vol. State Trials, 265. Salmon's Abr. 254.

1657.* Tasborough, for subornation of perjury. *Fined.* 2 vol. State Trials, 1017. Salmon's Abr. 376.

1662. Sir Henry Vane, for high treason. *Beheaded.* 2 vol. State Trials, 435. Salmon's Abr. 286.

1663.* Col. James Turner and others, for burglary. *Executed.* 2 vol. State Trials, 502. Salmon's Abr. 294.

1680.* William viscount Stafford, for high treason. *Beheaded.* 3 vol. State Trials, 101. Salmon's Abr. 396.

1681.* Borosky and others, for murder. *Executed.* 3 vol. State Trials, 466. Salmon's Abr. 443.

1683. John Hampden esq. for high misdemeanor. *Fined* 40,000*l.* 3 vol. State Trials. 824. Salmon's Abr. 500.

1683. William Ld. Russel, for high treason. *Beheaded.* 3 vol. State Trials. 706. Salmon's Abr. 462.

1684.* Titus Oates. Proceedings against him on the statute De Scand. Mag'. *Damages* 100,000*l.* 3 vol. State Trials, 985. Salmon's Abr. 519.

1685. Titus Oates, for perjury. *Fined, pilloried, &c.* 4 vol. State Trials, 1. Salmon's Abr. 530.

1685. Alice Lisle, for high treason. *Beheaded.*
4 vol. State Trials, 105.
Salmon's Abr. 544.

1687. Philip Stansfield, for high treason and parricide. *Executed.* 4 vol. State Trials, 283.
Salmon's Abr. 608.

1688. The seven bishops, for a libel. *Acquitted.*
4 vol. State Trials, 305.
Salmon's Abr. 582.

1690. Viscount Preston, for high treason. *Pardoned.*
4 vol. State Trials, 410.
Salmon's Abr. 614.

1695. Sir John Friend, for high treason. *Executed.*
4 vol. State Trials, 599.
Salmon's Abr. 656.

1696. Cap. Thomas Vaughan, for high treason.
5 vol. State Trials, 17.
Salmon's Abr. 713.

1701. Cap. William Kidd, for murder and piracy. *Executed.* 5 vol. State Trials, 287.
Salmon's Abr. 738.

1702. Haagen Sevensden, for forcible marriage. *Executed.* 5 vol. State Trials, 449.
Salmon's Abr. 757.

1704. Cap. Thomas Green and his crew, for piracy in Scotland. 5 vol. State Trials, 573.
Salmon's Abr. 809.

1709. Henry Sacheverell, D. D. for high crimes and misdemeanors. *Silenced for three years.*
5 vol. State Trials, 641.
Salmon's Abr. 816.

1716. Francis Francia, for high treason. *Acquitted.*
6 vol. State Trials, 58.
Salmon's Abr. 864.

1718. Bonnet and thirty-three of his crew, for piracy in South Carolina. *Executed.*
6 vol. State Trials, 156.
Salmon's Abr. 872.

1722. Christopher Layer, for high treason. *Executed.*
6 vol. State Trials, 229.
Salmon's Abr. 878.

1666. Thomas Ld. Morley, for murder.
7 vol. State Trials, 421.
Salmon's Abr. 299.

1710. George Purchase, for high treason. *Pardoned.*
8 vol. State Trials, 285.
Salmon's Abr. 855.

Mawgridge, for murder.
9 vol. State Trials, 64.

Gregg, for high treason.
10 vol. State Trials, 77. Appendix.

Stevenson, for murder.
10 vol. State Trials, 462.

MISCELLANEOUS.

1. Opinion on the commitment of the Hon. Simon Butler and Mr. Oliver Bond by the Irish House of Lords in 1793 for contempt. Hargrave's Collection of Juridical Arguments, p. 1.
2. Opinion concerning Writs of Errour in Criminal Cases, other than Treason. Har. Juri. Argu. p. 403.

E. 3. Penal Code of the French Empire. Translated. Vid. 2 vol. American Review. Appendix. *(Note 3.)*

4. Emlyn's Preface to the *third* edition of the State Trials.

5. Hargrave's Preface to the *fourth* edition of the State Trials.

E. 6. Sir Wm. Jones's Inquiry into the legal mode of suppressing riots, with a constitutional plan of future defence. 8th vol. of his works, p. 460.

NOTES ON THE SEVENTH TITLE.

(Note 1.) BECCARIA ON CRIMES AND PUNISHMENTS. This excellent little work is from the pen of Cæsar Bonesana, marquis of Beccaria. He was a man of pre-eminent talents, and no doubt of equal virtue; though his enemies, hostile to his liberal and philanthropick doctrines, have accused him of venality in the discharge of his official duties, and have compared him, both as to talents and corruption, to Bacon. Beccaria was much esteemed by the learned of his country, whose protection he needed and received, when persecuted on account of the principles contained in his "Essay on Crimes and Punishments." This work was published in 1767, at Milan, and passed through six Italian editions in the period of eighteen months. The Commentary, which is appended to it, is said to be the production of M. De Voltaire, who

holds this little work to be in morals, what a panacea would be in medicine.

When we reflect on the genius of the government and religion under which the marquis lived, we cannot but additionally estimate the enterprise and boldness of the man who ventured to disseminate such wholesome truths. Happily for this land, we need no advocate for humanity, liberty, philanthrophy; they are indigenous growths of our soil, which need but little culture, and which, under any circumstances, can never, we hope, be entirely eradicated. Bonesana was born in 1720, and died in 1794.

(*Note* 2.) BENTHAM'S THEORY, &c. It is a matter of no less surprise than regret, that a work of such extraordinary merit as Mr. Bentham's "Theory of Punishments and Rewards," should thus long have continued unknown, not only to the students, but to the learned of our country. Five years have elapsed since the publication of this book, yet it is to be found in no publick or private library with which we are acquainted; and most of the booksellers, and many of the literati, have never heard of it. This remark proceeds from regret that nearly every ephemeral production which issues from the British press, finds an easy admittance, and a flattering reception among our countrymen; while works of singular excellence, and sound philosophy, are totally disregarded, or perhaps permitted gradually to elaborate their way to a partial notice.

The eulogy, perhaps, is not unwarranted or too strong, that no where, among ancient or modern productions, is the philosophy of criminal legislation so ably and happily illustrated, as in the work under ob-

servation. Mr. Bentham's predecessors in this channel have, without exception, failed in exhibiting a complete theory of the sanction of criminal laws; one resting on the basis of sound philosophy, and which might serve as a lasting and universal guide.

In the works of Grotius, Puffendorf, Montesquieu, Beccaria, &c. we do not find delineated even a rude contour of this very interesting subject, which, under the skilful management of Mr. Bentham, has assumed in all its parts the form and attitude of science.

The learned editor of this work, M. Dupont, who gives additional lustre to Mr. Bentham's pages, considers it decidedly superiour to any preceding production. He informs us that he undertook to examine the most renowned works on the subject, as well as those of less note, and arose from their perusal without hesitating to offer Mr. Bentham's production to the publick. "I was induced," says M. Dupont, "to collect together all that is scattered in the 'Spirit of Laws' on the subject of punishments and rewards, and I found that this collection would have occupied not more than ten or a dozen pages." "We hence see the folly of D'Alembert's assertion, so often repeated in France, that 'Montesquieu said every thing, and abridged every thing, because he saw every thing.'" "Amid numerous thoughts either vague or loose," continues M. Dupont, "and some that are erroneous, we meet with many which are certainly judicious and profound, as in all that we possess of this illustrious writer; but how far do they come short of a theory of punishment!" "Beccaria did more;" but still this and all subsequent writers, according to M. Dupont, have shed but little light on this very important topick.

The law student cannot fail in being much delighted with this work; it is a book replete with original and philosophical thoughts, and sound practical observations, conveyed in a manner of peculiar force, and often in language of great novelty and appropriateness; in fine, in a style entirely Mr. Bentham's.

The whole skiagram, or analysis of his subject, we conceive to be as original as it is admirable; and the filling up every way suited to the excellence of the contour. The accuracy and clearness of his definitions, the fitness of his new words and terms, the zeal and learning displayed in the discussion and illustration of many novel and highly important topicks, and the light and conviction brought to the understanding on many hitherto involved and difficult questions, render this work not only eminently instructive, but uncommonly interesting.

Mr. Bentham displays much closeness and discrimination of thought in his observations on the attributes or qualities of punishments: these he holds to be *certainty, equality, divisibility, analogy, commensurability, economy, exemplariness, remissibility, tendency to reform, deprivation of the power of injuring, convertibility into profit, simplicity of denomination,* and *popularity.*

He likewise displays much ingenuity and philosophy in his remarks on what he denominates "Expense of Punishments," and his division of them into *economical* and *costly;* and likewise in his division of punishment into *privative* and *corporeal,* which latter he subdivides into *simple afflictive, complex afflictive,* and *restrictive.* So also, his observations on the *end* and *measure* of punishments, the infliction

of death, the incapacity of testifying, indiscriminate imprisonment, solitary confinement, different species of prisons, &c. are fraught with lessons of the soundest wisdom, and greatest practical importance. We have said thus much on this incomparable work, from a conviction that its author has left his predecessors at an immeasurable distance, in every thing which relates to the philosophy of criminal jurisprudence. It is much to be regretted that this work still remains in the French language: it was published by its learned editor, M. Dumont, in that language at London in 1811, and has not, we believe, been translated. As it is a work which should be very generally read, we have no doubt that it will soon assume an English garb.

Mr. Bentham is the author of the very able production on the "Principles of Morals and Legislation," some select chapters in which we have recommended to the student's perusal, in the *first* and *seventh* titles. He is likewise the author of a very ingenious little production entitled "A Defence of Usury, shewing the impolicy of the present legal restraints."

(*Note* 3.) Penal Code of the French Empire. The criminal as well as civil code of France, imperatively claim the attention of him, who aspires to the character of an enlightened statesman or lawyer. It is impossible to read the French codes, without profound respect for the learning and philosophy of their distinguished authors. The Penal Code has been translated and published in the appendix to the second volume of the American Review, and will be read with no less pleasure than advantage. The Commercial Code, however, is to us the most valuable and in-

teresting. It has been ably translated and annotated on by Mr. Du Ponceau of Philadelphia, a civilian of talents and learning: this is likewise to be found in the same work. The translation of the Commercial Code by John Rodman esq. of New-York, about the same time, published in an octavo volume of three hundred and sixty pages, is on the whole better entitled to the student's attention, as it is accompanied with a translation of the "Motives, or discourses of the counsellors of state, containing a luminous and interesting discussion of the various principles and provisions of the code;" and also the original text, on the opposite page of the book, for those who may be inclined to compare it with the translation. Mr. R. has added appropriate and sensible notes, which make us regret they are so few in number. The studious perusal of both these codes would require but a few days, and would richly compensate the student. So strong is our desire to furnish every temptation which may invite the student to a punctual adherence to the works designated in this Course, that we shall deem no apology necessary for the following extracts from Mr. Rodman's very sensible preface to his work.

"The Code Napoleon now constitutes the civil law of France. All former laws, customs, and usages, both written and unwritten, of the different provinces in that country, were entirely abolished on the introduction of this new system of jurisprudence. It is, unquestionably, a work of the highest merit, whether we consider the pure morality, the sound legal principles, and enlightened reason, which pervade every part of it; or the lucid order, precision, and method, with which the matter is arranged and exhibited.

Whatever, therefore, some persons may think of the nature of the present government of France, of its stability or duration; whatever may be the ultimate consequence of the powerful coalition now arrayed against her; and though the star of her glory now shines with diminished lustre; yet, as long as society and civilization exist, as long as reason, truth, and justice are prized among men, the codes of the French empire, those splendid monuments of jurisprudence, erected by the learning and wisdom of the nation, will endure, and reflect the brightest honour on their founders. The notion entertained by many people in this country, that this system of laws is wholly founded upon arbitrary power, and consequently affords no security to the rights of persons, or the enjoyment of property, is equally erroneous and absurd. However arbitrary a government may be, it can never be its interest or policy to make laws, by which the bonds of society may be slackened, and the relative rights of individuals left at the mercy of accident or force. In cases unconnected with *publick policy*, where the object is solely to determine the question of *meum* and *tuum*, the laws of even a despotick state are quite as likely to be framed so as to afford protection and security to private rights, as under the government of the freest republick. The excellence of laws, as they respect the mutual relations and multifarious commerce of men in society, depends much more upon the enlightened views, and the wisdom of the lawgiver, than upon the nature of the government, or the freedom of the people. In proportion to the advancement of civilization and of learning in a country, whatever may be the form of its government, the laws will be found just

and pure; I mean those laws which relate to *personal* rights, and the security of property, for I am not now considering *political* rights. In the reign of *Justinian*, as despotick a prince as any that swayed the Roman sceptre, that magnificent system of jurisprudence which forms the body of the civil law, was raised and perfected: a system, whatever may have been the early prejudices of the English nation against it, which contains all the elements of justice and equity between man and man, and the principles and provisions of which, at this day, strengthen and adorn the gothick fabrick of the common law of England."

"If we reflect," continues Mr. Rodman, "upon the manner in which the different codes established by the present government of France were enacted, we cannot but entertain a very favourable opinion of their excellence. They were the productions of care, labour, and time; and the fruit of the united wisdom, genius, and researches of the best and most enlightened men of that country. Many of the most distinguished members of the old parliaments were called to assist in the formation of this new system of jurisprudence, and contributed their learning and experience to render it as perfect as possible. The discussions which took place in the council of state, on the framing of the Code Napoleon alone, make two large quarto volumes, in which every article and clause of that code are examined, and critically compared with the former existing laws on the subject, and with those of other countries. Still greater solicitude was manifested, and equal care taken, to give perfection to the Commercial Code. After the plan of it had been formed, and discussed in the council of state, a copy of it

was sent to every court of justice, and to every chamber of commerce, throughout the empire; and their separate observations required on every article which appeared susceptible of amendment. These observations forming an immense mass of opinions, of suggestions, and of arguments, were laid before the council of state, and the code again taken into consideration, and such alterations made in it as were judged proper; after which it was submitted to the legislative body for final adoption. *Human ingenuity could not have devised, nor human happiness desired, a mode better calculated to ensure perfection to a work of this nature.* Not only the most distinguished judges and statesmen, but every merchant of character and respectability in France, was thus called upon to contribute his information and experience in the formation of this system of laws.

"The *Code Napoleon* contains all the *general* principles of civil and municipal law. Its provisions embrace all the various relations of men in society, their rights, duties, and obligations, both in respect to the publick authority and to each other. It secures the enjoyment, and regulates the descent and transfer of property; recognises the principles of equity in the construction of contracts and engagements, and provides for their faithful performance.

"The *Commercial* Code provides for the application of the general principles recognised in the Code Napoleon, to the numerous and diversified cases arising out of the operations and transactions of trade. It is therefore, in many respects, conformable to the spirit of the commercial laws of other civilized nations, though it differs from them in some important points,

and contains many new and highly valuable provisions. Such a body of mercantile law, condensed in so small a compass, its various parts arranged and exhibited in so able a manner, is not to be found in the jurisprudence of any other nation. The commercial law of England exists not in any definite and distinct form. It must be sought in the voluminous pages of the statute book, and still more in the countless volumes of elementary treatises and reports of adjudged cases, which encumber the library, and distract the mind of the judge and the lawyer. Founded originally upon usage, it has, from time to time, received particular additions and alterations from acts of parliament, and derives its force and authority much less from positive regulations, than from the numerous and sometimes contradictory decisions of the courts. The lex mercatoria of England, though equally the law of the land, forms no part of what is called the common law. The former has borrowed most of its principles, and many of its rules, from the commercial regulations of the continental nations, and from none more than from those of France, whose celebrated ordinances, and enlightened authors, have contributed more to improve and enrich the commercial jurisprudence of England, than all the statutes of her parliaments, or the writings of her jurists. The treatises of *Pothier*, of *Jousse*, of *Domat*, of *Emerigon*, and of *Valin*, are deservedly held in the highest estimation in Great Britain; and neither national antipathy nor inveterate prejudice has been able to resist the influence of these luminous and masterly productions. Even the ordinances of Louis XIV. have extorted the highest encomiums from the bench and the bar of Eng-

land; and are cited as authority in almost every commercial question of importance, before the courts of that country.

"In an age of science and of letters, whatever the wisdom and the genius of any nation has produced, which may contribute to private happiness or publick order, is entitled to credit and consideration. Whether it be the code of George or Napoleon, of Frederick or Alexander, which is offered to our notice, why should we not equally examine its principles and provisions?"

PARTICULAR SYLLABUS.

TITLE VIII.

"Equidem contra existimo, judices, cùm in omni genere ac varietate artium, etiam illarum, quæ sine summo otio non facile discuntur, Cn. Pompeius excellat, singularem quandem laudem ejus et præstabilem esse scientiam, in fœderibus, pactionibus, conditionibus, populorum, regum, exterarum nationum; in universo denique belli jure ac pacis." (*Note* 1.)

CIC. ORAT. PRO L. CORN. BALBO. CAP. VI.

THE LAW OF NATIONS.

1. The following select chapters in Grotius on the Rights of War and Peace.

   Chap. 18. "Of the Rights of Embassies." } BOOK II.

BOOK III.

Chap. 6. "Of the Right to things taken in War."
Chap. 17. "Of Neuters in War."
Chap. 20. "Of the Publick Faith &c."
Chap. 21. "Of Faith during War; of Truces, Safe-Conduct, and the Redemption of Prisoners."

E. 2. Marten's Compendium of the Law of Nations. *(Note 2.)*

3. Vattel on the Law of Nature and Nations. *(Note 3.)*

4. Du Ponceau's translation of the first book of Bynkershoek's "Questiones Juris Publici," being a treatise on the Law of War. *(Note 4.)*

E. 5. Schlegel upon the visitation of neutral vessels under convoy. Translated from the Danish.

E. 6. The Earl of Liverpool's Discourse on the conduct of the Government of Great Britain in respect to Neutral Nations. 1757.

7. War in Disguise, or the Frauds of Neutral Flags; published in London, Octob. 1805. Reprinted in New-York, 1806.

8. An Answer to "War in Disguise," or Remarks upon the Doctrine of England concerning Neutral Trade.

E. 9. An Examination of the British Doctrine which subjects to capture a neutral trade not open in time of peace, 1808.

E. 10. Baring's Inquiry into the Causes and Consequences of the Orders in Council, and an examination of the conduct of Great Britain towards the neutral commerce of America. London, 1808.

NOTES ON THE EIGHTH TITLE.

(*Note* 1.) "EQUIDEM CONTRA EXISTIMO" &c. Cicero, in common with the learned of the ancient world, who knew the difficulties and vast extent of the science of national law, readily accorded the most elevated station in the empire of knowledge to him, who had made himself familiar with the laws which regulate nations during a state of war or peace. Pompey was distinguished in every science and art; but his greatest merit, and the brilliancy of his fame, rested on his acquaintance with this august system: "*singularem quandem laudem ejus et præstabilem esse scientiam, in fœderibus, pactionibus, conditionibus, populorum, regum, exterarum nationum; in universo denique belli jure ac pacis.*"

A knowledge of this law is essential to legal preeminence. However learned in the doctrines of the common or municipal law an advocate may be, he can never maintain a lofty character, if when called on, he shrinks from the discussion of questions involving nice and difficult points of natural jurisprudence, or of con-

ventional and diplomatic law. The liability to be thus called on is principally confined to lawyers resident in the commercial cities, or near the sea board. Here the most important questions of national, maritime, admiralty, and Roman law, may arise, and they are so intimately blended, that no one can calculate on the efficiency of his knowledge of either of these branches of law, who has not made himself somewhat acquainted with the remaining three.

The Law of Nations may be defined a system or body of rules, ordained by nature, and the consent, express or implied, of sovereign states, for the guidance of international conduct. Thus contemplated, it embraces not only such rules as are dictated by the general principles of natural law applied to nations, considered as individuals in a state of nature, but also such voluntary, customary, and conventional obligations, as are consistent with this law of nature, though not prescribed by it. Hence the code of national jurisprudence is susceptible of four great divisions.

1. The implied, universal, or natural Law of Nations.

2. The voluntary Law of Nations.

3. The customary Law of Nations, and

4. The conventional, express, or particular Law of Nations.

In the first are comprehended the principles of natural law, applied to nations as if they were individuals in a state of nature. The second embraces the decisions or rules of natural jurisprudence, changed and modified in reference to the aggregate and political character of the subject to which they are applied.

In the third division we find such laws or rules, as derive their obligation from long and established use. It is founded on tacit consent. The fourth and last division includes the laws or obligations which flow from express agreement. Like the third it is not a *universal* law, but obliges only the *particular* nations that have contracted. "These three last kinds of the law of nations," says Vattel, "viz. the voluntary, conventional, and customary, together compose the Positive law of nations. For they all proceed from the *volition* of nations; the voluntary law, from their presumed consent; the conventional law, from an express consent; and the customary law, from a tacit consent; all of which should be carefully distinguished from the natural or necessary law of nations."

(*Note* 2.) MARTEN'S COMPENDIUM &c. This small volume contains a great mass of learning on that practical and most important branch of the law of European nations, which is founded on treaties and customs, and which has been denominated by Vattel and others, the positive law of nations. It is among the most valuable of the productions of this distinguished professor of publick law, and for learning, systematick arrangement, and accuracy of definition, is a work of singular excellence. Appended is a list of Treaties, Conventions, Compacts, Declarations, &c. of the modern nations of Europe, from the year 1731 to 1802, with references to the principal works in which they are to be found. This, to use the language of the translator, "is perhaps the most ample, the most accurate, and of course the most useful list of treaties, &c. that is to be met with in any work whatever."

It was translated into English by William Cobbett in the year 1802.

(*Note* 3.) VATTEL ON THE LAW OF NATURE &c. This has been, in most countries, a very popular work on the law of nations. Notwithstanding many novel and untenable positions of the new philosophy are to be found in it, and its opinions on the subject of religion and religious establishments, are to be unhesitatingly condemned as unorthodox, we still perceive so much merit in the production at large, that we do not hesitate to advise its perusal. Vattel is generally a perspicuous and elegant writer; and this work contains so much useful matter, and is so universally read, that to be unacquainted with it would indicate either a want of industry, or an unwarrantable fastidiousness of opinion. In the treatment of his subjects, however, his fulness sometimes degenerates into diffusion; and his reader has arrived at the conclusion, long before his author is willing to part with his demonstration.

The preface to this work deserves particular attention, as presenting a clearer idea or definition of the law of nations than had before been given. [Vid. the latter part of note 1 on this title.] Vattel's chapter on "*things odious and favourable*," a topick connected with the interpretation of laws and contracts, is so far from worthy of that ingenious author, as to have filled us with surprise, that so much contradiction, and even absurdity, should have fallen from his pen.

(*Note* 4.) DU PONCEAU'S BYNKERSHOEK. This valuable accession to our law library was published in 1811 in an octavo volume of two hundred and eighteen pages. It is also to be found in 3 Hall's Law Jour. Bynkershoek never needed an eulogist.

PARTICULAR SYLLABUS.

TITLE IX.

"Maritime Law, and the principles of which it is constituted, are not composed of fanciful opinions, and doubtful systems. This law rests on the general basis of the law of nature and nations, on the positive regulations of the conventional law of Europe, and on those usages established among nations by necessity, the utility of which has been proved by long experience, and on which time has impressed a venerable character that commands our respect. In this manner, many rules that derive the force of legal authority from the tacit consent of nations, have been insensibly established. It is this tacit consent, that gives validity, and binding force to the European law of nations."....AZUNI.

"The Maritime Law is not the law of a particular country, but the general law of nations."....LD. MANSFIELD.

THE MARITIME AND ADMIRALTY LAW.

1. Azuni on the Maritime Law of Europe. *(Note 1.)*

E. 2. Rayneval De la Liberté des Mers. (The first volume only.) *(Note 2.)*

E. 3. Barton's Dissertation on the Freedom of Navigation, and Maritime Commerce.

4. De Marten's Essay on Privateers, Captures, and Re-captures. (Horne's translation published 1801.) *(Note 3.)*
5. Wheaton's Digest of the Law of Maritime Captures and Prizes. *(Note 4.)*
6. "Of the Court of Admiralty." [1 vol. Bacon's Abridgment.]
7. Brown's Admiralty Law. [The 2d vol. of his work, entitled "A compendious view of the Civil Law, and of the Law of Admiralty."]
8. Peters's Admiralty Reports. *(Note 5.)*
9. Bee's South Carolina Admiralty Reports.

MISCELLANEOUS.

E. 1. Postlethwayte's Dictionary, title "Sea, Dominion of."
2. The Duke of Newcastle's Letter to Mon. Michell, in answer to the Prussian Memorial. Vid. 1 vol. Collectanea Juridica, 129.
3. The Communication of Sir Wm. Scott and Sir J. Nicholl to Mr. Jay, on the general principles of proceeding in prize causes in British Courts of Admiralty &c. [This may be found in the Appendix No. 1 to Wheaton's Digest, or in the Appendix to the American edition of Chitty's Treatise on the Law of Nations.]

E. 4. Dr. Croke's Opinion, in the case of the Herkimer, on the rights and powers of captors and prize agents over captures and proceeds, before final sentence. 2 Hall's Law Journal 133.

5. Judge Davis's Opinion on a claim for wages by the representatives of deceased seamen. 2 Hall's Law Journal 359.

E. 6. Dr. Croke's Opinion in the case of the Orion. 4 Hall 505.

E. 7. Translation of the 5th title of the 47th book of the Digests, entitled "Of the Action of Theft against mariners, &c." 2 Hall 250.

E. 8. Translation of the 1st title of the 14th book of the Digests, entitled "Of the Responsibility of Ship-Owners for the acts of the master, and of the action called "*Actio Exercitoria.*" 2 Hall 462.

E. 9. Translation of the 2d title of the 22d book of the Digests, entitled "Of Maritime Loan." 3 Hall 151.

E. 10. Translation of the 273d and 287th chapters of the Consolato del Mare. 4 Hall 299. 161. Or vid. Robinson's Collectanea Maritima.

11. Sir Leoline Jenkins's Argument before the House of Lords in the reign of Charles

II. on a bill to ascertain the jurisdiction of the Court of Admiralty. *(Note 6.)*

12. Judge Cooper's Opinion "On the effect of a sentence of a Foreign Court of Admiralty." Phila. 1810. *(Note 7.)*

NOTES ON THE NINTH TITLE.

(*Note* 1.) AZUNI ON THE MARITIME LAW OF EUROPE. In this very interesting work are disclosed, in a lucid, systematical, and erudite, but perhaps too oratorical manner, the reciprocal rights and duties of nations in relation to maritime commerce. This highly important branch of international law is, perhaps, no where treated with so much ability, and certainly by no one with so much scientifick regularity and fulness. Perhaps in the whole Bibliotheca Legum, there is no work which points out so particularly the sources of information on the subject of maritime jurisprudence, as this work of M. Azuni. As an elementary work, presenting a clear and comprehensive outline of a very extensive subject, no work with which we are acquainted, can be compared to it. His translator, William Johnson esq. of New-York, to whom the profession are much indebted, remarks that "Azuni is the first person who has digested all the principles of maritime law into a regular system. He appears to have been well fitted by inclination and study, as well as by education and long experience, to execute a work, which required various and extensive learning, sound judgment, and a liberal and philosophical spirit. His book, therefore,

may be regarded as new, and one that bids fair to become a standard authority on all questions connected with the laws of maritime commerce and navigation."

The student will find this work highly valuable also, on account of the numerous biographical and bibliographical notices by the author and his translator.

Mr. Johnson's translation was published at New-York in 1806 in two volumes 8vo.

(*Note* 2.) RAYNEVAL DE LA LIBERTÉ DES MERS. We consider this a highly respectable production, and fully entitled to an attentive perusal, although it has many defects, and some opinions to which we cannot subscribe. Many of the questions so often discussed with ability by preceding writers, as the *right of search, contraband, enemy property on board of neutrals, right of blockade, freedom of navigation*, &c. are ingeniously and satisfactorily treated by him, and in a manner by no means superseded by the other writers whom we have designated in this title. We have recommended only the first volume of this work, as the student can reap but little useful instruction from a discussion on the long agitated and, we may now say, exploded doctrine of *mare clausum*. In the pages of Selden, Grotius, Bynkershoek, Galliani, Sarpi, Puffendorf, Lampredi, Boxhorne, Pontanus, Wolfius, Heineccius, Pacius, Granswinkel, Strauchius and others, much time has been wasted in elaborate, learned, and ingenious argumentation on *mare clausum* and *mare liberum:* and as the interest of the question has considerably subsided, we are of opinion that as little time as possible should be consumed in perusing the written labours of these "war-

riours with the pen." The student in the course of his references, and in perusing the books &c. here set down, will acquire as much knowledge on this point as the subject merits. The second volume of M. De Rayneval's work is principally on this subject, and others of little interest to us. Azuni, in his first volume, part 1st, chapters 2d and 3d, presents a luminous view of this subject; they contain, perhaps, nearly all that an American student needs.

(*Note* 3.) MARTENS' ESSAY ON PRIVATEERS &c. Azuni, in his work on Maritime Law, page 37, 2 vol. thus expresses himself concerning this treatise.—"Among the maritime captures which most attracted the attention of Europe, during the last war, may be distinguished that of the rich Spanish register ship *Santo Yago*, taken 5th April, 1793, by the French, and retaken, nine days after, by the English. The process instituted in England for the restoration of this prize, induced M. Martens, a learned professor in the university of Gottingen, and the distinguished author of several works on publick law, to publish, in 1795, an Essay on Privateers, Maritime Captures, and Recaptures. In the first chapter he traces the history of privateering from the middle ages to the present time; and in the second, makes some rapid observations on the *modern* rights of privateering, in which he follows the general principles laid down by M. Valin, in his "Traité des Prises," and by Emerigon, in his "Traité des Assurances." The third chapter is divided into two sections, in which he endeavours to establish some theories of the universal, and positive law of nations, on the subject of recaptures. He gives a brief and very imperfect account of the ancient codes of mari-

time law, and takes a cursory notice of the laws and treaties of some of the northern powers on the same subject. He passes over in silence the ancient and modern laws of many of the Italian states, of which so ample a view has been given in the first volume of the present work. The essay of M. Martens displays much erudition, which will render it instructive, and highly useful to those who feel interested in the progress of the science of maritime legislation."

(*Note* 4.) WHEATON'S DIGEST &c. It is matter of no little surprise that in England, where nearly every legal topick has been discussed with much learning and ability, and the law of most subjects perspicuously arranged, no regular treatise or digest on the subject of *maritime captures* should have been written; especially when we consider the vast importance and interest of this portion of legal science to the British people generally. Since the time of Bynkershoek and Lee, his unworthy translator, this law has been much investigated and improved by the English courts of judicature; and a noble superstructure has been elevated on foundations established by them. It is with real satisfaction that we recommend this production, the growth of our own soil, as it is executed with ability and faithfulness, and cannot fail in proving eminently serviceable to the profession, as the law of this subject, prior to this work, is chiefly to be found in the voluminous productions of the publicists of different nations and languages, and the numerous judicial reports of various countries. Every source of useful and accurate information has been resorted to by this writer, and the work is luminous and sufficiently learned. We consider it decidedly the best American law trea-

tise that has come to our knowledge, and no doubt will receive, as it certainly merits, a welcome reception from our trans-atlantick brethren.

(*Note* 5.) PETERS'S ADMIRALTY DECISIONS. The Admiralty Reports of judge Peters were published in July 1807, and embrace cases occurring between the years 1780 and 1807. The decisions are chiefly those of the hon. Richard Peters, the father of the reporter; some are by the hon. James Winchester, late judge of the district court of Maryland, and others by Francis Hopkinson esq. of Pennsylvania, men of no less varied learning, than deep research in the law. The Appendix to this work is valuable, as it contains the laws of Oleron, Wisbuy, and the Hans-Towns; the ordinances of Louis XIV, a treatise on the rights and duties of owners, freighters, and masters of ships, and mariners; and our own laws relative to mariners. The decisions have been regarded as generally sound, sufficiently learned, and well reported. The student will not fail frequently to consult the decisions of the hon. Thomas Bee, judge of the district court of South Carolina, published in 1810, and by all means Gallison's Reports of Cases in the Circuit Court of the United States for the first circuit, published in 1815; containing the decisions of *Joseph Story* esq. at present one of the judges of the supreme court of the United States: a station, for which these decisions proclaim him eminently qualified, and which he promises to adorn with the abundant fruits of a vigorous mind, richly improved, and strengthened by the laudable ambition of attaining the highest legal pre-eminence.

(*Note* 6.) SIR LEOLINE JENKINS'S ARGUMENT &c. We should love to dwell on such names as sir Leoline

Jenkins, were it compatible with the design of this work. We profess to point to the sources of instruction rather than to give it: and from this we have not often deviated.

This very learned judge has always been esteemed one of the most profound civilians that England ever knew. He was not only a distinguished lawyer, and presided with great ability as chief judge of the admiralty court, but he was pre-eminent as a statesman, and filled with great credit various offices of government. His letters and legal opinions, among which is the argument here recommended, were published in 1724 by W. Wynne in two folio volumes; to which is appended an interesting biography of this great man. Jenkins was born in Glamorganshire, in 1623, and died in 1683.

(*Note* 7.) Cooper's Opinion &c. This admirable opinion of judge Cooper's, in the case of Dempsey, assignee of Brown *v.* the Insurance Company of Pennsylvania, is perhaps one of the ablest, most comprehensive, and perspicuous arguments that has appeared on that difficult and highly important question, the effect of a sentence of a foreign court of admiralty, as evidence in domestick suits. Both in England and this country, the question has been very frequently agitated, and, not less frequently, variously and confusedly decided.

Judge Cooper, in this opinion, has presented a more luminous and satisfactory view of the subject than any we have ever seen. Judge Brackenridge, of the same state, in the case of Calhoun *v.* The Insurance Com. of Pennsylvania, 1 Binney, 293, advocated, with much force of reasoning, the doctrine of

the *non-conclusiveness* of such sentence. In his miscellanies 525, note *, speaking of judge Cooper's opinion, he says "I claim only to be the precursor of judge Cooper on the same side of the question; and this I have a right to claim. But I would recommend every American student to read this opinion of judge Cooper's, not so much for the reasoning and ideas, as for the analysis, and systematick comprehension of the subject. It is a model that deserves to be admired" It was published by A. J. Dallas in 1810 in a small octavo volume of eighty pages, accompanied by an Introduction of twelve pages, highly worthy perusal.

PARTICULAR SYLLABUS.

TITLE X.

"Sir Matthew Hale set himself to the study of the Roman Law, and, though he liked the way of judicature in England, by juries, much better than that of the Civil Law, where so much was entrusted to the judge, yet he often said that the true grounds and reasons of Law were so well delivered in the *Digest*, that a man could never understand law as a science so well as by seeking it there; and therefore he lamented much that it was so little studied in England."..... BURNET'S LIFE OF HALE, p. 24.

THE CIVIL OR ROMAN LAW. *(Note 1.)*

1. Gibbon's concise, but elegant and learned exposition of Roman Jurisprudence. Decl. and Fall. chap. xliv. *(Note 2.)*
2. Butler's Horæ Juridicæ Subsecivæ.
3. Dr. Ellis's Summary of Dr. Taylor's Elements of the Civil Law. *(Note 3.)*
4. Bever's History of the Legal Polity of the Roman State, and of the rise, progress, and extent of the Roman Laws.
5. Ferriere's History of the Roman or Civil Law, translated from the French by John

Beaver; accompanied by Dr. Duck's Treatise of the use and authority of the Civil Law in England. *(Note 4.)*

6. Schomberg's Elements of the Roman Law.
7. Justinian's Institutes. *(Note 5.)*
8. Dr. Arthur Brown's View of the Civil Law. [The first volume of that work.]
9. M. Pothier's Treatise on the Law of Obligations, translated from the French by David Evans esq. in two volumes. [The first volume.] *(Note 6.)*

E. 10. The 17, 18, 19, and 20th books of the *Pandects* on *Consensual* Contracts, and the 22d and 23d title of the 6th book of the *Code* "De Testamentis," are especially worthy the attention of the student.

11. The following select chapters in Strahan's edition of Domat's Civil Law. *(Note 7.)*

VOLUME FIRST.

Preliminary Book. Title 1. "Of the rules of Law in general." Title 2. "Of Persons," Title 3. "Of Things." From p. 1 to 33.

Part 1st. Book 1st. Title 1. "Of Covenants in general" p. 34 to 57. Title 2. "Of the contract of Sale" pa. 57 to 92. Title 3. "Of Exchange" pa. 92 to 94. Title 4. "Of Hiring and letting to hire, and of the several kinds of

Leases," p. 94 to 115. Title 5. "Of the loan of things to be restored in specie, and of a precarious loan," p. 115 to 121. Title 7. "Of a Depositum, and Sequestration," 138 to 148. Title 10. "Of Donations that have their effect in the life time of the donor," p. 183 to 191. Title 15. "Of Proxies, Mandates, and Commission," p. 226 to 236. Title 18. "Of the vices of Covenants," p. 246 to 260.

Part 1st. Book 2d. Title 4. "Of those who manage the affairs of others without their knowledge," p. 297 to 302. Title 9. "Of Engagements formed by accidents, p. 329 to 338. Title 10. "Of that which is done to defraud creditors," p. 338 to 345.

Part 1st. Book 3d. Title 1. "Of Pawns and Mortgages, and of the privileges of creditors," p. 345 to 384. Title 4. "Of Cautions or Sureties." p. 393 to 407.

Part 1st. Book 4th. Title 1. "Of Payments," p. 500 to 511.

Part 2d. Book 1st. Title 4. "Of partitions among co-heirs," p. 632 to 644.

Part 2d. Book 2d. Title 4. "Of the collation of goods," p. 687 to 697.

VOLUME SECOND.

Part 2d. Book 3d. Title 1. "Of Testaments," p. 1 to 109.

Part 2d. Book 4th. Title 3. "Of the Falcidian Portion," p. 198 to 218.

Part 2d. Book 5th. Title 1. "Of Vulgar Substitution," p. 221 to 225. Title 2. "Of Papillary Substitution," p. 225 to 235. Title 3. "Of Direct and Fiduciary Substitutions," p. 235 to 254.

NOTES ON THE TENTH TITLE.

(*Note* 1.) THE EXCELLENCE OF THE CIVIL LAW.

"Servatur ubique jus Romanum, non ratione imperii, sed rationis imperio."

It has been the peculiar fate of the Roman or Civil Law, to be adopted, in part at least, by almost every enlightened nation, as the *substratum* of its municipal code, without that ample and willing acknowledgment of its excellence, to which the numerous advantages which it has conferred on these various systems of law, so fully entitle it. It is by no means my intention to inquire into the causes of this extorted compliment to the merits of the Imperial Code, or the foundations of that jealousy of it, which so long obtained, and the effects of which, even at this time, are by no means inconspicuous. A very superficial view of the juridical history of the nations of Europe, manifestly discloses the great use which has been made of that

rich and abundant fountain of legal wisdom, the Roman Code, and fully justifies the observation, that in the pages of the *Corpus Juris Civilis* is to be found the common law of the nations of Europe. "That it has attained this pre-eminence" says Brown,* "we shall not wonder, when we reflect on the superiour advantages which attended its formation. Most laws (not excepting those of England) have been immaturely born in the early times of rudeness and barbarity, and receiving their accretions from chance, or sudden emergency, appear deformed masses, composed of ill-jointed, ill-proportioned members; the laws of shreds and patches. With us, the most liberal constructions and interpretations of the law by judges, perpetual new acts of the legislature on the spur of the occasion, together with the creation and advancement of separate courts of equity, have been necessary to support a structure which, barely sufficient for convenience, never can admit of much beauty. Far different was the fortune of the Civil Law. It originated in times of the highest civilization, the offspring of philosophy and science. The compilers of it, though at the head of the legal profession, were not mere lawyers, but philosophers and statesmen. Nor were they confined to the resources of their own minds. The labours and compilations of many ages and countries, beginning with the foundation of Grecian legislative wisdom, afforded them powerful auxiliaries. Under their auspices, the Institutes of Justinian appeared in all the beauty which method, arrangement, and the

* Bro. Civil Law, p. 2.

ornaments of style, could add to the natural charms of truth and equity."

So remarkable for excellence is this system of jurisprudence, that it is frequently denominated the *Code of written reason*, (Ratio scripta,) and in all cases not specially provided for by their own laws, many nations resort to this as the certain and never-failing source of pure and sound law. Its superiority over all other systems is such, that notwithstanding the numerous obstacles it was obliged to encounter, from the contracted jealousies of many, among whom were even learned and powerful lawyers, the fact was "by the blessing of God," as John of Salisbury expresses himself, "the more the study of it was persecuted, the more it flourished;" so that like the Roman arms, it spread itself in the east and in the west, forming the civil constitution of most of the nations of Europe, and interweaving itself with their own laws, customs, and feudal institutions, in some instances with a very extensive, in others a more limited authority.

The high encomiums lavished on the Imperial Code, by those who were intimately acquainted with it, should carry with them considerable authority; and though sometimes very extravagant in phraseology, are yet strongly evincive of the sincerity of their admiration. We find Cujacius to tell his son, that "no nation can be well governed without the help of the Roman law, for without the help of that 'divine science,' the most prudent, wise, and fortunate man will have but a very imperfect idea of the rules of equity and true justice." M. Le Maitre considers the Civil Code as a wonderful collection of the wisdom of many learned men, who did not confine themselves to par-

ticular usages, but to justice in general. "They established," says he, "such laws as were deemed most useful to mankind, and have written the rules of government for all nations, as Solomon did those of divine wisdom."

St. Austin, in his book *De Civitate Dei*, says that, "Providence made use of the Roman people to subdue the universe, and to govern it the better by their laws, after the utter destruction of that empire." Zonaras is of opinion, that God made choice of the Romans to give the world a sample of his justice; and Baldus says, that in all nations, the Roman law has the authority of reason.

Leuvius is also of opinion, that "the books of the Roman law contain the most religious and equitable decisions that were ever made, as well as the most perfect idea of justice and right; therefore is it," continues he, "that nations acknowledge this code for their *common law*." The profoundly erudite Leibnitz, than whom no higher authority can be named, on any subject which engaged his inquisitive research, holds, that nothing approximates so closely to the method and precision of geometry, as the Imperial Law.

No nation has been more copiously supplied from the purest streams of the Civil Law, and has at the same time given it so little credit for what it had received, as Great Britain. Many of their ancient writers, as Gilbert de Thornton, Bracton, the author of Fleta, Britton, have largely transcribed from the Imperial Code, and, on some subjects, shine entirely in its borrowed light. Many of their modern writers also, and several of their judges, especially the illustrious Mansfield, have been much indebted to this

source; and their pages and judicial decisions are often illuminated by the pure and lustrous wisdom of Roman jurisprudence.

But notwithstanding the long and pointed opposition which has been made to this system of law in England, it has at all periods found its ardent and impassioned admirers in that country. Great Britain, by her inborn love of wisdom, equity, and sound learning, has unconsciously, in various ways, advanced the progress and fame of the Civil Code. English law writers, counsellors, and judges, have of late been more willing, not only to adopt, but to acknowledge the excellencies of this law; thus passing on it a higher eulogium than had ever been accorded, as their admiration had to contend with national pride and vanity, and to overcome prejudices of very ancient standing. Although the jealousy, which would have occluded from the common law courts the equity and sense of the Roman code, has been deeply radicated, and, until of late, quite unshaken, yet we find this system to have at all times prevailed almost exclusively in the ecclesiastical courts, the courts of admiralty, the court of chivalry, and the courts of the universities; and that the proceedings in the courts of chancery and exchequer, are in strict conformity with the rules and practice of that law. It is likewise manifest, that much of the law of Legacies, Wills, Trusts, Bailments, Executors and Administrators, Guardian and Ward, Contracts, Occupancy, Custom, Prescription, Accession, &c. is derived from this fountain, and that, maugre the dislike of lord Coke and others, numerous other branches of the English law are greatly indebted for much of their excellence

to the experience and learning of the civilians. Brown, an interesting and sensible, though by no means classical writer, says that he scarcely ever met with a point, not connected with the feudal law, of which, if English law books did not satisfy the doubt, he has failed to find a resolution in the Civil Law. Vid. Brown's Civ. Law, p. 13, No. 21.

Chief justice Holt, one of the most liberal and enlightened judges that England ever knew, was obliged occasionally to indicate his respect for this law. In the case of Lane *v.* Cotton, 12 Mod. 482, having need to cite the Civil Law, he justifies his reference to it "inasmuch as the laws of all nations are doubtless raised out of the Civil Law, as all governments are sprung out of the ruins of the Roman empire; for it must be owned that the principles of our law are borrowed from the Civil Law; therefore, in many things, grounded on the same reason."

On numerous occasions, likewise, we find lord Mansfield, actuated by the same ingenuous and expanded views, quoting, with great approbation, the decisions of the Civil Code; and indeed, whenever the learned judge could with propriety avail himself of the equity and good sense of this system, to mitigate the severity, or supply the defects of the common law, this great ocean of jurisprudence was resorted to by him, with a liberality and confidence, honourable to his wisdom and discernment; whilst it manifested his acquaintance with its richness and peculiar excellence.

"He who is desirous of knowing," says Brown, "with a scholar's mind the rudiments and origin of the rules laid down for his instruction, must be a disciple of Justinian as well as of Coke. How, it may

be asked, is this position consistent with a truth universally known, that the foundations of the common law were laid in the feudal system? Feudal principles, indeed, supplied the foundations, but were utterly incompetent to the superstructure. They breathed only war. Strangers to commerce and the arts of peace, they regarded landed property in the hands of the vassal, only as the instrument of military strength, and the source whence the lord derived his supplies. On contracts, covenants, and obligations" continues this writer, "those vast fields of modern controversy; in short, on all things called by some metaphysical writers, 'things purely rational,' 'moral entities,' '*entia rationis*,' that system was silent."

But it is by no means to the student of the common law only, that we recommend an extensive acquaintance with imperial jurisprudence. For as statesmen, politicians, and writers on the laws of nature and nations, have extracted most of what is valuable in their documents and works from the Civil Law, it necessarily follows, that those who aspire to sound and extensive knowledge on the law of nations, will find another motive for frequently resorting to the pages of the Roman code. "In matters of intercourse between one nation and another," says Strahan in his preface to Grotius, "we have no other law to go by, but the law of nations; and this law is chiefly grounded on the rules and maxims which are laid down in the Civil Law, and which have been received by most nations as the rules of justice between one nation and another: so that to understand the law of nations thoroughly," continues Strahan, "and to be able to comprehend the reasoning of the authors who treat thereof, it is absolutely necessary

to have a knowledge of the Civil Law, as one may easily perceive by looking into Grotius, Puffendorf, and other writers on that subject. Hence our ancestors," adds he, "in their great wisdom, thought proper to employ generally, in all negotiations with foreign courts, and in treaties of peace and commerce, persons well skilled in the Civil Law, and law of nations; and although in solemn congresses, for the greater lustre and splendour of the embassy, it was necessary to employ persons of the first rank and quality, yet to ease them of the great weight of affairs, they were always accompanied by persons of inferiour rank, who might aid them by their knowledge of the Civil Law." Of the same opinion was Albericus Gentilis, who says that "all nations or sovereign princes, in disputes which may arise between them, are to be governed by the Civil Law;"* and, in more modern times, we find a distinguished English judge to say, that a great part of the law of nations is founded on the Civil Law.†

But this code, valuable as it is, has in common with all the labours of man, its blemishes and imperfections. Like the sun it has numerous spots, which to the general eye obscure not its lustre. It has some useless learning, and, in parts, breathes a spirit of severity and cruelty, altogether unknown both in England and this country. The too great extent of parental authority, the severe relation of master and slave, and of debtor and creditor, the penal code, and criminal procedure generally, are prominent defects.

As to the comparative excellence of the civil and common law, it would be vain and rash in us to decide.

* Vid. Genti. De Jure Belli. Lib. 1, Cap. 5.

† Sir William Scott, in the Swedish case of Convoy, 1799.

Each has, without doubt, its beauties and blemishes, some peculiar, and others common to both. The inquiry would be difficult, inasmuch as, among other reasons, it would not be easy to say what is exclusively civil or common law. If their peculiar beauties and defects be compared, and the common law be taken in its strictest sense and extent, the decision, we presume, of those skilled in both, would be largely in favour of the Imperial Code, as a full and nearly complete system of publick and private law. Such an inquiry, however, would be perhaps impracticable, and certainly not of much utility. Our duty is to estimate and embrace the excellencies of each, and whilst we carry not our "veneration so far as to sacrifice our Alfred and Edward to the *manes* of Theodosius and Justinian," we should not so blindly admire the former, as to refuse the tribute of merited praise to the latter.

It has already been mentioned, that the great defect in the Civil Code is on the subject of the *jura personarum*. The rights of property, whether the *jus in re* or *ad rem*, were accurately defined, simple, and equitable. "The civilians," says Brown, "knew nothing of that puzzled distinction between real and personal property, which pervades our legal system of ownership, which causes different species of property to descend in varying lines, and to different persons; which obliges the heir, who controverts the pretended will of his ancestors, to litigate a double suit, before a temporal and also a spiritual tribunal, perhaps with opposite success, and repugnant decisions; which deprives a great part of the community, possessed of valuable leasehold interests, of that share in the constitution which is possessed by the impoverished cottager at

their door; which involves the creditor in endless labyrinths, by discriminating different modes of executions, adapted to the various distinctions of the debtor's property liable to his demand. They knew no feudal fictions, which hamper our alienations, and load us, two hundred years after their causes have ceased, while the sage trembles to touch the wen, now become part of the constitution. Simple and uniform in their regulations, clear and pellucid in their divisions, they subjected lands and goods to the same dispositions, and transmitted them in the same conduits to posterity." By that law," adds he, "all property *gavelled;* with us gavelling is almost considered as a punishment, and has actually been made the instrument of penal laws; yet gavelling is the policy of republicks; it hurts the pride of families; it prevents the growth of estates; it forbids the towering castle to rise, and the immense demesne to spread, and swell the arrogance of primogeniture. But the Romans reverenced not the first born; liberty did not glory in the vast possessions of her sons. The conquerors of the world were taught to subdue themselves, and to found their pride on the extended dominions of the state; content as individuals with a limited patrimony, their ambition as a people was to acquire unlimited dominion. They followed the original impulse of nature and reason, implanting in the parental bosom equal love to all the progeny. The doctrine of primogeniture may be adopted by legislators, and commended by philosophers; but it certainly originated with barbarians, and was nursed by savage pride. The preference of the male to the female line, was equally unknown at Rome; nor was the daughter, any more than the younger son, left a depen-

dent on the mercy, or a claimant on the justice, of the elder brother. The absurd consequences also, which arise from our marked distinction between the whole and the half blood, are the offspring of the feudal law, and strangers to the jurisprudence of Justinian."

Such is the unrivalled excellence of the Civil Code, to which no eulogium can do justice; a code replete with instruction for the statesman, the lawyer, and the general philosopher. Should it then be neglected by the American student? Are these not weighty reasons why the learning of this country should be enriched and adorned by the splendid results of the erudition, wisdom, and labours of jurists, aided and fostered by imperial munificence? Have we not, in our codes, adopted and amalgamated the doctrines of the civilians to a greater extent than our mother country? If this be accorded, can any sensible reason be advanced, why this system should not constitute a primary branch of the course of an American law student? Similar and no doubt stronger motives could be urged, why this law should be regarded, than have been advanced in favour of the learning of the feudalists.* Let the student then of this country henceforth seek for the depths, the refinement, and polish of his legal knowledge, in the abundant wisdom of the Imperial Code: let him never consider his legal course of reading by any means complete, until he has read at least as extensively on the Civil Law, as is here prescribed. In this branch of his studies he will find much to admire, and but little to condemn; much to sharpen and invigorate the understanding, and but little which is not

* Vid. note 1 on the second title of this Course.

worthy the dignity and excellence of humanity. In it he will discover a perspicuity and precision of legislation, rarely to be found; and in the definitions, maxims, and legal phraseology (often conveying the same law, more vaguely expressed in the statutes of our own country, or the writings of our lawyers) a remarkable clearness and adaption of language to the sense, not a little favourable to the memory, and certainly greatly so to the liberty of the citizen.

In fine, no one aspiring to the character of lawyer or statesman, should calculate with any certainty on attaining distinction in either, without a competent knowledge of a system which forms a conspicuous feature in the codes of England, Germany, Italy, and Turkey;* Scotland, France, Holland, Spain, and Portugal; and, without doubt, of most of the states in this western world

The Corpus Juris Civilis, as reduced by order of the emperor Justinian, embraces, 1st. The Institutes, in four books, comprehending the rudiments or elementary principles of the Roman law. 2d. The Digests or Pandects, containing the works and opinions of *forty* of the most distinguished civilians. No less than *two thousand* treatises, containing, as it is said, three million lines, were abridged and reduced to one hundred and fifty thousand lines, forming the *fifty* books of the Digests or Pandects. So polished

* The Turks use the Basilics. The Basilica were composed by the emperor Basil and his son, in the Greek language, chiefly from the Justinian Code. They are divided into seven volumes and sixty books. Indeed the Basilica nearly superseded the Justinian Code in the east. They were published at Paris in 1647 by Charles Annibal Fabrot.

and elegant is the style of this work, that it is a common remark, that were all its other authors lost, the Latin language might be recovered by the aid of the Pandects alone. 3d. THE CODE, comprehending in *twelve* books, a collection of Imperial Constitutions; and 4th. THE NOVELS, *one hundred and sixty-eight* in number, being a supplement to the Code. They contain the decrees of successive emperors on new questions. The whole form a body of law perspicuously arranged, and more extensive and complete than any that the world has ever known.

(*Note 2.*) GIBBON'S CHAPTER. We have no hesitation in strongly recommending this chapter to the attentive perusal of the student, as containing a succinct and masterly historical view of the Roman law. As a summary it certainly stands unrivalled, and as a mere outline only is it to be read. We cannot therefore subscribe to the opinion of the editor of sir William Jones's Treatise on Bailments, who thus expresses himself concerning this chapter: "This is only a brilliant *coup d'œil* on a subject which it was a part of Mr. Gibbon's historick duty to have examined with microscopical attention. The many pages he has employed in the malicious detail of theological controversy, and the numerous notes in which he has perpetuated the scandal and obscurity of insignificant writers, might have been occupied with disquisitions and illustrations more creditable to the candour and talents of the historian."

We entirely coincide with the learned editor, that Mr. Gibbon might, by devoting more time to it, have rendered his chapter more learned and valuable. He might have amplified it into a volume, or extensive trea-

tise on the Civil Law; but his duty, as historian, surely did not require this of him. In that capacity he has, as we conceive, fully redeemed his pledge, and even exceeded the usual limits assigned, in this point, to the historian. Mr. G. without doubt, could have better employed his time in composing a treatise on Roman jurisprudence, than in meddling with theological polemicks; yet his chapter, for what it professes to be, is luminous, learned, succinct, and satisfactory.

(*Note* 3.) DR. ELLIS'S SUMMARY &c. This admirable little work is the production of the Rev. Dr. Ellis, published by him anonymously, in the year 1755. It is a summary taken from Dr. Taylor's Elements of the Civil Law, and indeed contains most of what is valuable in that work.

Mr. Gibbon, speaking of Taylor's production, remarks "that the laws and manners of the different nations of antiquity, concerning forbidden degrees &c. are copiously explained by Dr. Taylor in his Elements of the Civil Law, a work of amusing, though various reading, but which cannot be praised for philosophical precision. He is a *learned, rambling, spirited* writer." Dec. & Fall. 5 vol. chap. 46, Note 132. 150.

Ellis's Abridgment contains much learning in a small compass, and is written in a neat and perspicuous style. It is preceded by a valable essay on *Obligation*. This little work cannot fail in being a great favourite with every student of the Civil Law.

(*Note* 4.) FERRIERES' HISTORY &c. The work which we here recommend, is the production of Claude Joseph de Ferrieres, written originally in French, and published at Paris, in one vol. 12mo.

in 1718. Dr. Bever in the year 1724 translated it into English, and added to it a translation of that part of Duck's treatise *"De usu et autoritate juris civilis,"* which relates to the authority of that law in England. Claude Joseph de Ferrieres is likewise the author of a Law Dictionary in 2 vols. 4to. and a treatise entitled *"Nova et methodica juris civilis tractatio"* in 2 vols. 12mo. The little work which we have placed in our Course, is highly worthy the student's attention. The author, however, is manifestly indebted for a portion of his matter and manner to the illustrious author of the treatise *De ortu et progressu Juris Civillis.* Both the original and translation are scarce in this country, but no doubt may be found in the publick libraries, and perhaps among some private collections. His father, Claude de Ferrieres, was a distinguished civilian: his works are comprised in 6 vols. 4to, published 1688; entitled *"La Jurisprudence du Code de Justinian, du Digest, des Nouvelles,"* and *"Nouvelle traduction des Institutes de l'Empereur Justinian,"* in 6 vols. 8vo. He died in the year 1715 aged 77.

(*Note* 5.) JUSTINIAN'S INSTITUTES. The legislative labours of the emperor Justinian have gained a crown of imperishable fame. The Code, the Digest, and the Novels, would have been complete as a body of law without the Institutes, in which are orderly displayed the elementary or general principles of the *Corpus Juris Civilis.* Introductory to every code, the maxims and general rules of the entire science should be treated of: such an institutionary work may then be considered as a general index, which unfolds the science or philosophy of the whole system, and as a comprehensive outline or contour of

the body of the law. In this point of view is the student to read the Institutes, which, with one remarkable exception, is an excellent compendium of Roman jurisprudence. The exception we allude to is the doctrine of *Evidence*, which is altogether omitted in the Institutes. To supply this deficiency we strongly recommend Domat's Civil Law, vol. 1, book 3d, title vi. *"Of Proofs and Presumptions, and of an Oath;"* and an occasional reference to the pages of Everhardus' *"De Testibus et Fide Instrumentorum,"* Machardus' *"De Probationibus,"* Menochius' *"De Præsumptionibus,"* and Farinacius' *"De Testibus,"* who are the most distinguished authors on the Civil Law of Evidence. The best editions of the Institutes are by Arnold Vinnius, professor of law at Leyden in 1650, in the original, with excellent Latin annotations; and the English translation by Harris, and the recent one by Dr. Cooper, published at Philadelphia in 1812. The student will of course read Dr. Cooper's edition, as it is decidedly superiour to any other, though no very fair specimen of the doctor's learning or industry.

(*Note* 6.) M. Pothier's Treatise &c. Were it not inconsistent with the design of this volume, we should delight to dwell on the genius, learning, useful labours, and moral excellencies of this highly distinguished French civilian: but a very brief notice of him is all that we can with propriety allow ourselves. Perhaps no age or country has produced a writer whose legal works have, in so short a time, been so universally and flatteringly received and admired: to the interest of his topicks, he has imparted all the advantages of the most clear and masterly arrangement,

and all the profundity and richness of learning, without the semblance of affectation or pedantry.

Robert Joseph Potheir was born in January, 1699, at Orleans, of honourable parentage. At a very early age he lost his father, who left him with but limited resources. He was therefore compelled to supply the deficiency of time, by unremitted intellectual exertion; and to store in his youthful mind, in a few years, all the attainments of mature age and protracted study. He completed his education at the university of Orleans.

At the age of twenty-one he was admitted a counsellor of the Presidial court of Orleans, from which he not only derived lustre, but had the happiness, by his zeal in its interests, to be eminently serviceable to it, and to reflect on it a new and lasting splendour. The next honour which awaited him was the professorship of law in the university of Orleans, in which he succeeded M. de la Janes in 1750. His learning, industry, and above all, his talent for instruction, could not fail to render his lectures highly popular and instructive. In 1740 he gave to the world a treatise in two volumes, on the customs of Orleans, which gained him great credit and new honours. But the work which displayed the entire compass of his mind, was an undertaking of prodigious magnitude, great utility, and appalling difficulty; no less than the entire new modelling of the Pandects of Justinian. This he accomplished in the space of twelve years, to the admiration of all who have studied the work, which is entitled *"Pandectæ Justinianæ in novum ordinem digestæ,"* in three volumes folio. In 1761 he published his "Treatise on the Law of Obligations or Contracts,"

an elementary and highly scientifick work, in which not only the *legal* but *moral* causes of obligations are displayed. His eulogist, to whom we are principally indebted for the substance of this sketch, says "the reputation of M. Pothier was necessarily extended with the diffusion of his works; and he had, during the course of his life, all the celebrity which a man of science can enjoy. The publick voice acknowledged him as the greatest jurist of his age, or rather as the greatest since the time of Dumoulins*, with whom he was frequently classed. Without waiting for his death, the weight of authority was given to his decisions, and the highest tribunals have acted upon the citation of his works, an honour above suspicion, and the greatest which a jurist can receive."†

Sir William Jones, in his Law of Bailments, having occasion to notice the writings of M. Pothier, thus expresses himself, "I here seize, with pleasure, an opportunity of recommending those treatises to the English lawyer, exhorting him to read them again and again; for if his great master Littleton has given him, as it must be presumed, a taste for luminous method, opposite examples, and a clear, manly style, in which nothing is redundant, nothing deficient, he will surely be delighted with works, in which all those advantages are combined, and the greatest portion of which is law at Westminster as well as Orleans. For my own part," continues he, "I am so charmed with them, that if my undissembled fondness for the study of jurisprudence were never to produce any greater benefit to the pub-

* Dumoulins was styled "*Prince of the French Law.*"
† Vide Evans's Pothier.

lick than barely the introduction of Pothier to the acquaintance of my countrymen, I should think that I had in some measure discharged the debt, which every man, according to lord Coke, *owes* to his profession."

The work which we have recommended in this Course, is the English translation by David Evans esq. in two volumes, accompanied by an introduction, a valuable appendix, and numerous excellent notes, illustrative of the English law. As the second volume is entirely composed of notes, we have recommended the perusal of the first volume only, with the exception of such matter in the second volume, as we have designated in this Course as highly worthy of perusal.

(*Note* 7.) DOMAT'S CIVIL LAW. This work, entitled "The Civil Law in its natural order," was given to the world by its learned author in 1689, in one volume 4to. to which were subsequently added three other volumes. In 1724 an improved edition in two volumes folio, with a supplement, was published by D'Hericourt; and in 1777 M. de Jouy gave a still more valuable edition in folio. In 1721 an English translation of Domat was published by Wm. Strahan L.L.D. with remarks on the material differences between the Civil and Common Law. This is the work, the select chapters of which we strongly recommend to the American student. Domat is certainly a learned and scientifick writer; but as his work is very large, and many of the chapters of but little importance, we have designated such as are particularly valuable, being about one fourth of the whole work.

PARTICULAR SYLLABUS.

TITLE XI.

"If it had been found impracticable to have devised models of a more perfect structure than any of the republicks that have heretofore existed, the enlightened friends of liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politicks, however, like most other sciences has received great improvements. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments, the introduction of legislative balances and checks, the institution of courts composed of judges, holding their offices during good behaviour; the representation of the people in the legislature, by deputies of their own election; these are either wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained, and its imperfections lessened or avoided.....HAMILTON,

THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA.

1. The Constitution, and Amendments thereto, of the United States. (At this time to once attentively read.)

2. The 8th chapter of the 1st volume of Wilson's Lectures on Law, p. 319 to 358.

3. The 11th chapter of the same work; "A Comparison of the Constitution of the United States, with that of Great Britain." vol. 1. p. 425 to 464.

4. The 1st, 2d, 3d chapters of the 2d vol. of the same work, from p. 117 to 286. "Of the Constitutions of the United States, and of Pennsylvania. Of the Legislative, Executive, and Judicial Departments." *(Note 1.)*

5. The Federalist, and Letters of Pacificus. *(Note 2.)*

6. Review of the Federalist &c. Vid. 1 American Review, p. 201 to 258. 2 Am. Rev. p. 1 to 77.

E. 7. Adams's Defence of the Constitutions of the Government of the United States.

E. 8. Letters of the Abbé De Mably to Mr. Adams, on the Governments of the United States.

E. 9. Debates of the Pennsylvania Convention on the Constitution proposed for the General Government.

E. 10. Debates in the Assembly of the State of Virgininia on the same subject.

11. On the power of the Judiciary to decide on the constitutionality of a law of the United States. Vid. 2 Hall's Law Journal, p. 93 to 101, 255 to 281.

12. On the right of the Constituent to instruct his Representative in Congress. 4. American Review, 137 to 171.

13. On the right of the State Legislatures to instruct their Senators in the Congress of the United States. 4 Hall's Law Journal 571 to 587. Vid. also judge Brackenridge's Miscellanies, p. 97.

E. 14. Address of the minority in Congress to their constituents on the subject of the war with Great Britain. Address of the House of Representatives of the Commonwealth of Massachusetts on the same subject, both published in June 1812, and the masterly review of these pamphlets in the 4th vol. American Review, p. 1 to 76. *(Note 3.)*

15. Graydon's Digest of the Laws of the United States.

16. The following select cases on constitutional points, and important constructions of the Laws of the United States.

CRANCH'S REPORTS.—FIRST VOLUME.

Mabury *v.* Madison, p. 137.

United States *v.* Simms, p. 253.

Pollard *v.* Dwight, p. 421.
United States *v.* Schooner Betsey &c. p. 443.
United States *v.* Burr, p, 470.

FIFTH VOLUME.

Hope Insu. Com. *v.* Boardman, p. 57.
Bank of U. S. *v.* Deveaux et al, p. 61.
Brown et al *v.* Strode, p. 303.
Hodgson & Thompson *v.* Bowerbank, p. 303.
U. States *v.* Vowel & McClean, p. 368.

SIXTH VOLUME.

Campbell *v.* Gordon & Wife, p. 176.
U. States *v.* Ship Helen, p. 203.
The Schooner Rachel *v.* U. States, p. 329.
Tyler et al *v.* Tuel, p. 324.
Sere & Laralde *v.* Pitot et al, p. 332.*

NOTES ON THE ELEVENTH TITLE.

(*Note* 1.) WILSON'S LECTURES ON LAW. The works of the honourable James Wilson, late associate justice of the supreme court of the United States, and professor of law in the college of Philadelphia, were published in the year 1804 by Bird Wilson esq. in

* Vid. some remarks on Cranch's Reports, Note 3, Particular Syllabus, Title VI.

three volumes, 8vo. The Lectures on Law, delivered by Dr. Wilson, occupy three fourths of the work. We entertain great respect for the character and learning of this gentleman; and should be happy, as it is the product of our soil, could we recommend the work generally to the American student of law. The duty which we have taken on ourselves imposes the utmost regard for the student's time, and as such elementary works as the *"Commentaries,"* and *"Systematical View of the Laws of England,"* are without doubt to be studiously read by him, we conceive that they have superseded, (at least for the use of law students,) such works as contain general and indefinite legal information, combined with, and embellished by the ornaments of literature; which though young gentlemen, in the course of their *collegiate* inquiries, would find highly interesting and useful, would prove by no means satisfactory to the regular student of law. There are some of these lectures, however, well entitled to our student's regard, as they treat on topicks not to be found in Blackstone or Wooddeson. To those who read on legal subjects as a part of general education, these lectures are entitled to a preference over those of Mr. Wooddeson, provided the "Commentaries" be likewise read.

(*Note* 2.) FEDERALIST AND LETTERS OF PACIFICUS. It is seldom that the speculations of philosophers have been so remarkably verified as those of the writers of the Federalist. It is a fact very honourable to the authors of this work, that their opinions of the federal system, founded on *a priori* reasoning, form an accurate history of the practical operation of a scheme at that time but just organized; an instance somewhat

uncommon of the correctness of philosophical prophecy. For a very sensible and interesting review of this excellent and popular commentary on the constitution of the United States, we refer the student to the 2d No. of vol. 1st, and 1st No. of vol. 2d of the American Review; an article which contains a large portion of the learning and genius of the writer of that work; a writer to whom the American publick are largely indebted for many eloquent and ingenious productions on the politicks of the country.

(*Note* 3.) ADDRESS OF THE MINORITY &c. We shall have occasion to remark that pamphlets, essays, &c. the ephemeral productions of some exigency, often contain the substance of more extensive and elaborated works, and deserve to outlive the momentary cause of their being.*

These two pamphlets cannot, and ought not to be forgotten: they are documents of great interest and importance. We have had some hesitation in recommending them, because *political;* but where is the distinct boundary between *constitutional* and *party* dissertation?

Vid. post Notes 6, 7, on Title XIII.

PARTICULAR SYLLABUS.

TITLE XII.

"Whilst almost every European nation remains plunged in ignorance respecting the constitutive principles of society, and only regards the people who compose it as cattle upon a farm, managed for the particular and exclusive benefit of the owner, we become at once astonished and instructed by the circumstance that the thirteen republicks have, in the same moment, discovered the real dignity of man, and proceeded to draw from the sources of the most enlightened philosophy, those humane principles on which they mean to build their forms of government."..... ABBE DE MABLY.

THE CONSTITUTION AND LAWS OF THE SEVERAL STATES IN THE UNION.

A Comparative View of the Constitutions of the several States with each other, and with that of the United States, exhibiting in Tables the prominent features of each Constitution, and classing together their most important provisions under the several heads of Administration; with notes and observations. By William Smith, of South Carolina, L. L. D. p. 34.

[The student will readily admit the absolute necessity of an extensive and accurate knowledge of the statutory code of the particular state, in which he contemplates to practise his profession. The various legislative enactments, by which the common and statute laws of the mother country have been either confirmed, repealed, altered, or modified, should receive his diligent attention.

Whether, and to what extent, the common law of England is the *lex non scripta* of the United States, in their *federal* capacity, and how far this common law, and the English statutes, are obligatory in the *several states* composing the union, are points on which the student will of course duly inform himself. Next, in orderly succession, should follow a minute knowledge of the constitution and laws of the federal government, the constitution and laws of the state in which the student is to reside, and finally, such of the laws of the sister states as are not merely of local, but of general interest throughout the union; such, for example, as those regulating the execution and authentication of deeds, powers of attorney, and other legal instruments; the provisions respecting inland bills of exchange, the laws relative to the attachment of the property of non-resident debtors, those respecting insolvents, and finally, all such state laws, as are likely to affect the interests of the citizens generally.

For the attainment of this essential branch of his studies, we beg leave to submit to the student the following rules:

1. If there be a *Digest* of the laws of the state in which he is to reside, it should be attentively studied, in preference to the statute book at large; and in

so doing, the Digest being interleaved, the student should note down the material points in which these positive and written enactments deviate from the common law, or the statutes of England. He should, in his annotations, regard the important judicial constructions which have been made on these statutes, and likewise note down such new laws and amendments, as have been enacted since the publication of the Digest.

If no such Digest has been published, we earnestly recommend to the student, as the *easiest* and most *certain* mode of acquiring definite and durable knowledge on the subject, to abridge analytically all the state laws *then in force, of an important and general nature;* to arrange them alphabetically under titles, and to annotate in the manner just prescribed.

Let not the student shrink from such a task. We are convinced that, in the end, it is a great economy of time, by no means an arduous undertaking, and will more strikingly compensate the student, than perhaps any other part of his professional knowledge.

2. After the student has accomplished this highly improving task, he should direct his attention to such of the laws of the *sister states* as we have above described. This knowledge need not be very minute or definite; it will generally be sufficient to know precisely whither to *refer* for it. All that is required on this head may easily be attained by a cursory review of the *indexes* of the most recent and valuable editions of the State Laws, and with a particular eye to the subjects most likely to be of *practical* use to him. The books of American Reports might occasionally be ex-

amined, with a view to important constructions of the statutes particularly interesting to the student.*

A short time devoted to this twelfth division of our subject, would accomplish our student in one of the most important, yet neglected branches of his legal education.

3. In several states we have observed, that lawyers, otherwise profoundly learned in their profession, have exceedingly disregarded the laws of the general and state governments, and have contented themselves with the gradual acquisition of this knowledge, as necessity urged them in the course of their practice. Nothing can be more objectionable than this mode of study; but particularly as regards state laws, which are usually exceptions to the general law, which general law is the common, and in part, the statute law of England. This method of acquiring the requisite information, is uncertain, hasty, and vexatious. It not unfrequently occurs, both in *court* and *office* practice, that opinions on the statute law are required to be given *instanter;* in which case, if the repeals and modifications, introduced in the general system by our own statutes, be unknown, that which is familiar, viz. the law of the mother country, is with confidence advanced and acted upon, as the rule or law of the case, without a suspicion of the change, or of the serious consequences which may result from such ignorance. We have known these difficulties to occur to intelligent and, in other respects, well read lawyers. The laws therefore of the United States, and of the state in which he prac-

* Much of this species of information is to be found in Mr. Hall's American Law Journal, a work of merit and great utility.

tises, must be familiar to the lawyer; and it is to be hoped, that the inconveniencies attending the casual and desultory mode of gaining this knowledge adopted by some, together with the injury which must result to the client from this neglect of *unlearning*, (if the word be allowed,) the general law, or being duly informed of its modifications, will satisfy the student of the necessity of allotting to this title a distinct and methodical attention.

4. In most of the states, not only the common, but the statute law of England, is in part obligatory. It therefore becomes important to ascertain, to what extent the statutes of England are in force in a particular state. In the states of New-York, Virginia, and Maryland, this investigation has been made under the sanction of legislative authority. In the year 1808, the legislature of Pennsylvania appointed the judges of the supreme court of that commonwealth, to ascertain the English statutes which are in force in that state, and also those which, in their opinion, ought to be incorporated into the statute law of said commonwealth. The report of the judges to the legislature is to be found in the 3d vol. of Binney's Reports p. 595, and in 2d Hall's Law Journal p. 51. Mr. Binney, in his note on this report, remarks, "This important document is here inserted at the request of the judges of the supreme court. In many respects it deserves to be placed by the side of judicial decisions, being the result of very great research and deliberation by the judges, and of their united opinion. It may not perhaps be considered as authoritative as judicial precedent; but it approaches so nearly to it, that a safer guide in practice, or a more respectable, not to say decisive authority in argument,

cannot be wanted by the profession." A similar task was imposed by the legislature of Maryland on the present chancellor, William Kilty esq. The work, as we learn, is executed with great ability. It has not yet been given to the world.

It is, we presume, unnecessary to designate the most recent or best editions of the statute law of the different states. The student, when necessary, will readily ascertain this fact. In several of the states the laws have been, by *legislative order*, revised, arranged, and annotated on. The Laws of Pennsylvania, by Smith, published in 1810, is a work of singular excellence. The "Revised Code" of New-York, by Vanness and Woodward in 1814, and the "Revised Code" of Virginia, are well arranged. The laws of Connecticut were published in 1808, by Threadwell, Perkins, and Day, by legislative direction.

PARTICULAR SYLLABUS.

TITLE XIII.

"The salutary influence of Political Economy is not confined to *government;* it is still more sensibly felt in *legislation.* Its principles, tenets, and theory, are closely allied and identified with the principles, tenets, and theory of Legislation." "How greatly do they err, who suppose political economy a stranger to politicks, legislation, and government, and judge it possible to have good laws with a bad system of political economy, or a good system of political economy together with bad laws.....GANILH.

POLITICAL ECONOMY.

1. Priestley's Lectures on History and General Policy. *(Note 1.)*
2. Boileau's Introduction to the study of Political Economy.
3. Joyce's Analysis or Abridgment of Adam Smith's Wealth of Nations. *(Note 2.)*
4. Lord Lauderdale's Inquiry into the Nature and Origin of Publick Wealth.

E. 5. Sir James Steuart's Inquiry into the Principles of Political Economy. *(Note 3.)*

6. Ganilh's Inquiry into the various systems of Political Economy. *(Note 4.)*
7. Arthur Young's Political Arithmetick.

E. 8. Malthus on the Principles of Population.

E. 9. Reply to Malthus.

10. Thornton's Inquiry into the Nature and Effects of the Paper Credit of Great Britain.
11. Pitkin's Statistical View. *(Note 5.)*

MISCELLANEOUS.

1. Hamilton's Report on a National Bank. 3 Hamilton's Works, p. 59.
2. Hamilton on the Constitutionality of a National Bank. Ibid. 111.
3. Bollman's Paragraphs on Banks. Phila. 1810. *(Note 6.)*
4. Carey's Letters to Dr. Adam Seybert on Banks, published 1810, and Essays on Banking, published in 1816.
5. Hamilton's Report on Publick Credit. 3 Ham. Works, p. 1.
6. Hamilton's Report on the subject of Manufactures. Ibid. 157.
7. Hamilton's Report on the establishment of a Mint. Ibid. 275.
8. Bollman's Plan of an Improved System of the money concerns of the Union. Phila. 1816.

9. Johnson's Inquiry into the nature and value of Capital, and into the operation of Government Loans, Banking Institutions, and Private Credit. New-York, 1813. *(Note 7.)*

NOTES ON THE THIRTEENTH TITLE.

(*Note* 1.) PRIESTLEY'S LECTURES &c. It will be perceived, from the subjects and books recommended in this Course, (with the exception of the first title in the division "Auxiliary Subjects,") that but little notice has been taken of history, and many branches of general science. This arises from the particular nature and object of the present work, which is to unfold the purest sources of *legal* knowledge, and of such other subjects as are *immediately* connected with it. History is certainly of the first importance to the lawyer; but as every well informed man will allot a suitable portion of his time to that subject, and as it often constitutes a branch of academical or collegiate education, or is presumed to have been studied by young men before their engagement in professional studies, we have deemed it more consistent to omit a general course of historical reading. This, at first view, may appear to be a defect in a Course professing to be minute and entire on the subject of legal education. But where, it may be inquired, is the line of distinction? A lawyer is to be man of general science: he is to know *something* of almost every topick, and *much* of the subject of jurisprudence and its auxiliary branches. As history is a topick which sheds light on science gene-

rally, and is studied no less by the divine, the physician, and man of letters, than by the statesman and lawyer, it does not demand a distinct and particular notice in this work, with the exception, however, of the history of our own country, and, (if it were practicable,) of such portions only of this, as illustrate the policy, constitution, laws, and political economy of the states and the federal government. Under the title "Auxiliary Subjects," however, the student will find enumerated for his perusal the best histories of our country. Some will amply compensate him for the perusal, and will be found to shed considerable light on the juridical history, the true policy, and the genuine resources of the United States, both individually and collectively: nor is there one unworthy the time expended in reading it. The history of this country has a superiour claim to insertion in this Course, as it illumines the paths in which we are obliged to walk, and likewise, as it is more apt we think to be neglected than the histories of other countries. With respect to the Lectures of Dr. Priestley, they contain so much of the philosophy of general history, in a small compass, that they appear to us entitled to particular notice; more especially as they serve as an excellent introduction to the science of political economy.

(*Note* 2) JOYCE'S ANALYSIS OF THE WEALTH OF NATIONS. In recommending Joyce's "Analytical Abridgment" of Adam Smith's "Wealth of Nations," we would by no means be understood to undervalue the justly celebrated original. As a science, political economy was perhaps in its infancy when Adam Smith assumed the pen. We reverence him as the great father of political economy; but since his time,

several writers of different nations, profiting perhaps by the light shed by their great master, have given to the world treatises also highly worthy perusal: from this consideration, together with the fact that the opinions of Smith are accurately stated in the abridgment, and that subsequent writers have amply annotated on all the peculiar views of that illustrious author, we have thought the work here recommended sufficient, at least for the present. At a future period of more leisure, the original may be taken up, with as much pleasure, as propriety. If the original be read, as it will be by all who cannot obtain the abridgment, the student will procure Playfair's edition, which is accompanied with notes, supplementary chapters, and a life of Dr. Smith.

(*Note* 3.) STEUART'S INQUIRY &c. We sometimes feel so grateful to the author who first directed us in the pursuit of a particular science, and imparted to us a fondness for it, that our judgment as to the worth of his production is, perhaps, not entirely to be relied on. Accident, not selection, placed this work in our hands: the topicks were then all new to us, and we read and studied it with delight.

If it were possible, however, to separate ourselves from this bias, we should still say that this inestimable production is too little known, that it has been unkindly dealt with by a publick, which has lavished all its praises on a succeeding writer, forgetful of the light which this author perhaps received from it; that it has been consigned to a partial oblivion from the size perhaps of the volumes, the modesty of its author, the familiarity and simplicity of his style, and mode of treating his subjects, and the seeming ab-

sence of learning; as he has scarcely in one instance quoted an author, but apparently written his treatise from the stores of his own mind and *currente calamo*. Circumstances, however trivial, sometimes occasion an author to be fashionable, and an almost exclusive favourite, and consign others to unmerited oblivion. Charmed, as we have always been, with this work of sir James Steuart, we must believe that others would derive similar pleasure, and restore it to its station, beside the "*Wealth of Nations*." Let not the student then be alarmed at the size of two quarto volumes of six hundred pages each, as the margin and type are very large, and the work contains not more reading than that of Smith. This is mentioned in order to remove those trivial obstacles which sometimes prevent the perusal of the most meritorious works.

(*Note* 4.) GANILH'S INQUIRY &c. A rudimental or popular treatise on political economy, has been a *desideratum*. This work of Mr. Ganilh, for so comprehensive an inquiry, is perhaps more level to the comprehension of young minds, and more distinctly unfolds the philosophy and great outlines of the science, than any production which has come to our knowledge. From the place, however, which we have assigned it in this Course, we intend it rather as a work to refresh the memory, and impress clear and strong views of the science generally, than as an institutionary work. We have preferred the chronological arrangement for various reasons unnecessary to state, being decidedly of opinion, that if the science is to be studied in detail, Ganilh, though an elementary work, will be found more useful if read with the view just mentioned. The various theories or systems of national wealth

are briefly and clearly exhibited, and most of the interesting questions of political economy are luminously stated and satisfactorily solved. As it is the only production which we have recommended on this topick, not English or American, we urgently request the student by no means to neglect it, but to give it that studious reading to which its merits entitle it.

(*Note* 5.) PITKIN'S STATISTICAL VIEW. Political economy would be a speculative and unprofitable science, were it not for statistical inquiries: they furnish practical results with which to compare our theories, and by which to test their soundness or their fallacy; for both the maxims of policy, and the speculations of philosophers, must eventually be tested by experience. Statistical inquiries prove that the interests of a country, and the methods of pursuing them, are greatly dependent on the local situation of that country, the nature of its government, the character of its people, and even its soil and climate; and consequently, that the destinies of a people are not to be fashioned by speculative laws, so much as by consulting their constitutional tendencies and inclinations.

The very elaborate and systematick investigation of Mr. Pitkin demonstrates the real interests of this country, and the species of policy that should be adopted by its government. It should be studied by all, who to the learning of Smith, Steuart, Ganilh, Lauderdale, Malthus, Young, &c. desire to add the wisdom of experience. This work of Mr. Pitkin, and the Statistical Manual of Mr. Blodgett, are the only American productions of any note, on this subject. In the former the student will find every thing relative to the resources and financial concerns of this nation, and

a brief similar statement as to Great Britain and Ireland from 1804 to 1813. A few days' attentive study will furnish him with a clearer view of the wealth and power which flow from agriculture, manufactures, and commerce, than could be gained by as many years of desultory and casual inquiry.

(*Note* 6.) BOLLMAN ON BANKS &c. Our national and individual pecuniary embarrassments, consequent on the war of 1812 with England, the suppression of specie payments, the curtailing of bank discounts, and other distresses of the commercial world, together with the organization of a national bank, gave rise to numerous essays on these topicks, several of which will be read with profit and interest, after the causes of their origin are no more, and our country is again blessed with all the consequences of successful commerce. Sensible and well written essays on these subjects, not being the mere *a priori* speculations of closet philosophers, but inductions from *existing facts*, and pressing exigency, will be found generally practical and useful, and often contain, in a few pages, that information which we may in vain seek for in elaborate treatises on political economy. The essays of Dr. Erick Bollman and Mathew Carey are decidedly the best which have appeared, and will compensate the student of any age or country for their perusal.

(*Note* 7.) JOHNSON'S INQUIRY &c. It not unfrequently happens, as we have just observed, that ephemeral productions, the offspring of exigency, and ushered into the world in the shape of pamphlets, to effect a particular object, possess more intrinsick merit than those, which having a more specious form and appearance, often descend to posterity by the gravity

of their *material* substance, rather than the worth of their *intellectual* contents. This remark applies with great force to a number of essays, which the extraordinary and anomalous situation of the moral and political world for the last twenty-five years has occasioned, and which, for the sake of philosophy, should be rescued from that oblivion which so universally attaches to this species of productions.

But in winnowing in so ample a field, the greatest caution should be observed; for scarce one in a hundred of these is entitled to outlive the hour which gave it birth. In these pamphlets, however, we sometimes find much learning perspicuously arranged, and unfolded in a pure and classical style: they occasionally contain the substance of more extensive treatises, and also new and valuable ideas, which are forgotten, or leave but faint impressions, because given to the world under the modest appellation of "Essays, "or "Thoughts." We have no doubt but that opinions worthy of Newton, Kepler, Bacon, and Boyle; Grotius, Wolfius, or Montesquieu; such as have eternized their names, and enrolled them on the imperishable scroll of fame; may have been previously advanced by humble, unknown, or forgotten essayists; and first attracted observation when illumined by the splendour of a philosopher's name, or perhaps urged into notice by the magnitude of the volume containing them. We would not be understood, by these remarks, as we have just hinted, to encourage the habit of indiscriminately perusing the pamphlets almost daily issuing from the press, and only distinguished by noisy verbiage, and passionate vituperation, or vain and speculative notions. Students may be permitted to be so economical

of their time, as seldom to read a pamphlet until the voice of general approbation presses it upon their notice.

To the pamphlets which we have recommended in this Course we advise some attention; such as "*War in Disguise,*"* "*Answer to War in Disguise,*" "*Examination of the British doctrine,*" &c. "*Address of the Minority,*" &c. "*On the constituent's right to instruct his representative,*" "*Review of the Federalist,*" the pamphlets of Dr. Bollman, "*Johnson's Inquiry;*" &c. which are productions of great merit, and will be found worth perusal, long after the time and circumstances to which they were indebted for their birth.†

* Vid. ante Title VIII. p. 286, and Title XIII. p. 287, 288.
† Vid. Note 13 on Title III.

AUXILIARY SUBJECTS.

"The sparks of all sciences in the world, are raked up in the ashes of the law."..... FINCH.

"Ipsa multarum artium scientia etiam aliud agentes nos ornat, atque, ubi minime credas, eminet et excellit."

DIALOG. DE ORAT. CAP. XXXII.

TITLE I.

THE GEOGRAPHHY, AND POLITICAL, CIVIL, AND NATURAL HISTORY OF THE UNITED STATES OF AMERICA.

1. Marshall's Life of Washington.
2. Williams's History of the state of Vermont.
3. Sullivan's History of the District of Maine.
4. Belknap's History of New-Hampshire.
5. Hutchinson's History of Massachusetts, from the first settlement in 1628 to 1750.
6. Minot's Continuation of the History of Massachusetts.
7. Trumbull's Civil and Ecclesiastical History of Connecticut.

8. Smith's History of the Province of New-York.
9. Smith's History of New-Jersey.
10. Proud's History of Pennsylvania.
11. Bozman's Sketch of the History of Maryland.
12. Stith's History of Virginia.
13. Jefferson's Notes on Virginia.
14. Ramsay's History of South Carolina from 1670 to 1808.
15. McCall's History of Georgia.

E. 16. Brackenridge's Views of Louisiana.
E. 17. Coxe's View of the United States.
E. 18. Sheffield on American Commerce.
E. 19. Brissot and Claviere on the Commerce of America with Europe.

(*Note.*) The motto which we have affixed to this division will receive forcible demonstration from every scholar's experience, who has bestowed the slightest attention on the operations and progress of his own mind. Perhaps the acquisition of the widest and most diversified knowledge is less grateful, even to the most inquisitive understanding, than the intellectual activity, acuteness, and energy which are generated under the discipline, which every seeker of knowledge necessarily acquires. Thus the greatest learning may be deemed most valuable, because it augments proportionally the capacity to learn. The moral sciences, besides, are so closely allied, that it is difficult to se-

lect one on which illustration cannot be reflected from others. A liberal mind, however zealously devoted to a particular profession or pursuit, discovers its zeal, not by confining its view to that alone, but by collecting from all the range of science and art whatever may perfect and embellish it; as a true lover of his country exhibits his attachment, not by wedding himself to its soil, but by exploring and importing the improvements of others. To every professional character it is desirable, moreover, to be as little infected, as possible, with the pedantry of his science; to mingle the ideas constantly forced and engraved on his mind by his particular pursuits, with those derived from intercourse with other men and other books. The lawyer, whose vocation brings him more frequently into the current of the world, than any of the other liberal professions, it particularly behoves to be uninfected with those prejudices and peculiarities of mind, those eccentricities of manner and expression, which arise from men's particular avocations, which colour, and too often circumscribe the operations of their talents, and which lord Bacon quaintly, but forcibly denominates the "*idola tribus.*"

This consideration, which will seem trivial only to those who have not duly appreciated the repulsion produced by peculiarity either of thinking or manner, is still more important in America, where the lawyer possesses, perhaps, a more than ordinary share of consideration, and influence. And as it is from the *students* of this profession, at least, if not from its practitioners, that the nation draws the largest portion of its legislators and statesmen, there is an obvious reason for somewhat enlarging the circuit of the law-stu-

dent's education, arising from this probable combination of the politician with the counsellor.

While we thus consider the sciences and the arts as a family connected by very intimate ties, there are some of these between which the relation is more extensive and obvious. The physician, the divine, and the lawyer, while they will aim, if they possessa liberal understanding, to extend their conquests into every region of letters, must, in their own defence, make very solid acquisitions in some, between which and their own particular province there exists a closer connexion. It is, we think, the felicity of the jurisprudent, that the collateral topicks to which the study of his profession compels his attention, are more the topicks of common life than those auxiliary subjects which engage the divine and the physician; and better fit him for the business and converse of men.

His very title imports an extensive acquaintance with the nature and principles of men's mutual obligations; and to discern and apply these under all the modifications of circumstances, demands both extraordinary acuteness of mind, and enlarged acquaintance with human affairs and human passions. The politician, whose pursuits are nearest allied to his own, requires less, perhaps, of this subtilty of intellect, and this knowledge of men; as the points with which he is concerned are more palpable to the common sense of mankind; and as effects may be computed with more certainty, when they are to be wrought by communities, who must be swayed by general interests, than when they depend on the infinite caprices of individual passion and understanding. A lawyer must be a philosopher to detect, a logician to reason, a poet to de-

scribe, and an orator to persuade; and if it be objected that this resembles too much the extravagance of Cicero, who unites in his "Orator" every feature of a various and perfect genius, this general disposition to combine in our own profession the excellencies and the talents which are requisite in others, may tend at least to prove what we have before declared to be our conviction,—the connexion of all the branches of science, and the necessity, if we are emulous of distinction in our own pursuits, of not being entirely ignorant of those of others.

It is not for us to designate the methods of attaining this general knowledge, "this armour and accomplishment at all points;" we are only to designate such subjects as have a more immediate connexion with law, and, consequently, which possess a particular claim to the attention of the American law student: they will be found under the preceding and three following titles. We presume and hope, that General History and Biography, Belles-Lettres and General Morals, and all that can improve and adorn the mind, will receive from the student some attention; but the History, civil, political, and natural, of our own country, *Legal* Biography, the Eloquence and Oratory of the *Bar*, and the particular duties and conduct in life of the lawyer, we are unwilling to leave to presumption and hope. These subjects, therefore, are embraced in our Course.

The student will recollect that, in our Introduction, we have recommended that the title Political Economy, and the several *Auxiliary Subjects* should be studied at the same time with those of the other titles, that is, throughout the whole Course. In this way

these auxiliary subjects may be rendered highly entertaining and relaxing, as well as improving.

We do not deem it necessary to remark on the merits or defects of the books recommended in this title. American history is a rich and interesting topick: as yet, however, we have not much choice in books on this subject: they all deserve the student's attention. Marshall's Life of Washington, Williams's History of Vermont, Belknap's History of New-Hampshire, Trumbull's History of Connecticut, and Ramsay's History of South-Carolina, merit a very earnest and studious perusal.

AUXILIARY SUBJECTS.

TITLE II.

FORENSICK ELOQUENCE AND ORATORY.

1. Dr. Blair's Lectures on Rhetorick and Belles-Lettres; particular attention to be paid to the following chapters.
   Lecture xxv. "Eloquence, or Publick Speaking—History of Eloquence—Grecian Eloquence—Demosthenes."

Lecture xxvi. "History of Eloquence continued—Roman Eloquence—Cicero—Modern Eloquence."

Lecture xxvii. "Different kinds of Publick Speaking—Eloquence of Popular Assemblies—Extracts from Demosthenes."

Lecture xxviii. "Eloquence of the Bar—Analysis of Cicero's Oration for Cluentius."

Lecture xxxi. "Conduct of a discourse in all its parts—Introduction—Division—Narration, and Explication."

Lecture xxxii. "Conduct of a discourse—The Argumentative Part—The Pathetick Part—The Peroration."

Lecture xxxiii. "Pronunciation or Delivery."

Lecture xxxiv. "Means of Improving in Eloquence."

2. On the Eloquence of the Bar. Vid. 2 vol. Rollin's Belles-Lettres.

3. Quinctilian's Institutes of the Orator. Patsall's Translation.*

E. 4. Lawson's Lectures on Oratory.

5. The Abbé Maury's Principles of Eloquence, adapted to the Pulpit and the Bar.

* Vid. Note on the 4th Title of Auxiliary Subjects.

6. Campbell's Philosophy of Rhetorick.
7. The Orations of Lysias and Isocrates. Gillies's translation.
8. The Orations of Demosthenes. Leland's translation.
9. Guthrie's Select Orations of Cicero, translated.
10. White's translation of the Orations of Cicero against Verres.

E. 11. Chapman's Specimens of Forensick Eloquence.

E. 12. Campbell's Continuation of Chapman's Specimens.

13. Lord Erskine's Speeches. New-York American edition in two volumes.

E. 14. Mirabeau's Speeches in the Constituent Assembly.

(*Note.*) ON THE ELOQUENCE OF THE BAR. Under this head we have mentioned the most popular and useful works on rhetorick, and some of the best collections of speeches.

The student requires not to be reminded by any remarks of ours, of the importance of this branch of his legal accomplishments; and for instruction in the arts of rhetorick, and for models of oratory, we refer him to the works we have selected.

The only general maxim which can be proposed to him who is emulous of a clear, correct, and felicitous elocution, is to render himself familiar with the best

models of English style, both in prose and verse. Though the eloquence of the bar is comparatively severe and unornate, and the advocate seldom has occasion for poetical imagery, he may often require that comprehension of expression peculiar to the poet; and though his topicks are for the most part technical, they may occasionally derive illustration from all the varieties of literature.

Nothing is so often wearisome to the auditors of the advocate, as the long citations he is under the necessity of making from legal authorities, except it be the drawling and careless manner in which they are read. The reading of an authority, if not the signal for inattention, especially to juries, is at least a forewarning of fatigue. Policy, therefore, might dictate more attention to this matter. Lord Mansfield, it is said, possessed the art, by the agreeableness of his reading, to render even a *statute* interesting.

The speeches of lord Erskine are perhaps the best models of bar eloquence we possess: equally remote from calm frigidity, and frothy declamation, they appear to us to form a very happy combination of that good sense which is the strong feature of English literature, and that powerful enthusiasm in which it is perhaps deficient. Even in his boldest flights there is a controlling propriety, which disposes us to believe that he has rather constrained than exaggerated his feelings, and which, it is evident, do not on that account affect us the less. We are disposed to a stronger recommendation of these speeches, from believing that the taste of our nation, (if there be not a deeper and more permament cause to be found in its character,) disposes us to an imitation of the florid eloquence

of the Irish school, rather than the chaste and tempered models of which we have been speaking.

If there is any great work in English literature, to which we should direct the particular attention of such as are studious of their style, it is *Hume's History*; the composition of which, however carefully elaborated, has not more elegance than ease, and holds, to our view, a desirable medium between the old, natural English style, and the more artificial, stately, antithetical, and balanced manner of modern days. And while on this topick, we would suggest to the student, belonging, as he does, to a profession which forms so large a portion of the *literati* of the country, the propriety of a strict adherence to the *established standards* of the English language, and of rejecting the numerous innovations which, while they subserve a temporary and inferiour convenience, may issue in worse effects than drawing on us the sneers of transatlantick criticks.

AUXILIARY SUBJECTS.

TITLE III.

LEGAL BIOGRAPHY AND BIBLIOGRAPHY.

It is a useful as well as pleasing interest which we feel in the lives of distinguished personages, especially of such as have been eminent in our own particular pursuits. We believe most ambitious minds, in the first pantings after distinction, have proposed to themselves some illustrious character as a model, whose sentiments they have imbibed, whose maxims they have practised, whose very errours they have copied, with a thousand times more ardour than can ever be communicated by precept. Something of this we feel in reading of every eminent man: we rise from our book with more love for knowledge, more respect for genius, more resolution to be diligent, more confidence in the success of exertion: it is scarcely possible to contemplate such characters as lord Hale and sir William Jones, without a more zealous esteem of probity, and a consoling conviction of the prodigies which may be wrought by method and application; emotions similar to those we feel in remembering the heroes of classical literature on classical ground; and which prompted the great Roman orator and lawyer, when

he declares the enthusiasm with which he called to mind the sages and orators of antiquity, amidst the streets and groves of their native city.*

If this sort of enthusiasm were its only effect, legal biography might claim a place in the studies of law students, into whose pursuits despondence and fatigue are so apt to obtrude themselves. It appears too a very natural curiosity, to be inquisitive into the history, fortunes, reputation, and character of those who have imparted lustre to the profession of law, whose decisions or opinions have been handed down as worthy of a place in the body of the law, and in whose names we have a kind of interest and acquaintance, from their having so long been associated with our daily studies; besides that their history, connected as it sometimes is with the history of their own times, may shed light on the legal character, notions, and revolutions of their age. It may not therefore be unacceptable to add a list of such eminent lawyers &c. as are worthy of a portion of the student's attention: by this we by no means desire the student to search after the voluminous biographies of personages, whose lives can be usefully summed up in the extent of a few pages. In this department of his studies, the student must generally be content with biographical sketches or notices, which, if well written, will often be found to contain all that is really useful in biography. Of most of the persons contained in the following lists, such works as Rees's Cyclopædia and Lempriere's Universal Biography, will be found to contain most of what is useful or entertaining to be

* Cic. De Legg.

known. The life of lord Hale, by Burnet, of lord Mansfield, by Holliday, of Francis North, baron of Guilford, and Dodson's life of sir Michael Foster, should be read by every law student. In Mr. Hall's Law Journal the student will find a number of excellent biographical sketches.

On the subject of *Legal Bibliography* it is sufficient to remark, that a zeal for knowledge is sure to make us anxious and particular as to the sources whence we are to derive it. As the mind is enlarged by knowledge, it grows fastidious in its selection, and is content only when it is supplied with the choicest nutriment. On almost every topick there has been much bad, and some good writing: some authors convey more instruction on a subject, in one page, than others in a dozen: selection therefore is of great moment: but the student should endeavour to make himself previously acquainted with the best productions on each subject, and likewise the best editions of such works; and not be content with chastening his taste, by reading every thing which is placed before him. In this Course we have endeavoured to make this selection for the student; the subject, therefore, of Legal Bibliography can present but few difficulties.—New works are daily issuing from the press, and new editions of existing works, (often much improved,) are frequently published; of all which works the student must not be disregardful: with but little expense of labour or time, he can accurately inform himself of their character.

AMERICAN LEGAL BIBLIOGRAPHY.

On the subject of American legal bibliography, it may perhaps be well to bestow some attention. In our twelfth note on the third title of this Course, we have said something on the progress of American jurisprudence, and particularly of the growth of the science as evidenced by the numerous excellent *judicial reports*. In addition, we deem it unnecessary to do more than to *enumerate* the American books of reports to the present time.

A LIST OF AMERICAN BOOKS OF REPORTS.

Vermont.

Chipman's Reports. 1 vol.

Tyler's Reports. From Jan. term 1800 to May term 1803. 2 vols.

Massachusetts.

Tyng's Reports. (1st vol. by Williams.) From Sept. 1804, to June 1805; other vols. from March 1806, to ——. 10 vols.

Gallison's Reports. From May term 1812 to Nov. term 1813, both inclusive. 1 vol.

Selfridge's Trial for killing Austin. Nov. 1806. 1 vol.

Connecticut.

Kirby's Reports. From 1785 to May 1788. 1 vol.

Root's Reports. From July 1789 to Jan. 1798. 2 vols.

Day's Reports. From June 1802 to June 1807. 2 vols.

New-York.

Caine's Term Reports. From May 1803 to Nov. 1805. 3 vols.

Judicial Opinions in Mayor's Court. 1 vol.

Caine's Cases in Errour. Feb. 1801. 1804. 1805. 2 vols.

Coleman and Caine's Cases. From April 1794 to Nov. 1805, both inclusive. 1 vol.

Johnson's Cases. From Jan. 1799 to Jan. 1803. 3 vols.

Johnson's Reports. From Feb. 1806 to ——. 11 vols.

Sampson's Report of the Catholick Question. March 1813. 1 vol.

Sampson's Report of the Case of the Journeymen Cordwainers. Dec. 1809. 1 vol.

New-Jersey.

Pennington's Reports. From May term 1806 to Feb. term 1808. 1 vol.

Coxe's Reports. From April term 1790 to Nov. term 1795, both inclusive. 1 vol.

Pennsylvania.

Dallas's Reports. From 1757 to 1806. 4 vols.

Addison's Reports. From Sep. term 1791 to March term 1799. 1 vol.

Binney's Reports. From 1799 to ——. 7 vols.

Brown's Reports. From 1806 to 1814. 2 vols.

Peters's Admiralty Decisions. From 1792 to 1807. 2 vols.

Smith's Trial for murder of Carson. May 1816. 1 vol.

Maryland.

Harris and McHenry's Reports. From 1658 to May 1797. 3 vols.

Hall's American Law Journal. From Jan. 1808 to Jan. 1817. 5 vols.

Virginia.

Call's Reports. From 1797 to 1803. 3 vols.

Washington's Reports. From fall term 1790 to fall term 1796. 2 vols.

Henning and Munford's Reports. From Oct. 1806 to Oct. 1809. 4 vols.

Munford's Reports. From March 1810 to Oct. 1810. 1 vol.

Cases in the General Court of Virginia. From 1789 to 1814. 1 vol.

North Carolina.

Cammeron and Norwood's Reports. From June term 1800 to June term 1804. 1 vol.

Taylor's Reports. From March 1799 to 1802. 1 vol.

Haywood's Reports. From Oct. 1789 to 1798. 1 vol.

South Carolina.

Bay's Reports. From 1783 to 1798, both inclusive, and from 1796 to 1802, both inclusive. 2 vols.

Bee's Admiralty Reports. From 1792 to 1808. 1 vol.

Kentucky.

Hughe's Reports. 1 vol.

Hardin's Reports, From spring term 1805 to spring term 1808 inclusive. 1 vol.

Tennessee.

Overton's Reports. From Nov. 1791 to Nov. 1812. 1 vol.

Louisiana.

Martin's Orleans Reports. From fall term 1809 to fall term 1810. 1 vol.

Cranch's Reports in the Supreme Court of the United States. From Aug. 1801 to Feb. term 1814. 8 vols.

A LIST OF WRITERS ON THE CIVIL LAW, THE LAW OF NATIONS &c. WHOSE BIOGRAPHIES MERIT ATTENTION.

Aguesseau, Henry Francis d'
Augustin, Anthony
Abreu, Chevalier de
Aitzema, Leovan
Bynkershoek, Cornelius Van
Baldus, de Ubaldis
Baldwin, Francis
Berth, Peter
Barrere
Bolanos, Juan de Hevia
Bellus, Petrinus
Buddæus, John Francis
Boxhorne, Marcus Zuerius
Cocceius, Henry
Cocceius, Samuel
Cujacius, James
Contius
Crusius, James Andrew
Cunæus, Gulielmus
Cleirac, Stephen
Cynus
Casaregis
Duck, Arthur
Docimius or Domitius
Dumont, George
Dumoulin
Emerigon, Balthazard Marie
Freer, Marquardus
Fabrot, Charles Annibal
Grotius, Hugo
Galliani Ferdinando
Godefroi, James
Godefroi, Theodore
Godefroi, Denys
Granswinkle, Theodore
Gravina, John Vincent
Gronovius, John Frederick
Gentilis, Albericus
Gama, Antonio de
Gothofredus, Dennis,
Gibbalinus
Habreu, Chevalier de
Huber, Ulric
Hubner
Heineccius, John Gotleib
Hobbes, Thomas
Henkel, Balthazar
Imola, Johannes de
Kurike
Koch
Leicherri, George James
Loccenius, John
Labeo, Antistius
Luenclavius, John
Lampridi
Leibnitz, William Godfrey
Luzac, Elie
Morisot, Claude Bartholomew
Mornac, Anthony
Monochius, James
Marquardus, Johannes
Noodt, Gerardus
Ompteda Henry Lewis, Baron Von
Puffendorf, Samuel
Postlethwayte, Malachi

Papinian
Paulus
Proculus
Pothier
Pacius, Julius
Pontanus, Isaac
Peckius, Peter
Perezius, Anthony
Roccus, Francis
Ranucci
Selden, John
Strauchius, John
Straccha, Benvenuto
Santerna, Peter
Struvius
Stypmanus
Salmasius
Schelling, Pierre Vander
Sarpi, Peter Paul
Targa
Ulpian, Domitius
Voetius, John
Voetius, Paul
Valin, René Josué
Vinnius, Arnold
Verwer, Adrian
Vattel
Wolfius, John
Zentgravius, John Joachim
Zazius, Hulric
Zouch, Richard
Zypæus, Francis

Note. We refer the student, for *concise* biographical and bibliographical information of the civilians and publicists above enumerated, to Struvius's *Bibliotheca juris selecta;* Ferriere's History of the Roman Law, chapter xxx; Duponceau's Translation of Bynkershoek's First Book of Questiones Juris Publici; Lempriere's Universal Biography; Evans's Translation of Pothier on Obligations, and Johnson's Translation of Azuni on Maritime Law.

He will also find in many instances, appended to the works of those writers, some notice of their lives and productions. The Encyclopædia Britannica; Rees's Cyclopædia; Bayle's Dictionary, and the Biographical Works of Fabronius, D'Alembert, Klein, Adams, Gezelius, &c. may be consulted with the certainty of gaining more extensive, pleasing, and useful information.

A LIST OF THE MOST EMINENT LEGAL CHARACTERS OF ENGLAND; WHOSE BIOGRAPHIES MERIT ATTENTION.

Alvanley, Richard Lord, C. J. C. B.*
Anderson, Edmund, C. J. C. B.
Bacon, Sir Francis
Bracton, Henry de
Britton, John
Bridgman, Sir Orlando, C. J. C. B.
Billinge, Thomas, C. J. B. R.†
Bromely, Thomas, C. J. B. R.
Babington, William, C. J. C. B.
Brian, Thomas, C. J. C. B.
Brundnell, Robert, C. J. C. B.
Baldwin, John, C. J. C. B.
Brooke, Robert, C. J. C. B.
Browne, Anthony, C. J. C. B.
Banks, John, C. J. C. B.
Bedingfield, Henry, C. J. C. B.
Brampstone, Sir John, C. J. B. R.
Blackstone, Sir William
Buller, Sir Francis
Coke, Sir Edward, C. J. B. R.
Coventry, Thomas Lord
Comyns, Samuel
Croke, Sir George
Cheney, William, C. J. B. R.
Cavendish, John, C. J. B. R.
Cottesmore, John, C. J. C. B.
Clopton, Walter, C. J. B. R.
Chomley, Roger, C. J. B. R.
Crew, Sir Ralph, C. J. B. R.
Catline, Robert, C. J. B. R.
Doddridge, Sir John
Dyer, Sir James, C. J. C. B.
Danby, Robert, C. J. C. B.
De Grey, William, C. J. C. B.
Ellesmere, Lord Chancellor
Eldon, John Lord, C. J. C. B.
Eyre, Robert, C. J. C. B.
Erneley, John, C. J. C. B.
Ellenborough, Edward Lord, C. J. B. R.
Fortescue, Sir John, C. J. B. R. Lord Chancellor
Finch, Sir Heneage
Foster, Sir Michael
Fineux, John, C. J. B. R.
Fitzjames, John, C. J. B. R.
Fleming, Thomas, C. J. B. R.
Foster, Sir Robert, C. J. B. R.
Frowicke, Thomas, C. J. C. B.
Finch, John, C. J. C. B.
Godolphin, Sidney
Grimestone, Sir Harbottle
Glanville, Renulf de
Gilbert, Sir Jeffrey, Ld. Ch. Bar. of the Ex.
Gawdy, Francis, C. J. C. B.
Greene, Henry, C. J. B. R.
Gascoigne, William, C. J. B. R.
Hardwicke, Philip Yorke, E. of
Hobart, Henry, C. J. C. B.
Heath, Robert, C. J. C. B.
Herbert, Edward, C. J. C. B.
Hankford, William, C. J. C. B.
Hussey, William, C. J. B. R.
Hide, Sir Nicholas, C. J. B. R.
Hyde, Sir Robert, C. J. B. R.

* Chief Justice of the Court of Common Pleas. † Chief Justice of the Court of King's Bench.

Hale, Sir Matthew, C. J. B. R.
Holt, Sir John, C. J. B. R.
Jones, Thomas, C. J. C. B.
Jones, Sir William
Jenkins, Sir Leoline
Juyn, John, C. J. B. R.
Jeffreys, Sir George, C. J. B. R.
Knyvet, John, C. J. B. R.
Kelynge, Sir John, C. J. B. R.
Kenyon, Lloyd Ld. C. J. B. R.
King, Peter Lord, C. J. C. B.
Lister, Richard, C. J. B. R.
Ley, James, C. J. B. R.
Lee, Sir William, C. J. B. R.
Littleton, Edward, C. J. C. B.
Loughborough, Alexander Ld. Ld. Chan.
Littleton, Sir Thomas
Markham, John, C. J. B. R.
Montague, Edmund, C. J. B. R.
Montague, Henry, C. J. B. R.
Maynard, Sergeant
Morgan, Richard, C. J. C. B.
Mansfield, William, Earl of C. J. B. R.
Mansfield, Sir James, C. J. C. B.
North, Francis, C. J. C. B.
Nottingham, Lord Chancellor
Norton, Richard, C. J. C. B.
Newton, Richard, C. J. C. B.
Norwiche, Robert, C. J. C. B.
Portman, William, C. J. B. R.
Popham, Sir John, C. J. B. R.
Prisot, John, C. J. C. B.
Pemberton, Sir Francis, C. J. B. R.
Parker, Sir Thomas, C. J. B. R.
Pratt, Sir John, C. J. B. R.
Pollexfin, Henry, C. J. C. B.
Pratt, Charles, C. J. C. B. (Afterwards Lord Camden.)
Plowden, Edmund
Prinne, William
Rolle, Sir Henry
Rede, Robert, C. J. C. B.
Reeve, Thomas, C. J. C. B.
Richardson, Thomas, C. J. B. R.
Raynsford, Sir Richard, C. J. B. R.
Raymond, Sir Robert, C. J. B. R. (Afterwards Lord Raymond.)
Ryder, Sir Dudley, C. J. B. R.
Spelman, Sir Henry
St. German, Christopher
Saunders, Sir Edmund, C. J. B. R.
Scroggs, Sir William, C. J. B. R.
Seaton, Thomas, C. J. B. R.
Shareshull, William
Saunders, Edward, C. J. B. R.
Thornton, Gilbert de
Talbot, Lord Charles
Thorpe, William, C. J. B. R.
Tresilian, Robert, C. J. B.
Thirninge, William, C. J. C. B.
Treby, George, C. J. C. B.
Trevor, Ld. Thomas, C. J. C. B.
Thurlow, Edward Lord
Vaughan, John, C. J. C. B.
Viner, Charles
Wray, Christopher, C. J. B. R.
Willes, John, C. J. C. B.
Wilmot, John Eardley, C. J. C. B.
Wright, Sir Edward, C. J. B. R.

CHIEF JUSTICES OF THE COURT OF KING'S BENCH,

From 22d Edward III. to the present time.

William Thorpe . . .	Mich. Ter.	22 Edward	3.
Thomas Seaton		32 Ed.	3.
William Shareshull		34 Ed.	3.
Henry Greene		38 Ed.	3.
John Knyvet		43 Ed.	3.
John Cavendish . . .	East. Ter.	50 Ed.	3.
Robert Tresilian		5 Richard	2.
Walter Clopton		19 Rich.	2.
William Gascoigne . .	Mich. Ter.	6 Henry	4.
William Hankford . .	East. Ter.	3 Hen.	5.
William Cheyney		2 Hen.	6.
John Juyn		17 Hen.	6.
John Fortescue . . .	Mich. Ter.	39 Hen.	6.
John Markham . . .	Trin. Ter.	1 Edward	4.
Thomas Billinge . ,	Hil. Ter.	19 Ed.	4.
William Hussey . . .	Trin Ter.	1 Richard	3.
John Fineux . . .	Mich. Ter.	11 Henry	7.
John Fitzjames . . .	Hil. Ter.	17 Hen.	7.
Edmund Montague . .	Hil. Ter.	30 Henry	8.
Richard Lister . . .	November.	38 Hen.	8.
Roger Chomeley . . .	March.	6 Edward	6.
Thomas Bromeley . .	Mich. Ter.	1 Mary.	
William Portman		Mary.	
Edward Saunders		Mary.	
Robert Catlyne . . .	Hil. Ter.	1 Elizabeth.	
Christopher Wray . .	Mich. Ter.	16 Eliz.	
Sir John Popham . . .	Trin. Ter.	34 Eliz.	
Thomas Fleming . .	Trin. Ter.	5 James	1.

Edward Coke . . .	Mich. Ter.	11 James	1.
Henry Montague		14 Ja.	1.
James Ley	Hil. Ter.	18 Ja.	1.
Sir Ralph Crew		22 Ja.	1.
Sir Nicholas Hide . .	Mich. Ter.	2 Charles	1.
Thomas Richardson		7 Ch.	1.
Sir John Brampston .	Eas. Ter.	11 Ch.	1.
Sir Robert Heath . . .	Mich. Ter.	19 Ch.	1.
Sir Robert Foster		12 Charles	2.
Sir Robert Hide		15 Ch.	2.
Sir John Kelynge		17 Ch.	2.
Sir Matthew Hale . .	Trin. Ter.	23 Ch.	2.
Sir Richard Raynsford	Eas. Ter.	28 Ch.	2.
Sir William Scroggs .	Tri. Ter.	30 Ch.	2.
Sir Francis Pemberton .	Eas. Ter.	33 Ch.	2.
Sir Edmund Saunders .	Hil. Ter.	34 Ch.	2.
Sir George Jefferys . .	Mich. Ter.	35 Ch.	2.
Sir Edward Herbert		1 James	2.
Sir Edward Wright . .	Eas. Ter.	3 Ja.	2.
Sir John Holt	April.	1689	
Sir Thomas Parker . .	March.	1709	
Sir John Pratt	May.	1718	
Lord Raymond . . .	Feb.	1724	
Philip York, ld. Hardwicke	Nov.	1733	
Sir William Lee . . .	June.	1737	
Sir Dudley Ryder . .	May.	1754	
William Murray, lord Mansfield, afterwards earl of Mansfield	Nov.	1756	
Lloyd, lord Kenyon, .	June.	1788	
Edward, lord Ellenborough	April.	1802	

CHIEF JUSTICES OF THE COURT OF COMMON PLEAS,

From 1 *of Henry IV. to the present time.*

William Thirninge . .	Mich. Ter.	1 Henry	4.
Richard Norton . .	Trin. Ter.	1 Henry	5.
William Babington . .	Eas. Ter.	1 Henry	6.
John Juyn		14 Hen.	6.
John Cottesmore . . .	Hil. Ter.	17 Hen.	6.
Richard Newton . . .	Mich. Ter.	18 Hen.	6.
John Prisot	Hil. Ter.	27 Hen.	6.
Robert Danby . . .	Trin. Ter.	1 Edward	4.
Thomas Brian		11 Ed.	4.
Thomas Wood		16 Henry	7.
Thomas Frowicke		18 Hen.	7.
Robert Rede	Hil. Ter.	22 Hen.	7.
John Erneley		10 Henry	8.
Robert Brudnell . . .	Eas. Ter.	12 Hen.	8.
Robert Norwiche		23 Hen.	8.
John Baldwin		27 Hen.	8.
Edward Montague . .	Mich. Ter.	37 Hen.	8.
Richard Morgan		1 Mary.	
Robert Brooke		2 Ph. & Ma.	
Anthony Brown		6 Ph. & Ma.	
James Dyer	Hil. Ter.	1 Elizabeth.	
Edmund Anderson . .	Eas. Ter.	24 Eliz.	
Francis Gawdy . . .	Mich. Ter.	3 James	1.
Edward Coke . . .	Trin. Ter.	4 Ja.	1.
Henry Hobart . . .	Mich. Ter.	11 Ja.	1.
Thomas Richardson		2 Charles	1.
Robert Heath		7 Ch.	1.
John Finch		10 Ch.	1.

Edward Littleton . .	Hil. Ter.	15 Charles 1.
John Banks	16 Ch.	1.
Orlando Bridgeman . .	Mich. Ter.	12 Charles 2.
John Vaughan	Trin. Ter.	20 Ch. 2.
Francis North . . .	Hil. Ter.	26 Ch. 2.
Francis Pemberton	34 Ch.	2.
Thomas Jones	35 Ch.	2.
Henry Bedingfield . .	Eas. Ter.	2 James 2.
Edward Herbert	3 Ja.	2.
Henry Pollexfin . . .	May.	1689
George Treby	April.	1692
Thomas Lord Trevor . .	July.	1701
Peter King (afterwards Lord King)	Oct.	1714
Robert Eyre	June.	1725
Thomas Reeve . . .	Jan.	1735
John Willes	Jan.	1736
Charles Pratt (afterwards Lord Camden)	Hil. Ter.	1762
John Eardley Wilmot		1762
William De Grey . . .	Jan.	1771
Alex'r Lord Loughborough	June.	1780
James Eyre	Feb.	1793
John Lord Eldon	Nov.	1799
Richard Lord Alvanley .	June.	1801
Sir James Mansfield . . .	May.	1804

A LIST OF THE LORD CHANCELLORS, LORD KEEPERS, AND LORDS COMMISSIONERS OF THE GREAT SEAL OF GREAT BRITAIN, WITH THE DATES OF THEIR RESPECTIVE APPOINTMENTS,

From the year 1530.

1530. Oct. 25.	Sir Thomas More	Lord Chancellor.
1533. May 20.	Sir Thomas Audley	Lord Keeper.
	afterwards	Lord Chancellor.
1545. May 30.	Earl of Southampton	Lord Chancellor.
1547. June 29.	Lord St. John, afterwards Marquis of Winton	Lord Keeper.
1547. Nov. 30.	Sir Richard Rich	Lord Chancellor.
1551. June 19.	Richard Goodrich, Bishop of Ely	Lord Keeper.
1553. Sept. 21.	Stephen Gardiner, Bishop of Winchester	Lord Keeper.
1555. Jan. 1.	Nicholas Heath, Archbishop of York	Lord Chancellor.
1559. April 4.	Sir Nicholas Bacon	Lord Keeper.
1579. April 25.	Thomas Bromley	Lord Chancellor.
1587. April 29.	Sir Christopher Hatton	Lord Chancellor.
1592. May 29.	Sir John Pickering	Lord Keeper.
1596.	Lord Treasurer Burleigh, and others	Lords Commiss'rs.
1596. May 6.	Sir Thomas Egerton, M. R.	Lord Keeper.
	afterwards Lord Elesmere	Lord Chancellor.
1616. Mar. 11.	Sir Francis Bacon	Lord Keeper.
	afterwards Lord Verulam	Lord Chancellor.
1621. May 3.	Lord Mandeville Duke of Richmond Viscount Pembroke Sir Julius Cæsar, M. R.	Lords Commiss'rs.
1621. July 10.	John Williams, Bishop of Lincoln	Lord Keeper.
1625. Nov. 1.	Sir Thomas Coventry afterwards Lord Coventry	Lord Keeper.

1639. Jan. 23.	Sir Thomas Finch - - -	Lord Keeper.
1640. Jan. 23.	Sir Edward Littleton - -	Lord Keeper.
1645. Aug. 30.	Sir Richard Lane - - -	Lord Keeper.
1653. 5 Car. II.	Sir Edward Herbert - -	Lord Keeper.
1657. Jan. 13.	Sir Edward Hyde afterwards Lord Clarendon - - -	Lord Chancellor.
1667. Aug. 13.	Sir Orlando Bridgman - -	Lord Keeper.
1672. Nov.	Earl of Shaftesbury - - -	Lord Chancellor.
1673. Nov. 17.	Sir Heneage Finch - - afterwards Lord Nottingham - -	Lord Keeper. Lord Chancellor.
1682. Dec. 13.	Sir Francis North afterwards Earl of Guildford - - -	Lord Keeper.
1685. Oct. 28.	George Lord Jefferys - -	Lord Chancellor.
1688.	Sir John Maynard - - Anthony Keck - - - Serjeant Rawlinson - -	Lords Commiss'rs.
1690. June.	Sir John Trevor - - - Sir William Rawlinson - Sir George Hutchins -	Lords Commiss'rs.
1693. March.	Sir John Somers - - - afterwards Lord Somers - - - -	Lord Keeper. Lord Chancellor.
1700.	The Three Chiefs - - -	Lords Commiss'rs.
1700.	Sir Nathan Wright - -	Lord Keeper.
1705. Oct. 23.	William Cowper, Esquire afterwards Lord Cowper - - - -	Lord Chancellor.
1711. Oct. 19.	Sir Simon Harcourt - - afterwards Lord Harcourt - - -	Lord Keeper. Lord Chancellor.
1714.	Earl Cowper - - - -	Lord Chancellor.
1718. May 12.	Lord Parker afterwards Earl of Macclesfield - -	Lord Chancellor.
1725. Jan.	Sir Joseph Jekyl, M. R. - Justice Raymond - - - Baron Gilbert - - -	Lords Commiss'rs.
1725. June 3.	Lord King - - - - -	Lord Chancellor.
1733. Nov. 29.	Lord Talbot - - - -	Lord Chancellor.

1736. Feb. 21.	Lord Hardwicke afterwards Earl Hardwicke - - -	Lord Chancellor.
1756. Nov. 23.	Sir John Willes Ld. Chief Justice, C. P. - - - - Justice Wilmot - - - Mr. Baron Smith - -	Lords Commiss'rs.
	Sir Robert Henley - - afterwards Earl of Northington - -	Lord Keeper. Lord Chancellor.
1755. July 16.	Pratt, Lord Camden - -	Lord Chancellor.
1769.	Sir Sidney Stafford Smith, Chief Baron of Exchcq. Justice Bathurst - - Justice Aston - - -	Lords Commiss'rs.
1771. Jan. 22.	Bathurst, Lord Apsley afterwards Earl Bathurst - - - -	Lord Chancellor.
1778. June 3.	Thurlow, Lord Thurlow	Lord Chancellor.
1783. April 9.	Lord Loughborough, Chief Justice, C. P. - - - Sir William Ashhurst Mr. Baron Hotham -	Lords Commiss'rs.
1783. Dec. 23.	Lord Thurlow again - - and resigned the Seals 15th June 1792.	Lord Chancellor.
1792. June 15.	Lord Chief Baron Eyre Sir William Ashhurst, one of the Judges of K. B. and Sir John Wilson, one of the Judges of the Common Pleas - - - - -	Lords Commiss'rs.
1793. Jan. 28.	Lord Loughborough, C. J. C. Pleas - - - - -	Lord Chancellor.
1801. April 14.	Lord Eldon, C.J. C. Pleas	Lord Chancellor

AMERICAN LEGAL BIOGRAPHY.

It is natural that admiration of the growth of legal science in this country, should be accompanied with a desire of some acquaintance with its cultivators. If useful discoveries and inventions, increase of learning, the spread of religion, and the general amelioration of society, concern us as abstract facts, they acquire additional interest when associated with a knowledge of the individuals to whom we are indebted for their introduction: biography then must be a *pleasing* study; but it is likewise eminently *useful:* it is history teaching by example. The means of improving various kinds of talent, the success of persevering industry directed by integrity, the deference, honours, and influence accorded to enlightened genius; the arts of rising in life, are all forcibly and advantageously exemplified, stimulating our ambition, and guiding our footsteps.

Law is a growth peculiarly adapted to the American soil. It is, perhaps, not a rash assertion that no country for the same population, ever produced in the space of forty years, as many deeply learned and scientifick lawyers. The bar of every state in the union, has been distinguished by its legal Hercules. Some of these luminaries have departed from us, leaving the brilliance of their fame for our contemplation; others, from their meridian height, now enlighten and warm us. Let the youths of the present day follow their paths, and as the setting horizon receives those now on the ascendant, may the culmination of those emerging from the dawn, be at least as splendid as that to which

they have succeeded. The lives of such eminent American jurists as have been published, will no doubt be consulted with a national and professional interest: it were invidious to designate the many profound and accomplished lawyers who continue to adorn and enlighten the bars of the respective states, as the student, in the progress of his studies, will become sufficiently familiar with their names.

AUXILIARY SUBJECTS.

TITLE IV.

PROFESSIONAL DEPORTMENT.

[Under the preceding divisions of our work, we have attempted to arrange for the student a choice yet extensive course of professional reading. Amongst the numerous volumes recommended, (few indeed in comparison with the multifarious tomes of the law library,) we make no doubt of having neglected some, with whose merit our reading has not made us acquainted, while of others we may have spoken in the manner rather suggested by accidental prepossessions, than due to their intrinsick worth. Under every disadvantage, however, of limited knowledge, or incorrect judgment, we may reasonably assume to ourselves the merit of delineating an outline which, however it may be partially altered by different taste, or better

judgment, must certainly prove better than the vague, imperfect, and injudicious course which is generally pursued. It was the wish of correcting this unprofitable plan of legal education, and of redeeming for the student many hours of vain and desultory labour, in a study sufficiently arduous with all the aid of method and selection, that engaged us in the present undertaking—an undertaking which must be performed very ill indeed, not to be productive of some benefit. It is sufficiently apparent from the tenour of the observations scattered through the foregoing pages, as well as from the nature of the work itself, that while we desire to suggest every encouragement to students, we would offer no hopes to the indolent and the superficial. Regarding law as a science equally venerable from its objects, and noble from the ingenuity and mental expansion employed and excited in its acquisition and practice, we eagerly desire to see its shrine unprofaned by knavery and ignorance, and its retainers not more eminent from the importance of their functions, than from the *honesty and skill with which they discharge them.* It is true we do not expect that this can ever happen; it is incident to the best things to be the most perverted; and while we may admire and emulate the portraiture which the votaries of law have been fond to appropriate to its professors, we must be content to see its dignity often debased by the ignorant, and its liberality by the mercenary. At the same time there are many, we flatter ourselves, who, prompted by an honest passion for distinction, not less than by the hope of emolument, will enter on the study of our favourite science with the spirit and the views we have attempted to inspire;

who conceiving of it far differently than as of a confused and arbitrary mass of *dictums* and decisions, regulated by no principles, and reducible to no order—as a mean of subsistence degenerating into drudgery from the unscientifick and mechanical manner in which it is often pursued, and for the most part more disreputable, indeed, than a mechanical pursuit—will desire to consider its philosophy and reason, and will receive with pleasure every attempt to facilitate their progress by the classification and selection of their reading. He, indeed, who has bestowed on law this kind of consideration—who has contemplated it originating in the first principles of nature and society; ever modified by circumstance, yet ever constant to those principles; ever changing its particular direction, yet never swerving from its general and inevitable objects, the good order and felicity of mankind; he too, who has exercised his genius in discerning the numerous modifications, combinations, and distinctions of its principles, the infinite number of cases seemingly alike, yet widely dissimilar, and all the subtile niceties which seem peculiarly incident to these studies, has not only been employed in the most noble and useful of human sciences, but has pursued the best discipline for invigorating his intellect, and enlarging his capacity for all other profound and useful learning. We do not wonder, therefore, at the partiality of those who remembering, in addition to the elevation of its objects, at once the learning and the skill, the patient research, and the subtile genius, the drudgery and the enterprise, the laborious lucubrations and the ready adroitness, which seem requisite to form the accomplished lawyer, are disposed to exalt it above every other art and science.

It is not our purpose, under the present title, to enlarge on the *manner* and *conduct* which should distinguish the guardians of the laws of the land, and the champions of the rights of their fellow-citizens. We have but seldom, in the course of this work, undertaken to point out what the law *is*, our chief province being to designate where the law may *be found*. Under the present division, therefore, of our subject, we would by no means be understood as having engaged in the responsible task of defining the conduct of a lawyer, in his various professional relations, best adapted to advance his interests, and maintain the dignity of his profession. We believe that, in most cases, *enlarged knowledge and noble studies* exercise so happy an influence on those who have addicted themselves to them, that treatises and precepts on *manner* and *conduct* become comparatively unnecessary to such minds; while to others they are either unintelligible or useless. The very acquisition of liberal knowledge supposes the acquisition of liberal ideas; so that, in most cases, the possession of intellectual power begets correctness in its application to the purposes of life, and the scientifick mind is always supposed to derive, from the complexion of its pursuits, more correct, more enlarged, and more *honourable* views, than one of more circumscribed knowledge. Under the influence of these sentiments, we feel less solicitude for the works which we shall have it in our power to select on this topick; especially as the student will ever bear in mind, that notwithstanding the word law is of comprehensive signification, lawyer is still more so; embracing the richness and solidity of learning, the profundity of wisdom, the purity of

morals, the soundness of integrity, the ornaments of literature, the amiableness of urbanity, the graces of modesty, and, generally, the decorations and amenities of life. We have therefore, under the present division of our Course, designated a few works calculated to augment the student's acquaintance with his own mind and heart, and furnish him with rules for the regulation of his conduct, either as it respects that decorum of manners which maintains "with an even balance the dignity betwixt ourselves and others;" prudence in every vicissitude and relation of life; or the judicious use of the means best adapted to advance his private fortune, or particular vocation. On these topicks, denominated by lord Bacon, *Conversation*, the *Doctrine of various occasions*, and the *Art of rising in life*, the pen of genius and of virtue have been industriously and efficiently employed; but on the peculiar duties and conduct of the lawyer, little that is valuable, has been written. In conclusion, we have added some observations on points connected with the conduct of law studies, which could not with propriety be introduced elsewhere. Neither in the General nor Particular Syllabus have we mentioned them as a branch of this work; they are therefore to be regarded as an Appendix, which we hope will be found to contain some useful remarks on several very important and interesting subjects.]

1. Bacon "De Augmentis Scientiarum." [Section xxiii. xxiv. xxv. Shaw's translation.]
2. Burgh's "Dignity of Human Nature." [Book

i. part 1. The first four sections and section xvi. of part 2, book ii. sec. viii. and book iii. sec. ix.]

3. Rochefoucault's "Maxims or Sentences." *(Note 1.)*
4. Watts on "The Improvement of the Mind." *(Note 2.)*
5. Gisborne's "Inquiry into the Duties of Men." *(Note 3.)* [Chapter ix. "*On the Duties of the Legal Profession*," page 331 to 416.]
6. Edgeworth's "Essays on Professional Education." [Chapter vi. page 318 to 410. London 1812.] *(Note 4.)*
7. The twelfth book of Quinctilian's "Institutes of the Orator." *(Note 5.)*
8. "Letters on the Study and Practice of the the Law." [Letter 35. "*Study of Philosophy.*" Letter 36. "*Of Integrity.*" Letter 37. "*Of Urbanity.*" Letter 38. "*Of Modesty.*" Letter 39. "*Philosophy Useful*, &c."] *(Note 6.)*
9. "The Barrister." *(Note 7.)*
10. Evans' Pothier on Obligations ["*Of the Examination of witnesses*" 2 vol. section ix. p. 223.]
11. "Considerations on the *viva voce* examination of witnesses at the English Bar." *(Note 8.)*

NOTES ON THE FOURTH TITLE OF AUXILIARY SUBJECTS.

(*Note* 1.) ROCHEFOUCAULT'S MAXIMS. Such works as this and the two preceding, (among which the student will not forget the wise and sententious "Proverbs of Solomon,") force their practical philosophy on the mind more powerfully by short and terse maxims, than bulky treatises of ethicks. Burgh is a sensible and well known writer of this cast. Bacon, in his "De Augmentis Scientiarum," proposes to reduce *self-policy*, or the *art of rising in life*, into a regular science, and has given his reader many pithy maxims on the subject. To Rochefoucault it has been objected, that his views of human nature are rash, and his principles ungenerous; the young mind does not easily admit his unfavourable representations of mankind: yet he is a happy man, who reaches old age, and does not esteem this celebrated writer much more a painter than a caricaturist.

(*Note* 2.) WATTS ON THE IMPROVEMENT OF THE MIND. Among the numerous excellent works of Dr. Watts, none has been read with more pleasure and improvement than the present. It was his singular merit to raise out of chaos an orderly and beautiful system of logick, freed from the subtleties and learned jargon of the schoolmen; and in his treatise on the *Improvement of the Mind*, he has displayed the same dislike of pedantry and useless refinement. In this work the student will find the soundest rules for the easy acquisition of knowledge. These rules are deduced from an intimate and philosophical acquaintance

with man; and form a methodical and admirable system, which, if strictly pursued, cannot fail to infuse a spirit of inquiry and observation, and to regulate and strengthen the faculties which they require. Dr. Johnson, in his life of Dr. Watts, speaks of this book with great respect. "Few books have been perused by me with greater pleasure than his *Improvement of the Mind;* of which the radical principles may indeed be found in Locke's *Conduct of the Understanding;* but they are so expanded and ramified by Watts, as to confer on him the merit of a work in the highest degree useful and pleasing. Whoever has the care of instructing others, may be charged with deficiency in his duty, if this book is not recommended."

(*Note* 3.) GISBORNE'S INQUIRY. There is much useful and highly interesting information in this chapter, on many of the important duties of the lawyer and judge. The author commences with a vindication of the legal profession from numerous dishonourable imputations, and shews them to be founded in prejudice and errour. Like Quinctilian, he inquires into the kind of causes in which a lawyer may justifiably engage, and treats of the knowledge, habits, dispositions, and morals generally, which should claim his particular regard. His duties prior to, and at the trial of causes, are pointed out, and reasons given why he should not early engage in publick employments, particularly as a legislator. The peculiar temptations and duties of the parliamentary and crown lawyer are next treated of, and many sensible observations are made on the highly responsible office of a judge. The whole is comprised in a small chapter.

(*Note* 4.) EDGEWORTH'S ESSAYS &c. In the chapter in this work "Of the Profession of the Law," there are many excellent thoughts on the discipline and education of law students. We are happy to find the sentiments which we have expressed on these points, in different parts of this Course, corroborated by so judicious a writer as Mr. Edgeworth. He insists on the lawyer's induction to general literature; on the necessity of method; the usefulness of logick; and the propriety of knowledge of common characters and affairs. In his remarks, also, on the examination of witnesses, and on the uselessness of the usual long apprenticeships in law offices; in his observations on legal memory, and his admiration of Mr. Bentham, we entirely agree with him. This, and the preceding chapter in Gisborne's inquiry, would occupy the student but a couple of hours; and should not, by any means, be neglected. The works, no doubt, are in most of the publick libraries.

(*Note* 5.) THE TWELFTH BOOK OF QUINCTILIAN &c. In the second title of Auxiliary Subjects this justly celebrated work has been recommended to the student, and we doubt not will be read with no less interest than improvement. To the twelfth book, however, we desire to attract his particular attention. The author, after having educated his orator in all the *learning* of his art, proceeds in this concluding book to enforce the necessity of *good morals*, and prescribes some rules as essential to his certain and durable success. He ingeniously maintains that there can be no efficient eloquence, unless the speaker be an *honest man;* points out the species of knowledge best calculated to improve the heart, and consequently to advance the ora-

tor's skill in the art of speaking; designates the particular dispositions of the mind which should be especially cultivated; speaks of the period in which the orator should commence his career; examines the difficult questions which arise as to the kind of causes which an orator is justified in advocating, and his conduct in their management; dwells on the matters which he should principally regard in *studying* his causes, and particularly those things which he should observe in *pleading* them; and concludes with some remarks on the various kinds of eloquence, and the adaption of each species to the particular cause.

(*Note 6.*) LETTERS ON THE STUDY AND PRACTICE &c. We have not recommended the whole of this volume, though it has been much spoken of. It is sometimes written with eloquence and spirit, but abounds, we think, in verbiage throughout. The letters which we have designated, and those on eloquence are the best in the volume. We are reluctant to believe that a book so wordy, tedious, and declamatory, is from the pen of sir James Mackintosh.

(*Note* 7.) THE BARRISTER. This is a charming and instructive little volume, manifestly the production of a man of law and of literature, and the offspring of an accomplished and reflecting mind. It is impossible to read this work without catching a portion of that honourable spirit which guides the pen of its author. The philosopher, the orator, and the gentleman should be intimately blended with the lawyer, to constitute that character which it is the desire of the Barrister, and the humble attempt of this Course, to form.

(*Note* 8.) CONSIDERATIONS ON THE VIVA VOCE EXAMINATION &c. This sensible essay, on a highly

useful topick, is appended to a work called Deinology, by Hortensius. Scarce any part of a lawyer's professional duty requires more skill and delicacy of management, than the *viva voce* examination of witnesses. Great knowledge of the human character, the art of adapting his manner to its varieties, penetration, equanimity, amiableness, firmness, clearness of expression, &c. are requisite in extracting the precise truth from witnesses; and it is one of those arts on which a lawyer's success or discomfiture frequently depends, independently of the intrinsick merits of his cause. It is an art, in which there may be a considerable display of genius; and often more strongly commands the admiration of intelligent observers, than elaborate and eloquent speaking. The ninth section of the second volume of Evans's Pothier is recommended by us in this place, chiefly on account of some useful observations on this topick, addressed to young practitioners.

OF NOTE BOOKS.

"Brevitas Memoriæ Amica."

It has often been a question whether the legal student derives from the practice of taking notes any solid advantage, and one fully commensurate with the necessary expenditure of time. A solution of this question can only be found by first considering it as applied to the *usual* manner of taking notes, which is founded on no principle, and regulated by no rule; and secondly, in reference to the most methodical and scientifick modes by which such a practice may be directed. We have no hesitation in saying that a student would do better never to make a note, than to indulge in the customary mode; and, on the other hand, that there is no auxiliary so powerful, or so durably advantageous as noting, when properly regulated. That species of note-taking which consists in transcribing nearly all which a student reads, and which, like the practice of some lawyers in noting the testimony of witnesses, presents the *whole*, with all its wordy and immaterial appendages, is surely a great waste of time.

Common-place books, as to their matter and method, should vary with the progress of the student; for that which is highly proper for him who is advanced in his studies, would be altogether unsuitable to the mere

tyro. In determining, therefore, on the utility of this practice, the student must be presumed to follow the most advantageous method; in which case, we do not doubt the justness of an affirmative answer.

It is a law of our nature that those impressions which simultaneously affect the mind through the medium of more than one sense, are more vivid and lasting, than where only one of the senses is excited. Writing is a species of *touch*, and is an act which, from the time and attention necessarily required, must be favourable to the memory: Besides this; there is a pride in our nature which revolts at the servile transcription of what is not understood; the student, therefore, will be stimulated to additional inquiry, and until he has sufficiently investigated the subject, judiciously to abridge his author, or extract the substance, he will not record it in his note book. The objects of noting are two; *first*, as a means of impressing knowledge on the mind, by selecting and extracting from much that which is valuable, and *secondly*, the possession of such a digest as may be frequently resorted to; which digest, being the work of the student himself, carefully and judiciously selected from an infinite variety of authors, and methodically arranged, must be familiar to him, and can be examined by him with more facility, for the solution of an occasional doubt, than perhaps any other work. In order to accomplish both of these objects, with the least expense of time, and with an assurance of freedom from the plausible objection that "what is committed to paper, is but seldom committed to the mind," we shall present to the student our opinion as to the different kinds of note books proper to be used; the order in which they

should be taken up; and the particular method to be adopted in each.

In contemplating the mind in its gradual progress from the rudiments of any science, to that complete knowledge of it which leads to refinement and censure; to that intellectual vision which, whilst it presents the science with all its harmonies, amplifies all its defects; the inquirer must perceive the necessity of adapting to each stage of his progress, a mode of investigation, and a method of recording its results, best suited to the particular state of mental improvement. This view of the subject is the result of experience, and is fully justified by that *a priori* reasoning, which presents itself to every one who maturely reflects on it. Some, perhaps, may think that this is imparting to a trifling subject an air of scientifick importance, and attempting to fashion on *principles* that which should vary with the taste or whim of the student. We think not: the simplest things in life lose none of their value by giving to them that philosophy which really belongs to them; and nothing should be deemed trifling which relates to the economy of time, improvement in knowledge, and the general benefit of students. We shall, therefore divide note books into the eight following kinds, the nature and use of which we shall, in their order, proceed to explain.

1. Note Book of Exceptions to General Principles.
2. Note Book of Abridgment of Statute Law.
3. Note Book of Remarkable Cases Modified, Doubted, or Denied.
4. Note Book of Leading Cases.
5. Note Book of Uncommon Titles.

6. Note Book of Obiter Dicta and Remarkable Sayings of Distinguished Judges and Lawyers.
7. Note Book of Books Approved or Condemned.
8. Note Book of Doubts and Solutions.

1st. NOTE BOOK OF EXCEPTIONS TO GENERAL PRINCIPLES.

The substratum of every science consists of certain elementary rules or first principles, which as they are generally the pure dictates of reason, and short and simple in their phraseology, find an easy access to the mind. These rules are necessarily numerous, and, with their exceptions and illustrations, constitute the entire learning of any science. Principles, owing to the universality of their expression, their reason, and application, glide almost imperceptibly into the mind, and being once seated in the memory, seldom or never abandon it. That which is once forcibly impressed on the understanding, because fully comprehended, is not liable to forsake us; hence those rules which have been repeatedly tested by reason, and successfully applied to an infinite variety of cases, and finally adopted as principles, have a particular congeniality with the mind, and are welcomed to the memory as the offspring of philosophy. But *exceptions* have each a peculiar reason, requiring a special act of memory, and they seldom enter the mind so freely, or remain so willingly as general rules. In the case of principles the memory is often merely *passive*, but exceptions generally call on the *active memory*. A note book therefore, which records exceptions, answers a double purpose; for as an exception proves the rule, a record of exceptions

must necessarily be a depository of the principles or rules. We conclude therefore that the proper subject of a note book is exceptions, and not general rules. Exceptions limit the note book to a moderate size; and as they are dependant on peculiar reasons, and are more liable to change than general rules, they require some adscititious aid to establish them in the memory. The titles of this note book should be alphabetically arranged, and the law points, for the sake of reference from one to the other, should be numbered. We shall state the mode of keeping this note book, and by way of example, (under the letter B,) shall arrange the exceptions under their respective titles.

Example of Note Book of Exceptions to General Principles.

Baron and Feme.

1. Feme-Covert may sue and be sued as feme-sole in the following cases: 1. By custom of London, if she has traded there by herself, and is sued in the courts of that city. 2. Where baron is perpetually banished. 3. Where transported for a time, and contract was made before the expiration of this period. 4. Where the time has expired, but baron has not returned. 5. Where an alien husband deserts the country.

2. Baron and Feme may testify for or against each other. 1. In case of high treason. 2. Of personal violence on the wife, or threat. Audley's case, 1 Sta. Tri. 265. Penn. *v.* Stoops, Add. Rep. 381. Lady Lawley's case, Bull. Nisi Prius 287. 3. In case of wife *de facto*, as where husband is indicted on Sta. 3 Hen. 7, for forcible marriage, or where for bigamy. 4. Wife of bankrupt, *touching his estate*, by Sta. 5, Geo. 2, Cap. 30. 5. In civil actions where neither is a party, the wife is a good witness to discharge one of the parties to the action, *by charging her husband*, as in Williams *v.* Johnson, 1 Stra. 505.

Bond.

1. Breach need not be assigned. 1. Where bond is for payment of an entire sum in gross. 2. In case of bail bonds. 3. Of bonds given to the lord chancellor, by petitioning creditor.

Bills of Exchange.

* 1. Though drawer had no effects in drawee's hands, from the date of the bill to its maturity, notice of non-acceptance must be given to him. 1. In case of acceptances on the faith of consignments from the drawer, not come to hand, 1 Bos. & Pull. 655. 2. Acceptances on the ground of fair mercantile agreements, 7 East. 359. 3. Of a bill drawn by an agent on his principal, 3 Bos. & Pull. 239, Clegg *v.* Cotton.

The above will be sufficient to evince the utility of this species of note book. In No. 1 of title "Baron and Feme" the student will find *five* exceptions to the general rule that feme-covert cannot sue, or be sued as feme sole. These exceptions at once suggest the general rule, which therefore need not be set down. In No. 2 of same title, the general principle that neither in civil or criminal cases can husband and wife testify either for or against each other, is disclosed by the exceptions; which, resting on a reason peculiar to each, are not easily remembered. Under the title "Bond," are given the *three* exceptions to the general rule that, in declaring on a bond *with a condition*, plaintiff must state the condition and assign the breach. It is easy to remember this rule; but the exceptions do not readily occur.

In some cases the student will find exceptions to such rules as are themselves exceptions to the general rule. This occurs in the exceptions stated by us under the

title "Bills of Exchange." The general rule is, that "a holder of a bill must give notice to the drawer of the drawee's non-acceptance." The exception is, that "it is not necessary to give such notice where drawer had no effects in drawee's hands from the date of the bill to its maturity:" but on this exception the student will perceive engrafted the three exceptions noted by us. When such a case occurs, it will perhaps be attended with some utility to place an * before the number, as we have done in the above example.

This note book may be commenced when the student arrives at the third title of this Course; for in reading the preceding matter, we think the student had better have no regular note book. He may occasionally set down his views or doubts, but as a practice we would discourage note-taking until he has acquired something of a *legal mind,* by a cursory view of the great *outlines* of legal science.

2d. NOTE BOOK OF STATUTES ABRIDGED.

Another very suitable species of matter for a note book is the *substance* of statutes. This book should comprise a concise abridgment of all such *important* English statutes as are known, or presumed to be in force in the state in which the student contemplates to practise. Statutes are always exuberant in words, so that much time and attention are required to extract their meaning. It will, therefore, be found a very profitable exercise, in the course of a student's reading, closely to abridge every important section of such statutes, and to give these sections the same arrangement

as in the original. These summaries will be found highly useful to the student through the whole course of his reading, and will often save him much labour in his practice. Although considerable time, and close application are requisite to the completion of such a note book, we doubt not that, eventually, it will be found that much time has been saved. It may perhaps be said, that it is the only mode in which statutes can be well understood and established in the mind; for they cannot be abridged without more than ordinary attention; whereas, unless a person has a very special object in reading a statute, the mass of verbiage in which it is enveloped, is apt to occasion a hasty and cursory perusal. This species of note book, therefore, effects three important objects; *first*, it prevents a habit of negligently reading statutes, and accustoms the student to bestow on this branch of law an early attention, commensurate with its great importance; *secondly*, it much facilitates his progress in other departments of law; and as it early impresses on his mind an acquaintance with important statutory provisions, he contemplates the law as a progressive and improving science, and necessarily directs his attention to existing imperfections, and the various modes of remedy; he compares the common law with the statutary amendments, and views the whole, not as the arbitrary mandates of an unmeaning legislator, but as a system growing out of necessity, and resting on principles. *Thirdly*, such a note book ably executed, saves much time in the future prosecution of legal inquiries. Statutes, with all their plenitude of wordy expletives, cannot be reperused on the occurrence of every doubt, but if their substance has been well extracted, a glance of

the eye over a statute thus abridged, will often afford more information than could be gained in half an hour's attentive reading of the original. The entire force of these observations can scarce be comprehended, except by those who have experienced the numerous difficulties to be encountered in the prosecution of legal investigations, especially those which arise out of statute law; and who have found the great waste of time arising from the want of proper aids, and the wonderful difference between the use of method and certain facilities, and the usual mode in which students prosecute their researches.

In this undertaking, the student should particularly attend to the distinction between *retrospective*, *explanatory*, and *declaratory* statutes; some being merely declaratory, some explanatory, and others both. He should likewise attend to the operation of statutes which revive such as had expired, of those which repeal declaratory, and of those which repeal repealing statutes. In all of these cases the student should regard the different modes of *construction* suited to each, and as an appendix to his statute note book, he should insert all important points of construction, which have arisen on the different species of statute. This appendix should refer to the statute abridged, and this, in turn, to the construction &c. in the appendix. The kind of statute, whether *retroactive*, *explanatory*, *declaratory*, *repealing*, *reviving*, &c. should be designated by a mark; as for example: retroactive by †, explanatory by *, declaratory by ¶, repealing by ‖, reviving by ‡, &c. so that these distinctive marks may at once declare an important quality of the statute; for it will be found upon looking into the example of the

appendix, which we have given, that the distinction between statutes explanatory, retroactive, &c. is highly important.

Example of Note Book of Statutes Abridged.

F.

FINE. 4 Hen. 7, Ca. 24. Vid. Appendix. F. No. 1, 2, 3, 4.

No. 1. *Preamble.* Last clause of statute De Finibus levatis 27 Ed. 1. viz. "Fines shall be openly read twice a week after the discretion of the justices, in the mean time all pleas to cease. Fines should be of the greatest strength for the avoidance of strifes, and be final as formerly, but now used the contrary, to the universal trouble of the king's subjects: therefore ordained § 1. Fines, after engrossed, are to be read and openly proclaimed in court in the same and three following terms, four days in each, during which all pleas to cease. § 2. After proclamation, Fine bars all persons, both privies and strangers, except *feme covert, infant, persons in prison, out of the realm*, and *non-compos*, not being parties. § 3. Such right, title, claim, and interest, as any one, except parties, hath, when Fine is engrossed, is saved to him and his heirs, if he or they pursue such right &c. by action or lawful entry within *five* years after proclamations. § 4. Such action, right, &c. as shall first grow, remain, descend, or come to all other persons *after* the Fine is engrossed and proclaimed, by force of a gift in tail or other cause *before* the Fine levied, is saved to them, if they pursue their action, right, &c. within five years after such action, right, &c. accrued, descended, &c. in which case action will lie against the pernor of the profits. § 5. Feme covert, non-compos, infant, one imprisoned, or out of the realm at the time of the fine engrossed, or accruel of the action, right, &c. are excepted, and they, or their heirs, have five years to pursue

their action, right, &c. after removal of the impediment. § 6. Such excepted persons and their heirs for ever to be barred, in like form as parties and privies, if they respectively do not pursue the action &c. within five years after removal of said impediments. § 7. The plea that none of the parties, nor any to their use, had at time of the fine levied, any interest in the lands, *saved* to all not parties or privies. § 8. All subsequent fines levied after the *common law* manner are to have the same effect as they would have had prior to this act. § 9. It shall be at the election of every one to levy a fine under this act, or at common law."

FINE.

32 Hen. 8. Ca. 36. Vid. Appendix. F. No. 1, 2, 3, 4.

No. 2. † *. *Preamble.* Whereas by statute 4 Hen. 7, Ca. 24, Fines duly levied with proclamations are final, and, to avoid strife, conclude as well privies as strangers, with the exceptions therein mentioned, since which time it hath been doubted whether fines so levied, by such as have in the lands &c. comprised in the fine, an interest in possession, reversion, remainder, or in use *in tail*, do immediately thereafter bind the heirs in tail, and those claiming to their use, to remove said doubts, and for a sure *interpretation* of said statute, be it enacted. § 1. That Fines *heretofore* levied, or hereafter to be levied according to said statute, by such as are of full age, of lands &c. intailed to them prior to said fine, or to any of their ancestors, in possession, remainder, reversion, or use, shall after the fine is engrossed, and proclamations, be an immediate bar against them and their heirs, claiming said lands by force of such intail, and against those claiming the same to their use. § 2. *Proviso*, This act not to extend to Fines levied by women, after the death of their husband contrary to statute 11 Hen. 7, Ca. 20, but said act to remain in full force. § 3 *Unimportant.* § 4. *First part unimportant.* This act not to extend to fines of lands &c. intailed by king's let-

ters patent, or any act of parliament, whereof the reversion, at the time of the fine levied, was in the king.

(C.)

CLERGY, BENEFIT OF. 1 Edw. 6, Ca. 12. Vid. Appendix. C. No. 1.

No. 1. †. § 10. Benefit of Clergy and Sanctuary taken from those who *heretofore*, or hereafter shall be duly attainted, or convicted of deliberate murder, poisoning, or house-breaking, by day or night, any person then being in the same, and put in fear or dread; or of robbery in the highway, or near to the same; or of the felonious stealing of *horses*, *geldings*, or *mares*, or of felonious taking any goods out of any parish church, or chapels, or found guilty of said offences by verdict, or who shall confess the same upon arraignment, or who refuses to answer directly according to law, or who stands wilfully mute. Clergy, in all other cases of felony, allowed.

CLERGY, BENEFIT OF. 3 & 3 Edw. 6, Ca. 33. Vid. Appendix. C. No. 1.

No. 2. * ¶. *Preamble.* As it has been doubted upon the statute 1 Ed. 6, Ca. 12, whether a person found guilty of feloniously stealing *one* horse, gelding, or mare, ought to be admitted to enjoy his or their benefit of clergy and sanctuary, it is enacted,— That all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not have his or their benefit of clergy or sanctuary, but shall be put from the same, as though he or they had been indicted or appealed for feloniously stealing of *two* horses, two geldings, or two mares, and thereupon found guilty by verdict, or confessed the same on arraignment, or stood wilfully or of malice mute.

In this manner the student may abridge all the important British statutes in operation in the state in which he resides. The above are not to be regarded as examples of the *kind* of statutes which we would have him abridge. We have selected them, because

the abridgment of any statute may exemplify the mode of abridgment, and chiefly for the purpose of shewing the nature and objects of the appendix, as the examples suggested themselves as particularly apposite. An example of the appendix alluded to may be of use.

Example of Appendix to Note Book of Statutes Abridged.

(F.)

FINE.
4 Hen. 7, Ca. 24, 32 Hen. 8, Ca. 36. Vid. Statute Note Book, F. No. 1, 2

No. 1. In Macwilliam's case, Hob. Rep. 332, lord Hobart, speaking of these statutes says that the first is the *text*, the other the *paraphrase;* that the cases of fines barring entails, since statute 32 Hen. 8, ought so to have been ruled upon the statute 4 Hen. 7, though the former had never been made.

No. 2. In Zouch *v.* Bamfield, 1 Lev. 76, it is said that statute 32 Hen. 8, Ca. 36, is not *properly a statute;* nor do fines receive any strength or virtue from it, but it is only a *construction* of sta. 4 Hen. 7, and as sta. Hen. 8, construes 4 Hen. 7, to extend to fines levied by tenants in tail, the estate tail is adjudged to be bound by this latter statute, and not by the explanatory statute, which is rather a *judgment* upon sta. 4 Hen. 7, than a *new statute.*

No. 3. Sta. 32 Hen. 8, Ca. 36, is an example *first* of the power of parliament to expound laws. 1 Black. Comm. 160, *secondly*, of the retrospective operation of a statute, for it affected fines *heretofore levied.* 1 Burr. 115, 6 Bac. Abr. 370, *thirdly*, that it is the act *explained*, and not the explanatory act which governs the case, T. Raym. 259, T. Jones 237.

No. 4. Explanatory statutes are said never to be extended by *equitable* construction, for they are themselves legislative constructions. Carth. 396, Poph.

91; Cro. Car. 36; Salk, 524; 3 Co. 31, a. This rule, however, is denied by Hobart, 2 Roll. Rep. 500.

(C.)

CLERGY, BENEFIT OF. 1 Edw. 6, Ca. 12, § 10. 2 & 3 Ed. 6. Ca. 33. Vid. Statute Note Book, C. No. 1, 2.

No. 1. The necessity of this *second* statute illustrates the rule that penal statutes are to be construed strictly. Sir Philip Yorke, afterwards lord Hardwicke, said *arguendo*, that this statute was merely *declaratory*, viz. that the stealing of *one* horse was not clergyable, which shewed that parliament, acting judicially, gave their judgment that it was felony without clergy, by virtue of the *first* act, the second being only to remove doubts, and not to make *a new law*. Leach. Cases in Cr. Law 6.

In recommending this kind of abridgment of the statute law, we by no means advise the student, at any one time, to undertake such a task. We wish it to be the gradual and almost imperceptible work of the entire period of his legal study, and perhaps of several years after. It may be taken up occasionally, and a statute or two abridged. The comments will of course be noted in the appendix, as they occur in the course of his reading. If this note book be properly attended to, the student, in the course of four or five years, will possess, at the expense of little because gradual labour, a highly valuable summary of all the leading English statutes, accompanied by a collection of the most enlightened views as to their operation &c. which have been given by distinguished judges &c. He must not be appalled by the apparent magnitude of this undertaking. Let him remember the importance of the result, and that it is to be effected "*non vi, sed sæpe cadendo.*"

3d. NOTE BOOK OF REMARKABLE CASES MODIFIED, DOUBTED, OR DENIED.

The student may insert in this note book such great or leading cases as have been modified, doubted, denied, or held to be inaccurately reported, which should be arranged either under proper titles, or *alphabetically*, sometimes accompanied by a concise statement of the point so modified &c. He may commence it with the chapters recommended in the second section of the third title of this Course, viz. The Law of Real Rights.

Example.

(A.)

Acherly *v.* Vernon, 1 P. Wms. 178, *doubted*, 1 Sch. & Lef. 5.

Akin *v.* Barwick, 1 Stra. 165, "that delivery to A. to the use of B. upon a precedent condition is not countermandable, but vests the absolute property in B. before agreement." Lord Mansfield, in Cow. 117, said "that the *judgment* in this case was right, but the *reasons* were wrong, that the true ground was, that the trader refused to accept the goods and returned them."

Allen *v.* Bower, 3 Bro. C. C. 149, *doubted* in 1 Sch. & Lef. 37.

(B.)

Blakeway *v.* Earl of Stafford. 2 Eq. Abr. 579, *doubted;* and said to be erroneously reported. 1 Sch. & Lef. 109.

Beynon *v.* Gollins, as reported in 2 Bro. C. C. 323, and Dick. 697, is *erroneous.* Vid. 1 Sch. and Lef. 259.

(C.)

Crofton's case, 1 Mod. 34, (Per Ld. Mansfield, 1 Burr. 545,) "*has been often denied.*"

Campbell *v.* Leach, Ambl. 749, a passage therein *doubted*, in 1 Sch. & Lef. 65.

4th. NOTE BOOK OF LEADING CASES.

The utility of this species of note book has, we flatter ourselves, been made sufficiently apparent in the sixth note to the fourth title of this Course.* We have only to observe in addition, that the note book must be judiciously divided into titles; and nothing more than the names of the leading cases inserted under their respective heads; and, if reported by different reporters, he should note where *best* reported. This note book may be commenced at the same time with the preceding.

5th. NOTE BOOK OF UNCOMMON TITLES.

The student will occasionally find important law points arranged in indexes under improper titles; or that they are not to be met with under the heads to which he would be apt to refer: he will likewise find that the law of some important doctrines is no where regularly treated, but is to be sought in an infinite variety of books. In many instances, no doubt, the former difficulty will be proved by subsequent reading and examination, to have been imaginary; be this as it may, the circumstance of thus humouring his taste, will prove favourable to his acquisition of knowledge; a note book, constructed after his particular notion, must prove serviceable, as he makes all the matter there deposited, more peculiary his own. For example; the student can find in but few or no indexes, or

* Vid. ante p. 196.

imagines so, the titles *"Court and Jury, respective duties of," "Damages, measure of" "Count Special," "Count General," "Onus Probande," "Git," "Caveat Emptor," "Chose in Action," "Time and computation of time,"* &c. he arranges alphabetically in his note book, these and other uncommon titles, or what he conceives to be such; he will afterwards resort to his note book as a familiar and almost certain source of information on the particular topick; he will there often find at a view, not only the particular point of inquiry, but the law of every other similar inquiry. If for example he desires to know the rule or measure of damages in the action of Covenant on Warranty, his note book presents him at once with the rules and principles which have been adopted on the subject of damages in all the actions, real, personal, and mixed; he will receive more information from a few pages of his note book, than the indexes &c. of perhaps one hundred volumes would furnish him.

The student should commence this note book with the chapters recommended in Bacon's Abridgment.*

6TH. NOTE BOOK OF OBITER DICTA, AND REMARKABLE SAYINGS OF DISTINGUISHED JUDGES AND LAWYERS.

Incidental opinions of distingushed judges, sentiments of learned counsel *arguendo*, and the peculiar doctrines of enlightened law-writers, often carry with them a species of authority, nearly equal to the deliberate judicial decision. The *obiter dicta* of such men as

* Vid. Particular Syllabus Title IV § 3. p. 149.

Coke, Kenyon, Holt, and Mansfield, must ever command great respect; Coke, perhaps, with all his knowledge, is less entitled to this deference as his learning was too apt to extravasate. Fearne, and Hargrave, and Comyns, cannot speak or write but with oracular force. "I find it so laid down," says Lord Kenyon in 3 Du. & Ea. 64. "by Ld. Ch. Ba. Comyns in his Digest. He has not, indeed, cited any authority for this opinion; but *his* opinion *alone* is of great authority, since he was considered by his contemporaries as the most able lawyer in Westminster Hall." The books of reports, likewise, frequently contain observations of judges on the points adjudicated by them, which for soundness, liberality, perspicuity, terseness, &c. have been much celebrated. The object of the present note book, therefore, is to record important *dictums*, opinions *arguendo* of distinguished lawyers; the peculiar opinions to be found in the legal works of such men as Fearne, Hargrave, &c. and the remarkable sayings, and comprehensive opinions, of illustrious judges. Such a collection would prove eminently useful in enforcing and embellishing juridical arguments.

Example.

TESTATOR, INTENTION OF.

1. "I verily believe that in almost every case where by law a *general devise* of lands is reduced to an estate *for life*, the intent of the testator is thwarted; for ordinary people do not distinguished between real and personal property." Ld. Mans. Doug. 768.

2. In Moss *v.* Gilmore Doug. 282. Cases being cited where mortgagor was called *tenant at will* to mortgagee, lord Mansfield observed "that a mortgagor is not tenant at will to the mortgagee; for he is

not to pay him rent; he is only so *quodam modo.* Nothing is more apt to confound than a simile. When the court or counsel call a mortgagor a tenant at will, it is barely a comparison: he is like a tenant at will." MORTGAGOR.

3. "It is correctly argued," says lord Mansfield, Jones *v.* Randal, Cow. 37, "that notwithstanding this contract is not prohibited by any *positive* law, nor adjudged illegal by any *precedents*, it may be decided to be so upon *principles.* The law of England would be a strange science indeed, if it were decided on precedents only. Precedents serve to illustrate principles, and to give them a fixed authority, but the law of England, which is exclusive of positive law enacted by statute, depends upon principles, and these principles run through all the cases according as the particular circumstances of each have been found to fall within the one or the other." Vid. infra 8. PRECEDENTS.

4. "The law of granting new trials depends so much upon the existing circumstances that the court are to have discretional power, and rules are difficult to be given." Pratt C.J. Roll. Rep. 2. NEW TRIALS.

5. Per Ld. Mans. Fisher *v.* Prince, 3 Burr. 1363. "It has been objected against staying proceedings in trover on producing the goods that this is in effect a motion to bring the goods into court, which cannot be done as the court does not *keep a warehouse.* It is pity that a *false conceit* should, in judicature, be repeated as an *argument.* The court does not keep a warehouse! What then? What has a warehouse to do with ordering the thing to be delivered to the plaintiff? TROVER.

6. Per lord Mansfield, 1 Du. & Ea. 5. "That a feme-covert can hold no property and cannot be sued is the general rule; but then it has been *truly* observed that as times alter, new customs and new manners arise, these occasion exceptions, and justice and convenience require different applications of FEME-COVERT.

the exceptions within the principle of the general rule." *Quere the soundness of this doctrine.*

REPORTS. 7. Per Ld. Mansfield, Rex *v.* Genge, Cow. 16. "The case cited is an express authority and is reported in *two books*, each of which states the case in the *same way*. It is, however, objected that these are books of no authority; but if both the reporters were the worst that ever reported, if they substantially report a case in the same way, it is demonstration of the truth of what they report, or they could not agree."

PRECEDENTS. 8. Per Ld. Mansfield, Robinson *v.* Bland, 1 Black. Rep. 264. "Where an errour is established, and has has taken root, upon which any *rule of property* depends, it ought to be adhered to by the judges till the legislature think proper to alter it, lest the new determination should have a retrospect and shake many questions already settled: but the reforming erroneous points of *practice* can have no such bad consequences, and therefore may be altered at pleasure, when found to be absurd, or inconvenient." Vid. supra. 3.

MONEY. 9. "'Tis pity that reporters catch at quaint expressions that may happen to be adopted at the bar or bench, and mistake their meaning. It has been quaintly said that *'the reason why money cannot be followed is because it has no ear-mark;'* but this is not true. The true reason is upon account of its currency; it cannot be recovered after it has passed in currency." Per Ld. Mans. Miller *v.* Race, 1 Burr. 475.

EQUITY COURT. 10. "In construing agreements, I know no difference between a court of law, and a court of equity. A court of equity cannot *make* an agreement for the parties, it can only explain what their true meaning was, and that is also the duty of a court of law." Per Ld. Mans. in Hotham *v.* E. In. Comp. Doug. 278.

COVENANTS DEPENDENT &c. 11. "The dependence or independence of covenants is to be collected from the sense and meaning of the parties, and however transposed this may be

in the deed, their precedency must depend on the order of time in which the intent of the transaction requires their performance." Per Ld. Mansfield, Kingston *v.* Preston, Doug. 691.

12. Per Ld. Mans. Rex *v.* Cawle, 2 Burr. 858. "Lord Coke, in Calvin's case says that *Berwick* is no part of England. In Calvin's case there was *no question* concerning the constitution of Berwick. What was dropped about it in this case was a mere *obiter* opinion, thrown out by way of argument and example. My lord Coke was very fond of multiplying precedents and authorities; and in order to illustrate his subject, was apt, besides such authorities as were strictly applicable, to cite others, not applicable to the question under judicial consideration." LORD COKE.

7th. NOTE BOOK OF BOOKS APPROVED, OR CONDEMNED.

The student will ascertain that some of the sources of his information are pure, and unquestionable, being the productions of men of learning, wisdom, probity and industry; that others are of dubious authority, and some, no wise to be relied on; as they are the hasty and indigested offspring of shapeless and unphilosophical minds, the elaborated works of ignorance; the loose notes of juvenile authors, the speculations of the sciolous, or the premature and unfinished labours of the sons of indigence. As the merits and defects, of the infinitude of books with which the lawyer is obliged to have some intercourse, cannot be ascertained by any individual in the usual mode, viz. by that attentive examination which is bestowed by criticks, whose vocation is reading, for the purpose of commendation or censure; it is highly proper that the student should avail himself of the labours and judgments of

others; and that he should listen to the consecutive opinions of the wise and learned, who for centuries have been studying these works, and have passed judgment on them. The utility of this species of information is well known to such as frequently, and minutely investigate moot and unsettled law points. In order to reconcile numerous, varying and conflicting opinions, to nicely weigh and extract from them the real and wholesome principle, such inquiring students must be well acquainted with the sources whence they seek for light; the character of legal authors must be familiar to them. It will be a useful inquiry, whether a reporter, for instance, were a man of sound morals, and stable character; a good lawyer; of matured mind; estimated by his brethren; attentive to his duties; in easy circumstances &c. for in points, resting on authorities nearly balanced, the question, as to the merits of the reporter, or legal author, becomes important, and frequently decisive. If principle or the weight of analogy incline in a direction opposite to authority, this authority, if of high standing, will be apt to prevail, whereas if doubtful or of sullied reputation, the principle or analogy would be unhesitatingly established. This note book may be commenced by the student contemporaneously with his first legal studies, because the bibliographical notices we speak of, are often found scattered through the volumes first put into his hands, and be collected occasionally, and without labour; as they generally consist of but a few lines.

Example.

1. "Almost any thing may be proved by citations from them." Per Ld. Mansfield, 2 Burr. 690. MOLLOY AND MALLINES.

2. "These notes were taken, 10 Wm. 3, when lord Raymond was young, as short hints for his own use: but they are too incorrect and inaccurate to be relied on as authorities." 1 Burr. 36, 3 Term Rep. 261. 263. LD. RAYMOND.

3. "Brother Viner is not an *authority*. Cite the cases that Viner quotes; that you may do." Per Foster Jus. 1 Burr. 364. VINER'S ABRIDGMENT.

4. "Eighth Modern is a miserably bad book." 1 Burr. 386. "The *obiter* saying in 10th Mod. if it were a book of better authority than it is, would signify nothing, when the *determinations* are the other way." Per Ld. Mans. 1 Burr. 153. "11th Mod. is a book of no authority," *arguendo* Cow. 16. Per Buller Jus. Doug. 61. 8th, 10th, 11th MODERN REP.

5. Lord Mansfield spoke extremely well of Bynkershoek's writings, and especially recommended his *Quæstiones Publici Juris*. Vid. 2 Burr. 690. BYNKERSHOEK.

6. Lord Mansfield absolutely forbid the citing Barnardiston's Rep. in Chan. as it would be only misleading students to put them upon reading it. He said it was marvellous, however, to those who knew the sergeant, and his manner of taking notes, that he should so often stumble upon what was right; but yet there was not *one* case in his book which was so throughout." 2 Burr. 1142. BARNARDISTON

7. "The book called 'Reports in Chancery,' in lord Nottingham's time, is a book of no authority." Per Ld. Chan. Hardwicke, 3 Atk. 334, 1 Wils. Rep. 162. LORD NOTTINGHAM.

8. "Clark's *Praxis Curiæ Admiralitatis Angliæ* is a book of undoubted credit." Per Ld. Hardw. 1 Atk. 296, 3 D. East. 338 No. CLARK.

9. Per Cur. 2 Vent. 243. "We are not satisfied with the opinion reported by Siderfin in Spignorell's case. He was then a *young* reporter." SIDERFIN.

ATKINS. 10. "Atkins's Reports is a book which, of late, has been often questioned." 2 Woodd. Lectures 362.

NOY. 11. Per Twisden J. 1 Vent. 81. "As for the case from *Noy's Rep.* I wholly reject that authority. It was but an abridgment of cases by sergeant Size, who, when he was a student, borrowed Noy's Reports, and abridged them for his own use." Vid. also Co. Litt. 54. a.

BUNURY. 12. "Mr. Bunbury never meant that those cases should have been published. They are very loose notes." Per Ld. Mans. 5 Burr. 2658.

MOSELEY. 13. Lord Mansfield forbid the reading of Moseley's Reports. Vid. 5 Burr. 2629; also 3 Anstr. 861.

SHEPPARD. 14. Per Willes C. J. 2 Wils. 78. "I rely much upon Sheppard's Touchstone of Common Assurances, which is a most excellent book."

KEBLE. 15. Keble's Reports denied to be authority in Cow. 15, and called in 3 D. E. 17, "a bad reporter," and in 3 Wils. 330, "a very inaccurate reporter."

FREEMAN. 16. Some of the cases in Freeman are well reported, but the book is of no authority. Cow. 15.

CARTHEW & COMBERBACH 17. Carthew and Comberbach are equally bad authority. Per Ld. Thurlow 1 Bro. Ch. Ca. 97. Ld. Kenyon, 2 Du. Ea. 776, says that Carthew is *in general* a good reporter.

FITZGIBBON. 18. Per Ld. Hardw. in 3 Atk. 610. Fitzgibbon's Reports is a book of no authority, but the case of Holt *v.* Ward is well reported.

GILBERT. 19. "Books of practice," says Jus. Blackstone," are all pretty much upon a level, in point of composition and solid instruction; so that, that which bears the latest edition is usually the best; but *Gilbert's History and Practice of the Court of Common Pleas* is a book of a very different stamp; and though (like the rest of his posthumous works) it has suffered most grossly by ignorant or careless transcribers, yet it has traced out the reason of many parts of our modern practice, from the feudal institutions, and the primitive con-

struction of our courts, in a most clear and ingenious manner." 3 Bla. Com. p. 271. Note.

LEONARD.

20. Lord Nottingham, in the duke of Norfolk's case, 3 Chan. Ca. 35, said that "he considered Leonard's Reports one of the best books that had lately come out."

POPHAM.

21. In 1 Keb. 676, Hide C. J. after citing a case from Popham, says that "he vouches this case because he *heard* it, and not for the *authority* of the book, which is *none*." Of the same opinion is lord Holt in 1 Ld. Ray. 626.

LEVINZ.

22. Per Ld. Hardwicke. "Levinz, though a good lawyer, is sometimes a very careless reporter."

STYLE.

23. Style's Reports are particularly important as containing the only common law cases reported for some years during the usurpation.

MITFORD.

24. In the case of Lloyd *v.* Johnes, 9 Vez. jun. 54, lord Eldon remarks of Mitford's Treatise on Pleadings in Chancery, that "it was a wonderful effort to collect what is to be deduced from authorities speaking so little what is clear, and that the surprise is not from the difficulty of understanding all he has said, but that so much can be understood."

12 MODERN.

25. Per Bull. J. Doug. 83. "12 Mod. is not a book of any authority."

PLOWDEN.

26. Lord Coke, in his preface to 10 Rep. says that Plowden's Commentaries are rendered particularly valuable, as they were compiled principally for the improvement of students. Barrington, speaking of some cases reported by Salkeld, observes that "he cannot indeed say that these cases are well reported, which must not surprise, as sir Edward Coke asserts that there are four erroneous cases *in that most accurate of all reporters, Plowden*, when the whole number contained in his Commentaries amounts only to forty-three. Vid. Barr. Observ. on 1 Rich. 2, note (t.) Mr. Hargrave observes that it may be well to state that the *English* edition of Plowden's Commen-

> taries, which must deservedly bear as high a character as any book of reports ever published in our law, has a great number of additional references and some notes, and that both of these are generally very pertinent, and shew great industry and attention in the editor. Co. Litt. 23. a.

The above example will sufficiently illustrate the utility of this species of note book. Let not the student, however, quietly repose on the opinions of others; he has a judgment of his own, which should be exercised; he should regard such a note book as an *auxiliary*, not as an *oracle*. He should read with the inquiring spirit of a philosopher, able and willing to form opinions; but, at the same time, let him respect the judgments of the learned. Whilst, with Boyle, he regards "*authority* as a long bow, the effect of which depends upon the strength of the arm which draws it; and *reason* as a cross-bow, of equal efficacy in the hands of the dwarf and giant," he should be well assured that it is *reason* which he summons to his aid, and not that self-confidence and vanity which so frequently characterize juvenile minds.

8th. NOTE BOOK OF DOUBTS AND SOLUTIONS.

In a science as extensive and complicated as law, difficulties will often be encountered, which the mind is not sufficiently matured to solve; and which no one is at hand to explain. In this situation we are unwilling to abandon the pursuit, and to advance is impossible The only relief from such a dilemma is, to record our doubts in a note book, under the hope that at some future day, after the sources of information

have better developed themselves, and the mind has been gradually strengthened, the solution will present itself. This note book is attended by great and peculiar advantages; it occasions much reflection; compels investigation, and all future reading becomes, in some measure, tributary to it. The plan of this note book is as follows. The doubts, as they arise, are to be *numerically* inserted on the left hand page of the book; and the solutions, or the sources of information, are to occupy the right; these answers or references are to be designated by the same numbers as the doubts or queries. When a question is answered, or nothing more than authorities cited, there should be a marginal note to the question, referring to the answer or references, and the page of the note book. As the solutions and references will occupy more space than the questions, they cannot be placed, in all cases, opposite to each other; hence there is a necessity for referring to the page of the note book, as well as to the number of the solution. The correspondence of the numbers designating the questions and answers is useful, as it more certainly, and at once points out their connexion.

It is no inconsiderable advantage attending this species of note book, that it gives the student a faithful picture of his gradual improvement; it places before him an accurate chronicle of his legal career, and he may often have occasion to be amused at the simplicity of some of his early queries, and also to be pleased with the progressive maturity of his inquiries, and the proportionate correctness and solidity of his answers. Some of his doubts he will solve, perhaps, on the day in which they were inserted; others, months, and even

years after; but let the solution come when it may, he will remember his former difficulty, and referring to the *index* of his note book for the query, will be able to add the answer.

DEBATING SOCIETIES.

As few questions are so simple as not to admit of disputation, there has been much vain contention on the tendency of debating societies. It would be thought, we imagine, very strange entirely to proscribe conversation, on the score of the many sophisms advanced in it, the many unprofitable arguments it occasions, the improper passions it excites, and the thousand wrong opinions it gives birth to; arguments usually adduced in opposition to debating, which, however, is nothing more than conversation conducted in a more regular form, and adjusted by stricter rules of argumentation. Nothing is more certain than the uselessness, or even injury of debating societies, conducted as they frequently are, except their great utility when composed of such as love truth, and enter into debate as one avenue of approach to it.

While, however, it appears to us thus absurd wholly to condemn these juvenile associations, because of some incidental evils, we acknowledge how unprofitable they generally are from the idle speculation, the sophism, captiousness, and violence which prevail in them.

There is in science so large a body of truths whose right understanding is of great practical utility, that it is at best but serious idleness to throw away time in the discussion of topicks useless in themselves, and more so from the improbability of ever arriving at any certain conclusions concerning them. Even in the sciences least subtile and abstruse, there is so much unavoidable errour, so much involuntary sophism, so much difficulty in demonstrating even substantial truth, that there can be no need of the assumption of false positions, or the support of ingenious sophistry, to sharpen the wits of disputants, and exercise them in the arts of logical offence and defence. A judicious selection, therefore, of useful subjects, and candour, moderation, and patience in their investigation, (qualities without which conversation and writing are, no less than formal controversy, utterly unconducive to truth,) are certainly necessary to render such associations what they are capable of becoming,—very profitable schools to those who deem worth attainment, not only the possession of knowledge, but the power of imparting it.

The man of books must sooner or later emerge into the world; must find his most cherished theories controverted; contend often and long in the support of opinions he had looked on as self-evident; demonstrate many errours whose very manifestness renders demonstration difficult, and encounter many sophisms which his own sincere love of truth prevented ever occuring to his mind. There are few retired students who have not experienced something of this. Debating societies, while they accustom him to opposition, may instruct him, at the same time in the arts and means

of countervailing it: they may teach him much of that rapid recollection, that happy talent of resource, that quickness of penetration, that felicity of illustration, and, above all, that facility in arranging and methodising a various subject, so useful in the ordinary intercourse of life, so necessary in the extemporaneous contests of the bar.

The *study* of the law, though it require vigorous comprehension, and habits of patient thinking, demands, however, no very peculiar modification of talent. Whoever can be made to understand with facility, may soon comprehend its system; whoever can think minutely, may soon be master of its niceties: as to its *practice* it is otherwise. Men, who in solitude think correctly, and reason clearly, are in publick masters neither of their thoughts nor their words. The happy exposition of a subject, the ingenious elucidation of difficulties, the fluency of utterance, the rapidity and skill of forensick evolutions, are impracticable to themselves, and irresistible in others. Some minds too are of a temperament too irascible to endure the triumph of an adversary, the detection of their own errours, or even opposition to their opinions. On such tempers, we have been asked, if these assemblages for disputation did not exert an unhappy influence? In both the cases we have adduced, if the want of readiness be not so great as to be incapable of improvement, and the warmth of temper such as to be hopeless of remedy, debating societies are perhaps as probable as any other schools of discipline to impart, by dint of habit, promptness in the one case, and self-restraint in the other: if the reverse, failure is certainly less painful here, than in more publick and responsible

situations. Many cases there undoubtedly are, where these faults of talent or temper are so glaring, that we should dissuade those who are so unfortunate as to possess them, from ever connecting themselves with a society of disputants: but then we should go farther, and advise them to detach themselves altogether from a profession, whose pursuit would continually expose them to similar situations of embarrassment and vexation.

Our recommendation of debating societies must not be understood, however, of those promiscuous assemblages of young men which chance, idleness, and whim heap together. In the common intercourse of society, we avoid the litigious, the sophistical, the vain, the arrogant, and the ignorant; and some congeniality of mind is requisite even among those who only meet to be antagonists. If our student, therefore, (to whom, more than either to the theological or medical student, these institutions are more peculiarly useful,) can find means to associate himself with a few select youths engaged in the same pursuits, animated with the same ardour of study, and possessing the same general views and dispositions with himself, he will, we doubt not, find his advantage in the combination.—They might erect themselves into a kind of court, select for argument some important point or doctrine, a number of which would be suggested by their Note Book of Doubts*, support or oppose it with their respective authorities, (which the ardour of competition would cause to be collected and examined with more

* Vid. ante. p. 360.

care than would probably be exerted in solitary study,) and thus prepare themselves by these mock encounters, for the more serious and laborious business of the bar.

OF LOGICK.

Fashion would appear to exert not less power over literature than on manners, and to decide not less imperatively on systems of philosophy and modes of reasoning, than on forms of address and costume.

The undeserved neglect of the learned is not more conspicuous than their unmerited renown: if sound philosophy has often been received with coldness, and consigned to temporary obscurity, idle systems have, on the other hand, been seen to usurp a long and despotick empire, to triumph alike over the understanding of the vulgar and the wise, and to yield place only to opinions yet more false and fantastical.

It is but a short period since the logick of Aristotle has been dismissed from the schools, over which it triumphed so long and so mischievously, together with the numberless false systems to which it gave birth, to make room for sounder opinions, and more effectual modes of investigating truth. But in all great revolutions either of politicks or science, the displaced are ever exposed to extreme and unmerited disgrace. With the despotism of logick has expired also its fair and legitimate influence; its monstrous

and absurd abuse by the school-men has stamped on it the character of *chicanery* and sophistry, and impressed an opinion of its absolute uselessness, or something worse. Nothing but its strange misapplication and abuse could have degraded so low a science so important,—which is defined indeed to be "the art of using reason well in our inquiries after truth, and in the communication of it too thers," and which divested of the wordy jargon which so long obscured it, and improved and methodised by science, is at once intelligible to common sense, adapted to every subject of common life, indispensable in the consideration and illustration of every important concern, and essential in the vocation of the lawyer. We are indeed entirely convinced of the necessity of a rational system of logick to complete the education either of the jurist or the orator. While rhetorick imparts to oratory its warmth and its graces, logick gives it clearness and force; it is the property of the one to persuade, of the other to convince. Rhetorick is forcibly illustrated by an ancient philosopher, who compared the former to the hand closed, in reference to its collected and manly power, and the latter to the open hand, in allusion to the softness, the graces, and nice proportions of the palm.

The subtilties and senseless refinements which so long disgraced this useful learning, and the disrepute into which, from this cause alone, it has fallen, will surely have no influence on the discriminating student, when he is informed, that there are extant systems of logick which are free from these excrescences, and which have reduced this subject into a perspicuous and intelligible method, replete with good sense and

sound rules for the conduct of the mind in the exercise of all its functions. The arts of inquisition and *invention*, of examination and *judgment*, of preserving or *memory*, of elocution or *delivery*; are so well defined, and so philosophically treated and illustrated in these works, that their perusal cannot but be attended with advantage.

To skill in this art is it that Cicero attributes the vast superiority of Servius Sulpitius, whom he pronounces the most scientifick of all the Roman lawyers; for, says he, this pre-eminence could never have been attained by a devotion to law, in exclusion or neglect of an art which teaches the distribution of an entire subject into its proper parts, explains hidden properties by definition, dispels obscurities by apt interpretation, which enables one to perceive, and then to point out the distinctions in cases of ambiguity, and finally, which gives rules for discriminating with precision false from true propositions, and to understand upon given terms what is consequent and what otherwise.

Dr. Gregory of Edinburgh, whose writings would reflect honour on any country, in any age, and whose varied learning, without a semblance of pedantry, is evidenced in his mode of treating even the most unimportant and ephemeral topicks, in his celebrated memorial to the managers of the Royal Infirmary, has some observations on the utility of the art of logick, which from their excellence, we shall without apology transcribe.

"The ultimate general principles of strict good logical reasoning, are, and must be the same at all times, and on all subjects whatever; for example, the same in the law at present, as in Greek mathematicks

two thousand years ago. Except in mathematical science, there is no subject of reasoning in which the real use and strict application of the principles of logick have been so well exemplified, and so much attended to, as in the law. The argument of an able lawyer, in point of strict reasoning, is scarce inferiour to the demonstrations of Euclid and Archimedes; and if every cause had a right side, (which I believe is not the case,) and if an able and well employed lawyer always got the right side of every cause that he undertook, (which I presume impossible,) such a lawyer would not only be as strict but as candid, and, in every respect, as good a reasoner as a mathematician, who is always engaged in the discovery of truth, and who knows that he never can establish what is false; or obtain, as an able lawyer may often do, a wrong decision. There is no mystery or witchcraft in Logick. When stripped of the uncouth and barbarous terms in which it has commonly been taught, or rather involved and concealed, it is perfectly intelligible, and satisfactory at once to every man of sense: for nothing is good reasoning or sound logick, because *logicians* have been pleased to call it so: but logicians have ascertained and established many fundamental principles of strict good reasoning, because, on the most careful examination and repeated trials, they have uniformly been found satisfactory and irresistible by all men of sense."

We cannot better take leave of our student than by addressing him in the quaint, but expressive language

of lord Coke. "FAREWELL TO OUR JURISPRUDENT; WE WISH UNTO HIM THE GLADSOME LIGHT OF JURISPRUDENCE, THE LOVELINESS OF TEMPERANCE, THE STABILITY OF FORTITUDE, AND THE SOLIDITY OF JUSTICE."

THE END.

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