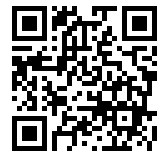

A

DISCOURSE

ON

THE LAWS.

Painted by Sr P. Lely. Engraved by Wainwright.

ROGER NORTH.

A

DISCOURSE

ON

THE STUDY OF THE LAWS,

BY

THE HON. ROGER NORTH.

NOW FIRST PRINTED FROM THE ORIGINAL MS. IN THE HARGRAVE COLLECTION.

WITH

Notes and Illustrations

BY A MEMBER OF THE INNER TEMPLE.

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BIOGRAPHICAL NOTICE

OF

THE HON. ROGER NORTH.

The Honorable Roger North was the sixth and youngest son of Dudley, the second Lord North. Of his family he has given some account in the preface to the Life of his brother the Lord Keeper Guilford, but of his own personal history little remains upon record except what may be gleaned from the family memoirs of which he was the author. He was born in the year 1650, and was originally designed by his father, who had "a specious fancy to have a son of each faculty or employ used in England," for the Civil Law. By the advice of his elder brother, Francis, his destination was changed, and he was educated to the Common Law bar, in which branch of the profession it was in the power of his brother to render him some very essential services. By his assistance "a petit chamber, which cost his

father sixty pounds," was procured for him, and to the scanty allowance which fell to the share of a younger brother his affectionate relative made a timely addition. Nor was his kindness confined to pecuniary assistance, for while Roger North was yet a student, the Lord Keeper, who was then rapidly rising into notice, "caused his clerk to put into his hands all his draughts, such as he himself had corrected, that by a perusal of them he might get some light into the formal skill of conveyancing." The most constant and affectionate intercourse was maintained between the two brothers, the Lord Keeper taking his younger brother with him into all companies and entertainments, and always "paying his scot." "I do not," says Roger North, "remember that he so much as took the air without me, and so when he dined or supped abroad, unless with grandees of one sort or other, I was with him." When Francis was made Attorney General, he divided the profits of one of the offices under him with his younger brother; and when he became Treasurer of the Middle Temple, a perquisite chamber worth one hundred and fifty pounds falling to his dis-

posal, he presented it to him in lieu of the small Student's Chamber, which he had hitherto occupied.

Upon the promotion of Francis to the seat of Chief Justice of the Common Pleas, he gave his brother "the countenance of practising under him at *Nisi Prius*," and when he became a housekeeper, Roger North and his servant "were of his family at all meals." On occasion of the burning of the Temple at the great fire, the Chief Justice, who was unwearied in his kindness towards his brother, "fitted up a little room and study in his chambers, in Sergeants' Inn, for the latter to manage his small affairs of law in, and lodged him in his house till the Temple was rebuilt, and he might securely lodge there. And his Lordship was pleased with a back-door in his own study, by which he could go in and out to his brother to discourse of incidents; which way of life delighted his Lordship exceedingly." The practice of the younger brother appears to have advanced with the dignity of the elder. Upon the Great Seal being given to the latter, Roger North was made King's Counsel, and in the three years ensuing acquired the better part of

the fortune which he afterwards possessed. At this time he became a regular member of his brother's family, and had a coach and servants assigned to him, "and all *at rack and manger*, for two hundred pounds a year, which was a trifle as the world went then." Of the tender interest which the Lord Keeper took in the happiness of his younger brother, a pleasing instance is recorded by the latter. "Once he (Roger North) seemed more than ordinarily disposed to pensiveness, even to a degree of melancholy. His Lordship never left pumping till he found out the cause of it: and that was a reflection what should become of him if he should lose this good brother, and be left alone to himself, the thoughts of which he could scarce bear; for he had no opinion of his own strength to work his way through the world with tolerable success. Upon this his Lordship, to set his brother's mind at ease, sold him an annuity of two hundred pounds a year at an easy rate, upon condition to repurchase it at the same rate when he was worth five thousand pounds, and this was all done accordingly." The affectionate kindness thus displayed towards him by his brother made a

proper impression upon the mind of Roger North, who entertained for his benefactor a tender respect amounting to veneration. During the reign of James II. who was very favourably disposed towards the Lord Keeper and his family, Roger North was raised to the post of Attorney General, but upon the Revolution his well-known principles compelled him to retire from public life. His old age appears to have been chiefly past "out of the way," as he expresses himself, at Rougham in Norfolk, where he died in the year 1733, at the age of eighty-three. He was married to Mary, the daughter of Sir Robert Gayer of Stoke Pogis, near Windsor, by whom he had two sons, Roger and Montagu, and five daughters, Elizabeth, Anne, Mary, Catherine, and Christian.

As a politician, Roger North appears to have been honest, but deeply prejudiced in favour of those high prerogative notions, which were current after the Restoration, and which led him to defend some of the most corrupt measures of that period. His acquirements as a lawyer were probably considerable, if we may judge from the professional knowledge displayed in the following

discourse. He was also, according to Dr. Burney, a dilettante musician of considerable taste and information in the art, the progress of which he watched and recorded during the latter end of the seventeenth and beginning of the eighteenth century, with judgment and discrimination, leaving behind him at his decease a MS. entitled, "Memoirs of Music," which Dr. Burney found of great use in the history of English secular music, during the period to which his memoirs are confined. He had an organ, built by Smith, for a gallery of sixty feet long, which he erected on purpose for its reception. There was not a metal pipe in this instrument in 1752; yet its tone was as brilliant and infinitely more sweet than if the pipes had been all of metal.

The most popular, and indeed the most valuable of Mr. North's works is, "*The Life of the Right Honorable Francis North, Baron of Guilford, Lord Keeper of the Great Seal under King Charles II. and King James II., wherein are inserted the Characters of Sir Matthew Hale, Sir George Jefferies, Sir Leoline Jenkins, Sydney Godolphin, and others the most eminent lawyers and statesmen of that time.*" As a piece of biogra-

phy this work has considerable and very peculiar merits. It possesses all that earnest spirit and vivacity of feeling which distinguish the writings of those biographers who are acquainted with, and attached to the hero of their pages; and in the warmth of the narrative and the evident interest of the writer, it more nearly resembles autobiography than any memoir in our language.

The affectionate reverence which Roger North entertained for his brother, his gratitude for no small degree of fraternal kindness, his respect for his principles, his talents and his station, his long continued intercourse with him, and his acquaintance with his profession, all contributed to render the task of recording his life most grateful and satisfactory. The memoir thus produced contains no insincere panegyric, no studied developement of character, but a simple and affectionate delineation of a man, who, while living, evidently engrossed the writer's whole admiration. So thoroughly was the author saturated, it may be said, with veneration for his brother, that he never appears to have questioned in the remotest degree the propriety of any of his actions, or to have entertained for one moment an idea that

any part of his conduct stood in need of excuse or extenuation. He has, accordingly, with the utmost simplicity and without comment of any kind, related several incidents which are certainly not very creditable to his brother's memory. In what terms, for instance, ought we to speak of the dishonorable trick to which he resorted, when counsel, of opening his case with "a long history of matters upon record, of bulls, monasteries, orders, greater or lesser houses, surrenders, patents, and a great deal more," all which he knew to be perfectly false, and when called upon to go into his evidence, gravely informing the court, "that the attorney had forgotten to examine the copies with the originals at the tower*." But though his blind attachment to his brother has thus rendered Roger North a more impartial biographer than he might otherwise have been, yet in sketching the characters of other individuals he exhibits very strong and unjust prejudices. In the account which he has given of Sir Matthew Hale, a name which stands above all common eulogy, these prejudices are most

* Vol. i. p. 87.

prominently visible. In a long and laboured attempt to depreciate the character of this celebrated man, whose rare merit it was to serve with pure hands at the altar of Justice, in times of tumult, of anarchy, and of court corruption, winning the respect even of the most opposite parties, North has betrayed the rancorous spirit of an angry politician. The piety of Hale is degraded into a sour puritanism, his unaffected humility into proud self-conceit, his firm and undeviating integrity in the judicial office into a weak and dishonourable love of popular applause. Not satisfied with attempting to lessen his public reputation, he has even attacked his private character; and has sought, in the unhappiness of his domestic circumstances, matter for reflection and crimination. The philosophical and literary pursuits with which Hale amused his leisure hours are stigmatized as trifling, and the productions of his pen as displaying "a very childish ignorance of his subject*." The prejudices

* Mr. North speaks of Hale's work, "*on the Origination of Mankind*," as in appearance a great work, with nothing in it, which scarce any one ever read or will read. This Treatise, according to Dr. Birch, "shews great force of rea-

thus lavishly scattered through these volumes, perhaps render the *Life of Lord Guilford* more valuable than a less partial memoir, as they serve to display the feelings and habits of thought of that class to which the writer had attached himself.

To celebrate the lives and virtues of his relatives appears to have been one of Roger North's chosen pleasures. In addition to the memoirs of his elder brother, he produced *The Life of the Honorable Sir Dudley North, knt. Commissioner of the Customs, and afterwards of the Treasury to his Majesty Charles II.; and of the Honorable and Reverend John North, Master of Trinity College in Cambridge, Prebend of Westminster, and sometime Clerk of the Closet to the same King Charles the Second.* The lives of an active and enterprising Turkey merchant, and of a tranquil and studious Churchman cannot be expected to furnish much matter of interest or curiosity, and yet the zeal of the author and his intimate ac-

soning and an equal compass of knowledge." Hale was, says he, no inconsiderable master of philosophical and more especially theological learning. — *See Life of Tillotson, p.* 48.

quaintance with his subject have rendered these memoirs highly amusing. Amongst the political economists of the present day, Sir Dudley North has obtained a very considerable reputation for his enlightened views with regard to the true interests of trade, the principles of which were at that period so very imperfectly understood*.

The strong political principles which North had imbibed led him to write an answer to Dr. White Kennett's *Complete History of England*, under the title of *Examen, or an Inquiry into the Credit and Veracity of a pretended Complete History, shewing the perverse and wicked design of it, and the many falsities and abuses of truth contained in it; together with some Memoirs occasionally inserted; all tending to vindicate the honor of the late King Charles II. and his happy reign, from the intended aspersions of that foul pen.* Like the other works of the same author, the *Examen* is valuable for the many original anecdotes it contains, and the view it presents of party politics,

* For a further account of the biographical works of Roger North, see the *Retrospective Review*, vol. ii. p. 238—vol. v. p. 136; and for an account of his *Examen*, vol. vii. p. 183, and vol. viii. p. 1.

but as an impartial authority it cannot be in any manner relied upon. Some idea may be formed of the prejudiced spirit in which it is written, when we recollect the manner in which the great judicial offices were filled at that period, and compare it with the representation given by North in his *Examen*. "I think," says he, "I may without injury to any age affirm, that in no time since William the Conqueror have the laws been executed in all the courts of royal jurisdiction with more justice, decorum, and impartiality than in the reign of Charles II."

It only remains to notice the present Treatise, which has now for the first time been laid before the public. As a guide to the study of the law, as it existed in the writer's time, it may be considered as comprising not only the fruits of his own information and experience, but also of his brother the Lord Keeper Guilford, the authority of whose opinions and practice is indeed frequently introduced. The particular directions given for the student's course of reading must now be considered as obsolete, but the general observations with regard to the Study of the Law may still be read with great advantage; while to those

who are desirous of making themselves acquainted with the old law, every part of the treatise will be found useful. From the occasional carelessness and incorrectness of the style, it is evident that this little Treatise was never prepared by the author for the press; but in now presenting it to the public it has been thought proper, with one or two very trifling exceptions, to adhere faithfully to the original manuscript.

Inner Temple, May, 1824.

DISCOURSE

ON

THE STUDY OF THE LAWS.

Of all the professions in the world, that pretend to book-learning, none is so destitute of institution as that of the common law (1). Academick studies, which take in that of the civil law, have tutors and professors to aid them, and the students are entertained in colleges, under a discipline, in the midst of societies, that are or should be devoted to study, which encourages, as well as demonstrates such methods, in general, as every one may easily apply to his own particular use. But for the Common Law, however, there are Societies, which have the outward show, or pretence of collegiate institution; yet in reality, nothing of that sort is now to be found in them; and, whereas, in more ancient times, there were exercises used in the Hall (2), they were more for probation than institution; now even those are shrunk into mere form, and that preserved only for

conformity to rules, that gentlemen by tale of appearances in exercises, rather than any sort of performances, might be entitled to be called to the Bar. But none of these called Masters, and distinguished as Benchers, with the power of ordering, and disposing all the common affairs of the Society, ever pretended to take upon them the direction of the students, either to put them, or lead them in any way, but each is left to himself to enter at which end he fancies, or as accident, inquiry, or conversation prompts. And such as are willing, and inquisitive, may pick up some hints of direction, but generally the first step is a blunder, and what follows, loss of time, till even out of that, a sort of righter understanding is gathered, whereby a gentleman finds how to make better use of his time. And of those who are so civil to assist a novice with their advice, what method to take, few agree in the same, some say one way, some another, and amongst them rarely any one that is tolerably just. Nor is it so easy a matter to do it, that every one should pretend to advise, for most enter the profession by chance, and all his life after is partial to his own way, though none of the best; and it is a matter of great judgment, which requires a true skill in books, and men's capacities, so that I scarce think it is harder to resolve very difficult cases in law, than it is to direct a young gentleman what course he should take to enable himself so

to do. But since some directions in a study so particular, and beside all common erudition, are necessary, (for how should a student of himself find out what to begin with, and they must be very mean intimations coming from one of the profession, that are not better than none at all;) and I, having been so frequently solicited to assistances of this kind, and as often ready to afford them in discourse, according to my capacity, (but such discourses make but indifferent impression, being of matters strange and new, and so are apt to sink, and fade to nothing;) and yet being desirous to gratify friends, as well as in due time to put forward some, I may be a debtor to for such care, and for these ends to preserve in my remembrance such notices, as at present seem material, and considerable, I have undertaken in an extempore way to set them down in writing, but cursorily, and in no better method than that way of proceeding will permit.

First, as to the professions, in general, I think few are ignorant how necessary they are to persons of the second rate in families. The eldest is usually provided for by settlements, and if the younger have any provision, whether by settlement, or just disposition of parents, it is seldom or never more than is judged sufficient for education in some profession (3); concluding that for all the future plenty and dignity of life, it must be expected from a profession, and

from no other means; and if there be examples from good fortune, from mortality, or other accidents happening to them, it is but as a lottery prize, and none but fools are drawn in by the trumpet of it to venture their all, in expectation of the like events. And it is to be observed that there is a vast difference between the circumstances of youth and age. The former will pass and live merrily upon a common exhibition, and fancy that will hold on, but it is a great mistake, for age requires more a great deal, because it sets up for authority, and dignity, which is not had without an estate, and whatever good parts a man has, and howsoever his company is desired, without an estate or gainful profession he is but an underling, and must look poorly in company of such as are better provided for. And that which was gay, and seemed a full provision for a youth, viz. a servant and perhaps a horse, with a few airs of dressing, comes far short of the pretensions even of the middle ages, which require settlement, plenty, and economy, and so in process the former becomes little better than a genteel vagabond, and at length ends in the dismal apprehension of being burthensome, and fastidious every where, and, in the no less horrid thought of being good for nothing, draws on some wretched and abject retirement. The true policy of life is to provide that the latter part may be easy, and comfortable; for that has disadvantages that re-

quire the counterpoise of good heart and spirits; *conscientia vitæ bene ante actæ*; and the Ancients accounted *otium cum dignitate* to be a full compensation for the miseries even of old age. And which way should a man secure this to himself, but from the course of a profession? It may be thought that the assiduity and pains, required in the pursuit of success, is too hard a task to be borne, but let it be considered that it is better to bear the means, out of choice, and enjoy the fruits in due time, than *volens, nolens*, to bear the bad consequences of neglect, when it is out of all possibility, by any means, or industry, to retrieve the mistake. There are two points undoubted, first, *that no great gain is without great pain*, or (more explicitly) that no person can reasonably expect success in a profession, without industry, assiduity, and perseverance. For the business is to exceed, or at least be a match for others that do take pains, and how can that be done but by taking more, or, at least, as much pains? Professions generally advance upon competition, and then the consequence is plain. Secondly, the pains and application must be in the youth, and that gone, the opportunity is lost. A man has but one youth, and considering the consequence of employing that well, he has reason to think himself very rich; for that gone, all the wealth in the world will not purchase another. It would seem strange, if experience did

not confirm it, that a man's age should be like the seasons of the year; for if you sow in harvest, when are you to reap? The spring is the time to commit seeds to increase, and if a man gets not his skill when young, he is like never to have any at all; for the soil becomes arid as age advances, and whatsoever is scattered upon it takes no thrift, but perishes and starves. Therefore, the thought of uneasiness in the way of a profession must be conquered, and let perseverance in a regular and steady pursuit be the object of an unshaken resolution. But that must not pass as granted, that the pursuit of a profession is such a course of labour and pain. The spectre that frights so, stands at the entrance; when that is put by, the walk will be easy, and, at last, pleasant; for every day's work makes the next easier, and when the work becomes, as in time it will be, engaging, then the very exercise that was so very laborious, will be rather a pleasure, and be at last an habitually agreeable diversion, and entertainment of time; and if the understanding and consequences are rightly considered, reason itself will get the better of aversion: for what can a man do better than that which he knows is best for him? But there is a great error in the common apprehension that a profession is inconsistent with pleasure; for I know no employment, but, undertaken and pursued in fit time and manner, in fit times and manner, also admits of many

reasonable pleasures.(4) If idleness be counted such, I own it is inconsistent with pains-taking at any time; but most people have found the fatigue of want of past-time more fastidious than the reasonable pains that lead to a profession; and I am sure that it is a great point gained in the course of a man's life, if he is never at a loss as to the spending of his time, or knowing what to do.

As to the profession of the law, I must say of it in general, that it requires the whole man, and must be his north star, by which he is to direct his time, from the beginning of his undertaking it, to the end of his life. It is a business of that nature, that it will not be discontinued, nor scarce endure a cessation; but he that will reap the fruit expected from it, that is, raising of an estate by the strength of that, must pursue the subject without interruption, and he must not only read and talk, but eat, drink, and sleep law; that is, he must purpose to prosecute his studies daily, till he comes to practice, and then to be never out of the way of business; but, as the proverb is, *semper tibi pendeat hamus*, and all this while all other studies, entertainments, and pleasures, must be such as are consistent with the profession, at least not averse or opposite to it.(5) This may be thought, perhaps, a hard and discouraging sentence, as if a man were condemned to the gallies during life, without hopes of redemption, but this is a great

mistake, as has been touched before; for when I say daily, without intermission or cessation, I do not mean every hour and minute in every day, but only, as the philosophers meant by *nulla dies sine lineâ*, no day is to pass without somewhat of study or practice of the law, except such as order and necessity will have exempted. As to actual study, it doth not demand so much of a day as it need to be esteemed a labour. I have heard some say, four hours in a morning (6) close application to books is enough for law. Sir Henry Finch used to say, study all the morning, and talk all the afternoon. (7) Yet this does not suppose the rest of a man's time is to be idle or lost. For there are other studies more pleasant which may be interwoven with the study of the law with great emolument; as for instance, History, and particularly that of England, which latter is to be accounted, however pleasant to read, an appendix or incident necessary to the study of the law: for it often lays open the reasons and occasions that have been for changes that have befallen the Common Law, either by authority of Parliament, or of the Judges in Westminster Hall. (8) And besides history, there are other sorts of learning most reasonable for a lawyer to have some knowledge of, though even superficial, as of the Civil Law. (9) A man of the law would not be willing to stand mute to the question, what is the difference between the Civil and the

Common Law; what is the Imperial Law, what the Canon, what the Pandects, Codes, &c. It is not at all needful to study questions in these laws, but the rise and progress of them, in gross, is but a necessary knowledge, and so far taking up but little time, and had by mere inspection of some books, and perusing their introductions. It may with ease and pleasure be interlaced with the Common Law; and not only that for a sort of use, but divers other sciences may be taken notice of for diversion, or ornament, and pleasure. I have known Music, [10] Geometry, and Natural Philosophy, as well as the knowledge of Geography, States and Republics, in great perfection, harboured *in eodem subjecto* with the body of the Common Law, and consistent with as great practice and preferments as have been known in the profession. For if it be considered what may be done in these idle times, usually spent in useless talk, and the vain whiling of it away, such acquests are not to be wondered at. I grant there must be a genius and zeal that way; it is not to be forced, and then there is no greater pleasure. Of this the great Bacon was an instance, and surely it is a vast advantage to be not only a common lawyer, but a general scholar, as in latter times Selden was; [11] for that you call a mere lawyer, seldom reaches better preferment than to be a puisne judge, if at all to be ever invited from his chamber. The profession of the law, comprehending

the whole in due order, refers to 1. Reading; 2. Common-placing; 3. Conversing; 4. Reporting; 5. Practising.

1. The first is reading or study, and that is referred to the books of law, which are, 1. Institutions; 2. Reports; 3. Repertories; 4. Formularies. As for statutes and records, they fall in with the others: for the Acts of Parliament bringing change or alteration in the Common Law, and the interpretation of them belonging to the courts of law, they are taken notice of and agitated as other points of law are, and with them to be found in the books.

1. A student begins with books that are institutionary, ([12]) and of them, in the first place, LITTLETON, the text of which is accounted law, and no other book hath that authority. It was originally compiled for the initiation of a student, and is, therefore, the most plain and intelligible, without any sort of obscurity, and contains the fundamentals of law, touching estates and contracts; and however fitted this book is to the capacity of a beginner, the very adepts in the law are not ashamed frequently to read it. I knew a Lord Keeper that read it every Christmas ([13]) as long as he lived. So necessary is it to retain in memory the very words of a book which is so authentic. This implies the small need this book has of a comment; for all such attempts must make more obscure that which is of itself as plain as possibly

can be; and that, so titled by my Lord Coke, which by the very word Comment, as supposing it carries explanation *(cujus contrarium verum est)* hath deceived many students to take it along with the text of Littleton; but to very bad purpose, for it disturbs and hinders the attention to the text of the book, which is that principally to be regarded and remembered; and further reasons shall be given of this elsewhere. There is another little book, called PERKINS (14); it contains a collection of cases and distinctions put under several of the chief heads of the law, as Feoffments, Grants, &c. This is very useful to a student, for it practices his attention to cases and niceties of the law, and shows upon what small niceties and diversities things will turn; but this book hath not authority equal with the other, and many cases in it are not allowed for law; but, however, for the reasons given, useful for a student, and the rather, because it is ordinarily printed in the same volume with Littleton, or so as may be pocketed, and thereby fit for *subsecive* times, and lazy intervals to be employed. Here I must stay to observe the necessity of a student's early application to learn the old law French, for these books, and most others of considerable authority, are delivered in it. Some may think that because the law French is no better than the old Norman corrupted, and now a deformed hotch-potch of the English and Latin mixed together,

it is not fit for a polite spark to foul himself with; but this nicety is so desperate a mistake, that lawyer and law French are coincident; one will not stand without the other. All the ancient books that are necessary to be read and understood are in that dialect, and the law itself is not in its native dress, nor is, in truth, the same thing in English. During the English times, as they are called, when the Rump abolished Latin and French, divers books were translated, as the great work of Coke's Reports, &c.; but upon the revival of the law, those all died, and are now but waste paper([15]). Even the modern Reports mostly are in French, and, as I said, all the ancient as well as divers authentic tracts, as FITZHERBERT'S *Natura Brevium*, STAUNFORD'S *Pleas of the Crown*, CROMPTON'S *Jurisdiction of Courts*, &c. ([16]) are only to be had in French; and will any man pretend to be a lawyer without it, when that language should be as familiar to him as his mother-tongue? Now, it is not the least use of these initiatory books that they are to be read in French, for, thereby a student, with his slow steps, gains ground in the language as well as in the law, and, by that time as he shall be capable to understand other books, he will be capable to read them, therefore, I should absolutely interdict reading Littleton, &c. in any other than French, and, however it is translated, and the English con-columned

with it, it should be used only as subsidiary, to give light to the French where it is obscure, and not as a text. For really the Law is scarce expressible properly in English, and, when it is done, it must be *Françoise*, or very uncouth. All moots and exercises, nay, many practices of the law, must be in French, at the bar of the courts of justice; as when Assizes or Appeals are arraigned, the Array, that is, Pannels of Juries challenged or excepted to, it must be done in French; so Counts, Bars, and such transactions as reach no farther than the Bench and Counsel, with the Officers, and not to the Country, (as Trials by Jury,) or to the Lay Gents (as we call our Clients) in motions and arguments of their suits, which they are concerned to understand, are to be done in Law French; also Replications at the Common Pleas Bar in real actions; and this is the meaning of those scraps of French so frequently heard in the Courts, which to explain is not the business here, but it is enough to show how necessary for a lawyer it is to be as ready as possible at his French, and how he must blush to be discovered incompetent. It is a language so religiously embraced by all good lawyers, that it is the custom for such to write their notes, or reports taken at the bar, as the shortest, and it is, in reality, the most apt way for expressing the Law, and that a little experience will show. For the assistance of students

in this task of entering into a course of study of the law, and learning the language, Rastall, one of our best authors, composed a book, which at first was printed in English and French, called the *Terms of the Law*, that lay in a little room, but it has been since, in every edition, enlarged, and makes a thick octavo; this is fit to lie by at reading, to the end when terms occur which are of art, as I may call them, and peculiar to the law, for comprehending a great deal in a word, as, *Avowry*, *Warranty*, *Brief*, *Attachment*, &c. that book is ready to explain them, and at the same time instruct both in the subject and language; and the same be looked into at times and much information had out of it. At first gentlemen have a horrid aversion to French, and think it desperate hard to learn, but if the former, that is the aversion, be conquered by resolution, the other will be found a mistake, for such as have a preparation of Latin, and a moderate apprehension of modern French, soon master it. Few need more than a fortnight's application for enabling them to read, fluently and currently; but, in a word, whether sooner or later, it is necessary, and must be done. A man may be a wrangler, but never a lawyer, without a knowledge of the authentic books of the law in their genuine language. One great discouragement here is the multitude of abbreviations which makes law French to the eye appear as difficult as if it were

Arabick, but this is because the particles and monosyllables, which frequently occur, are so abbreviated. But a small list of them, set down with a pen as they are found out, lying by, with a cast of the eye, readily helps, and in a few hours' time the memory receives and supplies all. It was the way of all writing, before printing, to abridge the labour of the pen, and the first printing followed the way of the manuscripts which in those times, was as familiar and easy as our alphabet. The law writings and books retain much of the old abbreviations, I cannot undertake to represent them all but a few are as follows:

bˢ .	bus.	eè . .	estre
bn̄s .	biens	ffᵗ. . .	fait or fuit
c̄ .	ceo	ecᵗ. . .	esteant.
e .	est.	fktm̄t .	frank tenement.
mᵗ. .	ment	oi̇a . .	omnia
ff. .	scilicet	oibˢ . .	omnibus
trās .	trespass	ꝑ . .	per
aps .	apres	ꝓ . .	pro
ac̄c :	actio	q̄ . .	que
c̄ovnt .	covenant	r̄ns .	riens—respons
Kᵗ .	Knight	trs̄ . .	terres
R .	Roy	br̄e . .	brief
gᵗ. .	gist	h̄oe .	home
h̄uit	habuit	pˢ . .	pres

These and many others will occur in the old books, and so in the latter also, which sense and common ingenuity will interpret, but if one will have recourse to the rest of them, let him look over TROTMAN'S *Abridgment of* COKE'S *Reports*, and he will find all that ever were used, it being affectedly done in that way for shortness (17). So let us leave the languages as supposed our own, without hesitation, and go on to books and matters. I have, at present, named only Littleton, Perkins, and the Terms. Now as we come farther into business, I must intimate that a student is not to make his course so strict as to read only one book till he has read it out, but to have divers books going at the same time, some for principal studies, and others for aid, and to relieve the time by somewhat of change; as then may be had some small pieces, such as the old Tenures which are short, and very apposite and material. These are scarce known to many students, but very useful to be taken along at intervals with other reading, for they will give a notion of the jurisdiction and process of the law upon the foot of antiquity, whence only they are justly to be taken. And generally in the law, as well as in all other human literature, antiquity is the foundation; for he that knows the elder, can distinguish what is new, but he that deals only in the new, cannot tell how fresh or stale his opinions are, nor from whence they are derived (18). I must not forget among the

subsidiary books, that of St. Germains called *Doctor and Student* (19), because it is plain and intelligible, and the points of law that are touched there are sound and well stated. There is recommended also the little book of FORTESCUE *de Laudibus Legum Angliæ* (20); along with which are some accounts of the ancient law in Latin, added by Mr. Selden, called the Sum of Hengham, but let such things be entertained no longer than they have relish, for though it is profitable to understand them, it is not reasonable to throw away the first time about it, that should be better employed: at length these will become intelligible of course. Next to LITTLETON *without any Comment*, I should advise to take into solemn course PLOWDEN'S *Commentaries*, and to join, at intervals, FITZHERBERT'S *Natura Brevium*, and CROMPTON'S *Jurisdiction of Courts*; there is also STAUNFORD'S *Pleas of the Crown*, with the book at the end *De Prerogativa Regis*, and MANWOOD'S *Forest Law*, (21) all of which are institutionary, and must be read at one time, or another, so, as the fancy takes, this or that may have a preference, and variety will be found a considerable relief in a course of study. The *Natura Brevium* gives full light into the nature of most common law process, but it is useful to have near at hand the *Registrum Brevium*, because many processes are there, not in the *Natura*, and no information, or description, can be so well to explain a process, as the form itself, and for the same

reason it is good to have within reach some of the books of entries, as RASTAL, (22) COKE, &c.; for if you would understand what counts, bars, pleas, replications, demurrers, and joining issues, and the like are, there you may read the form of them, which speaks all that is to be known of them. But Plowden is now *sur la tapis*, and that I would have read all over. I know it will seem tedious, because it is a collection of the prolix stating cases at the bar, and the no less extended arguments of the Serjeants' pleadings, and the Judges' resolving them. But therein is the profit to the student, for these extended discourses make the sense of what they speak clear, and very much variety of law and authority is incidentally brought to embellish as well as enforce your arguments, and all in a very proper style and expression, most fit to make an early impression in a student's memory, and after all the book carries much authority in the law, and is cited for proof, being authentic as any other book is. (23) It will be expected now, that I say what I think of the Year Books, which were Reports taken by officers assigned for that purpose, and registered under the order of years of the Kings' reigns and terms. The number of the folios usually concludes with the year, so they are thus called, an. 23 Ed. 3. fol. 4. About the time of Dyer there was little or no learning of the law, but from Year Books, and there was scope enough,

for they swelled into ten considerable volumes, so that those great pains-takers of the law, Fitzherbert and Brook, thought it fit to abridge them, under titles which indeed were but then common-place books carefully adjusted or regulated. These are called the *Grand Abridgments*, but of such I say no more, only this, that a student must have a care of dealing in abridgments, indexes, and common places, (24) which are all his enemies; his business is with the books themselves; and his own common place, if ever he makes any, however imperfect it prove, is better for his own use than all the others that are extant put together; but I shall have to touch that afterwards. Now as touching the Year Books, (25) I cannot propose them all to be read carefully, and in course, because I know the work is too immense, and the age not studious enough to promise a compensation for so much pains, nor is there any that apply themselves so desperately to study, as that requires. But I must say, that if there ever riseth a genius that shall have strength of body, and ambition of mind, joined with a resolution to conquer the learning of the law, he will not skip over the Year Books, but, as the great Hales did, read them all, and moreover all the old musty registers and records that he could come at, and he thought useful to be understood. Industry and order in the law ceased with order and peace in the State, for after

Noy, who was captain of the band, followed by Jones, Windham, Rolls, Glynn, Maynard and Hales, all such as I have described, and most of them survived the troubles, and shone sufficiently after the Reformation, and showed that preferment in the law may be acquired by great learning, and ability, more surely than by fortune; for those had none of her favours extraordinary; but when such are not extant, fortune must choose; but still they, even in that wheel, have a great advantage, that by study make themselves capable of her favours, and who may lay hold of such benefits when they proffer, without shame or blushing, whereas there are, and ever will be, many, and every day more and more, who cannot venture into advanced parts of the law, for want of foundation. But, to return to the books, I must own the task is much more insupportable of taking them into course, because of the superfetation of modern Reports published since the time of Dyer to ours, the very names of which are a catalogue (26) of a large class, and it is fit that a lawyer should be acquainted with them all, at least in some measure, for a lawyer should know every decisive case reported in the books, or blush at his defect. And I must add, that if the Year Books were taken into course, it must not be here; it is too early; they are too abstruse and difficult for a student to batter through, but thus much I must require as necessary

for a tolerable common lawyer, that after *Plowden*, he take in hand the Year Book that is called Hen. 7th, which is accounted the most explicit in expression and matter, and very many of the chief law matters now evidently known, were considered, debated, and resolved there; and it gives an idea of the manner of practice, and expression of the law in that time, and enables a student to read the other books of the Annals, or to understand them, if he has occasion to consult or peruse any cases referred to there. For these reasons, that Year Book is recommended to students. Together with this may be read some of my Lord Coke's Institutionary Pieces, as his *Pleas of the Crown*, *Jurisdiction of Courts*, and *Comments* (these truly so) *upon Magna Charta*, and the old statutes; ([27]) these will bring a remission over the other, and relieve the fatigue that will be found in dwelling too long upon it. When this is done, I should advise to enter upon some of the more modern Reports, used to be recommended, LEONARD'S, HOBART'S, MOOR *and* PALMERS', not forgetting CROOK. But I shall soon have too many, so we stop after one or two of them, and then look back, where we find two books which must not be omitted, that is, THELWALL and DYER; the former has matters concerning the old law of Franchises and Iters, not found in any other book, and the latter is a *sans peer* for conciseness and profound judgment. DYER is a book that will bear a second reading in

course, after most of the other books of Reports are despatched, and the latter reading shall be with more profit incomparably than the former. When we are got thus far, then it will be time to take in hand my LORD COKE'S *Reports;* these will not come so well, before a good foundation is laid out of the older books; this is a considerable branch, and therefore should be carefully and attentively treated, because the reputation of Coke, and the wonderful and specious formality of his *Reports*, have given them an authority in the law superior to most others; and, to say truth, as he was a most affected formalizer, his works are very apt for forming a student, and his *Institutes* have very much useful learning. It may be wondered I have not yet noted him upon LITTLETON, but the reason has been touched; but further now I must observe, that it is the confusion of a student, and breeds more disorder in his brains than any other book can, that is not a mere index and abridgment; for this *Commentary*, (28) so called, is only a common-place book exhausted, and the titles disposed, after the alphabetical order, into that as may follow the text of Littleton, and bating the small application to the text, more often impertinent than otherwise. The subject matter is extract of controversial law, which a student ought to gather for himself; for he will never thoroughly understand it, at least not retain it in his mind, when it is

of another's gathering. No one ever learnt a language by reading of a Dictionary; so no man can be a lawyer by reading Indexes, Abridgments, and Common Places such as this upon Littleton is. There are many sorts of such Common Places called Abridgments, which carry no other countenance: some under heads, as the *Grand Abridgment*, and some under *Maxims*, as Wingate and my Lord Bacon's, in a small piece, and Hugh's Boroughs, the modern Cases and Resolutions under titles, Jenkins's Cases adjudged. Shepherd has a body of law under titles; these are all useful as Repertories, to consult and find out where the authorities lie, and to furnish arguments, but are by no means to be read or looked upon, but occasionally as was said. It has been observed, that a student never takes a just impression of law but from the case itself, where it is most largely debated; for the much altercation works it into his memory, whereas, if he has the bare point adjudged, and nakedly delivered to him, it enters at one ear, as they say, and goes out at the other. The reason is, resolutions of law are mostly independent of each other, and not like mathematical propositions that have a perpetual connexion, and this is meant by that trite saying, *præstat petere fontes quam sectari rivulos*. That of *Coke upon Littleton* being of a mixed sort, is allowed to be read in course, after some progress in the books of

Reports, of which little account as to order is to be given. And since there are such abundance of these, it is enough to leave it to a student's fancy to take where he pleaseth, so as he reads them in fit manner; it is not of great import which, 1st, 2d, or 3d, nor is it a work here to give a character of the *Reports*, though some are better than others; it may suffice to say that KEEBLE [29] only is esteemed under value; GODBOLT, GOLDSBOROW and MARCH mean, but yet not to be rejected; DYER, MOOR, YELVERTON, ANDERSON, PALMER, CROOK, JONES, SIDERFIN, ROLLES, and several others of note are not to be passed by. So to conclude this head of reading, if more of the *Year Books* are taken in hand, they will come well after *Coke's Reports*, and the *Institutes*, but if the obsolete law be any discouragement, I would as a cure refer the student to read the *Preface to Rolles' Grand Abridgment*.

The next considerable article in our student's process is common placing [30] It is so necessary, that without a wonderful, I might say miraculous felicity of memory, three parts of reading in four shall be utterly lost to one who useth it not. Reading may form a capacity, create a judgment, and perhaps in time make the law pleasant as well as easy; but without common placing, it will not obtain the useful part, that is, authority and resort to books. It will often happen that a man shall hear a question of law stated, and remember that he

has read some case or other very apposite to, if not the very question in point resolved, somewhere in the books, and if he would give all he is worth, he cannot recover where it is to be found. This is a *Crevecœur*, and it is not to be imagined what a solicitude and loss of time this will create in searching vainly where to find it out. Now he that common places along with his reading, runs straight to his book; and knowing the method, probably at first finds it out. But if it be a matter that may with equal propriety fall under several titles, then he has two or more to look over, and perhaps divers, and not hit on the right. This is not loss but gain of time, for the very perusing the common-place book, and the many entries there which will be taken notice of, besides what is searched for there, will refresh the memory in divers other points that are not in his inquisition; for these entries being his own, bring to his mind the case at large, the book, and many other circumstances that occurred in his reading, beside what was noted, and hath an unthought-of virtue in improving, or at least retaining in, or, it may be recovering in what one has once read; and in regard that judgment grows with study and more with experience, it is of more use to recover a case to the memory when the judgment is ripe to esteem and value it, than it was at first to read and set it down. Now this advantage is not

had from perusing Indexes, Common-places, or Abridgments of others, for there no more is known than what falls under the eye, and that, perhaps, so short and imperfect that it breeds in the mind rather confusion than the distinction and information of Law. But, by accident, one may light on notable discoveries of books and authorities by such helps, but they are subservient to practice only, but as to study they are pestiferous and treacherous helps, and to be avoided rather than any way used. This is the use, or, in fitter terms, necessity of a Common-place. The next thing is the manner of conducting it, and that, to students, is usually a profound secret; for how should young men be inventors of methods that are the result of art and consummate experience? Therefore I propose first the furniture, which is a good, large, paper book, (31) as big (with some) as a church bible, but moderation must have place with a beginner, who must conclude his first attempts condemned to loss. For as *scribendo disces scribere*, so by essaying a common-place you learn to make one, and whoever doth not bestow a fruitless beginning shall never know a fruitful conclusion of his studies. The next furniture is a set of titles, which must be had either from some other common-place book, or from a printed set of titles, and these must be wrote at the head of pages, or rather columns, for three, or two at least, in a

page, are convenient, allowing spaces blank under them, more or less, as the plenty of matter to fall under the several titles is foreseen, more or less, wherein the error, if any there be, is not material, provided the student is not niggard of paper, and allow enough. Thus for the furniture. Next I recommend the use of a small, but legible and distinct hand, which in a common-place book must be affected, for room will be required, and a fair, French hand will eat upon it too fast; therefore, by all means, practice a most minute character for the purpose, and not illegible. Then for the titles. It is the fault of affected methodists to derive matters from a few generals, and so make most of your titles by way of subdivision. This is the fault of the printed titles, as also of the table to Keeble's Statutes at large. For under the title Administration, you find the titles Executors, Devastavit, Wills, Legacies, Probates, &c. which is very faulty in respect to use, which requires all or most to be distinct or general titles and few or no subdivisions, or, at least, such only as are so apposite as not to be mistaken; such as under Executors, Executors de son tort, and the like. Whoever begins a common-place book must be beholden to some friend for a list of titles, and if they would be satisfied of the manner, I should refer to Lincoln's-Inn Library, where the Lord Hale's Common-place book is conserved, and that may be a pattern, *instar omnium*.

Then next, it is considerable to know the manner of noting or entering in a common-place book; we find in the laborious tables of many, only references, as to say where an Executor shall be charged in his own estate and where not. This is almost useless, for nothing is gathered from perusing the entry, without perusing also the books, which is great labour, and, perhaps, after all, nothing to the purpose you enquire of, and also a great loss of time. But a short note of the law, or sum of the book or case, should be set down in print, by which you may know at first view if it be to your purpose or not, as thus—If Executor assents to a legacy, and there be not Assets, it is a Devastavit; and then add the book by name and folio, never omitting the name of the case. A good lawyer may write at the end of his own Common-place book *sparsa coegi*, for the business of a student in order to practice is the collecting as many controverted points, nice distinctions, and opinions, as well as resolutions of judges, as he can. In which design his Common-place book must be a succedaneum to his frail memory, and when he finds the name and the case in his Common-place book he is provided to wield the weapon as occasion requires, for capping of books and book-cases by name is the great ostentation of a put-case student and practising Lawyer, and nothing more brings fame and credit to him. The end and aim of a Lawyer is duplex, 1st. to know, and 2nd. to appear to know—the latter

brings in Clients, and the former holds them. Such as are washy and feeble horses will fail in conduct and argument as they in a journey, and therefore all the art and assistance one can have in this great work of being and appearing a good Lawyer is but little enough.

I think I next proposed conversing and mentioned the advice of Sir Heneage Finch to study all the morning and talk all the afternoon. I have heard Serjeant Maynard say the law is *Ars babiativa* (32), meaning that all the learning in the world will not set a man up in the bar practice without a faculty of a ready utterance of it, and that is acquired by a habit only, unless there be a natural felicity of such; such as the family of the Finches are eminent by. Where nature gives not, industry must purchase. They say Demosthenes used to speak to the sea with pebbles in his mouth to enable him to conquer an impediment in his speech, and that the brutish noise of the people might not with its importunity disturb him. And he whose trade is speaking must not, whatever comes on't, fail to speak, for that is a fault in the main much worse than impertinence. When that is done, care must be taken of subject matter; after that a man may let fly and his words be trusted; however, *audendum tamen*, time and practice will correct failings and acquire better performance. The expedient proposed for this is society, and 'tis said

for every end of life desirable, for the fate of men's lives is too often determined to good or evil by their company, and as the choice of company is more nice and difficult, so are the hazards of young gentlemen's swinging into utter perdition greater; but a student of the law hath more than ordinary reason to be curious in his conversation, and to get such as are of his own pretension, that is, to study and improvement, and I will be bold to say that they shall improve one another by discourse as much as all their other study without it could improve them. There is seldom a time but in every Inn of Court there is a studious sober company that are select to each other, and keep company at meals and refreshments. Such a society did Mr. Pool find out, whereof Serjeant Wild was one, and every one of them proved eminent, and most of them are now preferred in the law, and Mr. Pool at the latter end of his life took such a pride in his company that he affected to furnish his chambers with their pictures. There are many reasons that demonstrate the use of society in the study of the law—1st. Regulating mistakes; oftentimes a man shall read and go away with a sense clear contrary to the book, and he shall be as confident as if he were in the right; this his companion shall observe, and sending him to the book, rectify his mistake. 2d. Confirming what he has read. For that which was confused in the memory,

by rehearsing will clear up and become distinct, and so more thoroughly understood and remembered. 3d. Aptness to speak. For a man may be possessed of a book-case, and think he has it *ad unguem* throughout, and when he offers at it shall find himself at a loss, and his words will not lie right and be proper, or perhaps too many, and his expression confused; when he has once talked his case over, and his company have tossed it a little to and fro, then he shall utter it more readily with fewer words and much more force. Lastly, the example of others, and learning from them many things which would not have been otherwise known. In fine, the advantages of a fit society are to a student superior to all others put together, and I shall not go about to make a complete catalogue of them.

I come now to another article which is reporting, that is, attending the Courts of Justice, and there observing what passes, and noting down what is thought material, for the doing which most of the law books called Reports are a pattern, for they are but the debates, arguments, and resolutions of controversial law, noted down for memory by some Counsel or Judge whose eminence gives them reputation and value. The custom of having solemn Reporters determined with the Year Books, only Hetley was later, who, I think, values himself upon having been a Reporter assigned. Of later times,

Reports have teemed from the press, more from the profit of the copy than any good to the law, for the opinions and resolutions begin to contradict one another so much that a selection is fit to be made and the rest suppressed, and as they are, they load a student's time most intolerably, for most think they are obliged to know them and study them accordingly, whereof the worst consequence is, that the older and more authentic and valuable books of the law are slighted and passed by. (33) But this out of place: the business in hand is the attendance of the students upon the Courts of Justice, there to report for themselves as well as they can; this is done not so much to learn by collecting of law, but to observe the course of the court and method of practice, that they may learn the phrase and language of the Court, and know how Counsel behave themselves towards it, and what the Court expects from Counsel, and in a word the *expetenda* and *fugienda* in practice, against they come there themselves. And without this introduction, it must needs be thought, how raw and incompetent gentlemen must be that prefer themselves in business. I confess there is great difference in times, and according as the Bar and Bench is supplied with men of learning and good nature. I have known the Court of King's Bench sitting every day from eight till twelve, and the Lord Chief Justice Hales managing matters of

law to all imaginable advantage to the students, and in that he took a pleasure or rather pride; he encouraged arguing when it was to the purpose, and used to debate with the counsel so as the court might have been taken for an academy of Sciences as well as the seat of justice.(34) And in other times business has shrunk, the Judges not appearing till eleven in the morning, and then being very short and hasty in their dispatches, ruling things without debate, and not enduring their own rules to be disputed; and more than this, what with the many discouragements and perverseness of times, few or no suitors will be at the cost of upholding arguments, and the business of that court reduced to matters of course, and when disputes happen they are altogether about factious wrangles in corporations upon mandamus and returns, and actions grounded thereon, which have little or no learning depending upon them, and the spirit of the causes moving rather from factious spirits than doubts of law; so that it is a more reasonable account of attending there for news, and to hold forth in coffee-houses, than to trouble pen and paper with noting. Now I observe two errors in the direction of students to this matter—1st. that they go to the courts too soon; 2d. that they attend at the wrong place. 1st. What the advantage by attending is at court. It is certain that more law is to be gathered by reading than at

court, and if it were not for practice it were better not to come there, but to take the cases resolved that are fit to be known from report of others, and employ the morning, which is the prime of their time, in their chamber, reading and common-placing. Now it is usual after a year or two's residence in the Inns of Court, for all students to crowd for places in the King's Bench Court, when they are raw and scarce capable of observing any thing materially, for that requires some competent knowledge, and the bad consequence is that it makes them pert and forward, and apt to press to the bar when they are not half students, and that is the downfal of more young lawyers than all other errors and neglects whatever. For this reason I would not have any lose time from their studies after this manner till after four or five years' study, and two years afore they come to the bar, which should not be before seven of study,(35) is more than enough, especially when to get a place they must be very early, and idle about, or worse, till the court sits, and then with little more profit than such may expect that come only to hear news. Nay, it will be found that for some years after calling to the bar their best employment will be that of sitting there and reporting, as I know full well, without more of refreshment than a motion or two in a term. This length of time in the approaches to practice must be endured, for what inconvenience is it when

a man has once firmly dedicated his whole life to the law? If any good fortune invites to any steps forwarder, there he is to embrace the opportunity; if not, he cannot be secure of moderate success in the profession, but by entering by proper means, and not *per saltum*, leaping over hedge and ditch to come at it. An egg may have more than its natural heat, but will hatch or be addle; therefore, let the motions be rather phlegmatic than mercurial, for it is a true saying, soon ripe soon rotten. The other error is going to the King's Bench and not the Common Pleas. It is said the Common Law is at home in the Common Pleas, but a guest in the King's Bench; and it is certain that the business of that Court is less pregnant of law than at the Common Bench. The causes of the Crown, Corporations, matters of the Peace and concerning the Government, take up most of that little time they allow there, which, as I said, are more faction and wrangle there than law. But at the Common Pleas there is little but merely matters of law agitated; they proceed by originals; the processes are those of the Common Law; whatever disputes may happen in the main, there will not want many touching the proceedings, that is, of Essoins, Defaults, Appearances, Returns, &c. very fit for a lawyer to know, for he may hope in time to be at the Coif, and then he will have need enough of all his observations. There-

fore my advice is, that a student shall bestow two years before he is called to the Bar, the first at the Common Pleas and the last at the King's Bench, and if any shall say the latter is not enough to learn the course of the court where he is to practice, I answer, that will be supplied after he is called to the bar, for his business for some years will not so overwhelm his time but he will have much lying on his hands for noting and observing the course of the Court, for the law gathered is very inconsiderable while he attends at the bar in quality of a practiser; and there is further reason to prefer attendance at the Common Pleas, it is not so crowded as the King's Bench is; a gentleman may come at ten in the morning and have a place, but there he may come at six and fail of a tolerable post to attend in, the difference of which, as to the well employment of your time, is notorious enough: if it be considered what three or four hours in a morning is in study, it will not be thought fit to throw it away in idle attendance. Lastly, it remains to speak of practice. But that is so far off, when the discourse is to a student at his first entrance, as all insinuations about it may be well spared, and when gentlemen come so forward they will scarce think themselves to seek what belongs to their calling; and besides it is a large field, and admits more accurate reflections than this dispatch will permit, and if occasion were,

I could furnish some hints from a curious hand, as may be done in due time: therefore at present I shall only repeat the caution I have already touched, that the student doth not rush upon it too soon; that observed, and the antecedent time well employed, a gentleman cannot fail of success in his profession, such as shall amply compensate all his pains, make him generally esteemed and courted, and at length and so probably as may accounted in his turn earlier or later as it may happen to be taken into preferment and authority, and so conclude his days with honour, and the felicity of having an estate to leave of his own getting.

A reporter ought to have two books, one for his notes in the court, and the other for writing them over fair into, and it should be the afternoon's work never to be omitted, the transcribing from the note-book into the fair book, and correcting from the memory then fresh, all cases and matters of law that were thought worth the noting in the morning, and then this fair book will ever be useful and intelligible, whereas the note-book shall be so disorderly wrote, that after a little time the reader himself shall scarce know what to make of it. Some are so careful to examine all the books cited, and many have acquired short-hand, pretending to take every word, but this latter I do not think so well, because, if a student understand the point and the reasons,

he will be able to set them down short and plain to himself while others are speaking, and so he practises to contract and to write material and short, but taking every word makes him not careful to distinguish between what is pertinent and what not, and of what usually passes in the courts the former is thin spread, and the latter not very scarce. It is a great advantage to have access to the company of Judges or men in eminent practice, for such are commonly very condescending and friendly to young men who are out of all emulation with them, and they will be pleased to instil notions of law, and some are not better entertained than with putting cases to them and taking their answers, which given with judgment and modesty, is very engaging, and sometimes has created friendships that have been introductive into great preferments. The keeping of Courts Leet and Baron is a most useful practice to a student, and as it is the lowest of employments in the law, so fittest to begin at, for no ground is so sure as that which is gained by inches. Some have been so unhappy by good fortune, if I may so say, to be let into business at the upper end, for *cessante causâ cessat effectus*. The favour removed, they could never maintain their post; and after that, it was more difficult to recover any ground, than for a student that creeps in by degrees to gain it. Court-keeping

exercises a dealing with country people, and shows their humours, and which way to surround them. Besides, there is a practice of dispatch, a management of authority, and the use of forms; this latter is of more consequence than one would imagine. I knew a Lord Keeper, (36) when first a student, kept courts, and made up all his rolls, and wrote the copies with his own hands, and having no means to keep a clerk, thought he did not foul his fingers in so doing. It is a vulgar observation, that the attornies get ground of the long robe, as it is called, the reason of which is, the gown has derelicted the practice of forms, so that all is now left to them; and such as profess only to afford a little discourse and take money, shall not be applied to, but for necessity, when their advice is wanted, and it is not one business of a thousand that comes to them; the former part is nearer the client than the counsel. I have heard Serjeant Maynard say he has several times gone the western circuit on foot, and that no attorney made breviate of more than the pleadings, but that the counsel themselves perused and noted the evidences; if deeds, by perusing them in his chamber, if witnesses, by examining them there also before the trial, and so were never deceived in the expected evidence, as now the contrary happens, the evidence seldom or never comes up to the brief, and counsel are forced to ask which is the best wit-

ness. But the abatement of such industry and exactness, with a laziness also, or rather superciliousness, whereby the practice of law forms is slighted by counsel, the business, of course, falls to the attornies. I forgot to take notice of the elder compilers of the law, Bracton, Britton, and Fleta. Who would have an historico-critical account of them will find it in the dissertation of Selden at the end of Fleta. It is certain in their time they contained the body of the common law, and in fit cases they are authority, and are cited at this day, my Lord Coke says, for ornament, which is a jest. The clergy then were Judges and Serjeants, so they affected the form and model of the civil law, and compiled methodically in Latin, as appears by Bracton and Fleta. But time has so antiquated these books, that they are become useless in a regular course of study, and they are to be looked into chiefly for curiosity and accomplishment, for the more books a lawyer reads well, the more curious and inquisitive will his knowledge of the laws and history of them be. And to say truth, although it is not necessary for counsel to know what the history of a point is, but to know how it now stands resolved, yet it is a wonderful accomplishment, and without it a lawyer cannot be accounted learned in the laws. And for the history of the law, its rise is to be taken from *Glanville*, who was *Cap. Justic. Angliæ*, when, after the Conquest, the law, as it was then, a

compound of the Norman principally, and then, as subject to it, a little of the inferior Saxon institution, was licked into some tolerable form, since which it has received change enough.

These books I put for the course, with aids.

Course.	Aids.
Littleton.	Terms of the Law.
Perkins.	Diversity of Courts.
	Old Tenures, and Doctor and Student.
Plowden.	Fitzherbert's Natura Brevium.
	Crompton's Jurisdiction of Courts.
	Staunford's Pleas of the Crown.
Hen. 7.	Coke's Jurisdiction of Courts.
Keilway	——— Pleas of the Crown.
	——— Commentary on Magna Charta.
Leonard.	Petit Brook.
Coke's Reports.	Coke on Littleton.
Dyer.	Bracton.
Moor.	Britton.
Crook.	Fleta.
Palmer.	Glanville.

Here may be supplied what was too short touched about common placing, a thing that much retards reading, and will be thought at first very troublesome; but there is a knack or dexterity acquired by practice that will make it more easy. For it is very tedious to write at length as verbatim out of the book, therefore a student is to use himself to contract the sense of a case, point, or period, as thus:— be the sentence, that an executor who assents to a

specific legacy, not having assets to satisfy the testator's debts, shall be charged of his own estate as for a wasting, write only thus—assent to legacy sans assets, devastavit—and by this, other instances may be imagined to show the compendium necessary to be made in common placing, and how it may be done; and a student must be very attentive about it, and thereby he will exercise, and at length get a habit of extracting the material part of a business, and to develope the accoutrements, as well as to abridge his pains in writing. He must expect to lose his first pains as well as the paper and book he uses, though this is not to be thrown away; and the second undertaking will go on well, and the book be a vade-mecum as long as he lives. All the words and discourse in the world will not give such an idea of this work as one month's practice; and the use of the pen must never be grudged, but, as a horseman's sword, it must always be ready, if not drawn.

FINIS.

NOTES

AND

ILLUSTRATIONS.

NOTES

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ILLUSTRATIONS.

Note 1, page 1.

"A learned man in the laws of this realm," says one who was himself very learned, "is long a-making; the student thereof, having *sedentariam vitam*, is not commonly long lived; the study abstruse and difficult, the occasion sudden, the practice dangerous;" such is the encouragement extended by Sir Edward Coke, in the Preface to his Entries, to the students of his day, when the law was contained within the compact compass of some thirty or forty folios. What then must be the situation of the student of the nineteenth century, and how in his "short-lived" career can he hope to master the knowledge which is scattered through four or five hundred weighty volumes? The evil is an increasing one, and the termination of it will probably be that which is predicted by an able writer, "the tacit ignorance of all the professors of the law." In the mean time,

and until some expert *codifier* furnishes us with a less complicated system, the student must struggle, as he best may, across the dry and stony tracts of the old law, over mountains of modern reports, and through streams of statutes, of which (reversing the case of the Niger) the termination is undiscoverable. It is with the intention of lightening in some degree the toils of the student, as he is making his way through the older authorities of the law, that the foregoing treatise is presented to his notice.

Although the last century and a half has produced strange alterations in the course and extent of those studies which are required from a student of the law, yet the present publication will not be thought useless or impertinent, when it is considered that the principles and foundation of our jurisprudence are contained in those venerable authors whose writings are there recommended. To obtain a complete and satisfactory acquaintance with the intricate system of the English law, it is absolutely necessary, to use the words of Sir Edward Coke, "to have consideration of our old bookes, lawes and records, which are full of venerable dignitie and antiquitie," and which will enable the student "to see the secrets of the law." Without a knowledge of the changes which our system of law has undergone, it is impossible either to understand the grounds of it, or to appreciate its merits and its defects, and it is only by a

reference to the more ancient authors, or " by learning and inquiring of the sages," that such knowledge is to be obtained. It is by such means alone that the student can ever hope to enjoy " the gladsome lights of jurisprudence."

In order to facilitate these arduous studies, it is proposed in the present note to give a very succinct account of some of the treatises in which the study of the old law is commented upon and recommended.

The earliest treatise on the Study of the Law, appears to be Fulbeck's Preparative, " *A Direction or Preparative to the Study of the Law, wherein is shewed what Things ought to be observed and used of them that are addicted to the Study of the Law, and what on the contrary part ought to be eschewed and avoyded. At London, Anno Dom.* 1620." It appears from the Epistle to the reader, that this tract was written in the year 1599, at a period when the library of a lawyer was confined to a moderate compass. The Year Books, Dyer and Plowden, are the only Reports mentioned by Fulbeck. Many valuable hints may be gathered from this little volume, which displays much acuteness and good sense. Several citations from it will be found in the course of the following Notes. The character of Fulbeck, given by another writer on the same subject, is, that " he leans too much on the Civil Law, and where he touches the Common, he

shews rather the matter than the method of study." *(Preface to Phillips's Directions for the Study of the Law.)*

In 1631 appeared *the English Lawyer, describing a Method for the Managing the Lawes of this Land, and expressing the best Qualities requisite in the Student, Pratizer, Judges, and Fathers of the same. Written by the Reverend and Learned Sir John Doderidge, Knt., one of the Justices of the King's Bench, lately deceased.* As a manual of advice to the student, little is to be gathered from this work, which is chiefly occupied with an attempt to reduce certain portions of the laws into a logical arrangement. The first and second sections treat of the natural faculties and acquired qualities necessary for the student of the law.

The next work on this subject is *Studii legalis Ratio, or Directions for the Study of the Law. By W. Phillips. London*, 1675." There is not much original matter in this volume, the most useful parts of which are compiled from Lord Coke, Sir John Doddridge, and other writers. The number of law-books necessary to form a lawyer's library had grown very considerable since the time of Fulbeck, and in Phillips's day actually amounted to fifty volumes! "And here our Student hath a catalogue of all or most of the books requisite for the study, which are about fifty in number, not very many nor great, most of them being but of small bulk or volumes,

therefore not so great labour to read over, as may not be compassed in a considerable time."—(*p.* 121.) This tract, which is in many respects valuable, has now become rather scarce.

In the *Preface* prefixed by Lord Hale to *Rolle's Abridgment*, and which has been re-published in the *Collectanea Juridica*, vol. I, p. 263, the student will find much excellent advice, more especially with regard to the study of the old law.

A few Observations on the Study of the Law, by Sir Thomas Reeve, Lord Chief Justice of the Common Pleas in the reign of George II., may also be found in the first volume of the *Collectanea Juridica*, *p.* 79.

The later treatises on the subject, of which there are several, do not fall within the scope of the present note.

Note 2, page 1.

The form of these exercises is still preserved in Lincoln's-Inn. The practice was for the students to exercise themselves in moots and putting of cases while they continued members of the smaller Inns, or Inns of Chancery, where they prepared themselves to take part in the more important disputations of the Inns of Court. These legal exercises were divided into *Readings* and *Mootings*, the former being a much more elaborate and important proceeding than

the latter. The Reader was appointed by the Benchers, and received half a year's notice to prepare himself, and the reading used to continue three weeks and three days, during which period the Reader kept a splendid table in the Hall, feasting the principal persons of the Court, the Judges, &c. Mr. North, in the life of his brother, has left an entertaining account of the sumptuous feasts given by the latter during his readings in the Middle Temple Hall. "The profusion of the best provisions and wine was to the worst of purposes, debauchery, disorder, tumult, and waste. I will give but one instance. Upon the grand day, as it was called, a banquet was provided to be set upon the table composed of pyramids, and smaller services in form. The first pyramid was at least four foot high, with stages one above another. The conveying this up to the table, through a crowd that was in full purpose to overturn it, was no small work; but with the friendly assistance of the gentlemen, it was set whole upon the table. But after it was looked upon a little, all went hand over head among the rout in the hall, and far the more part was trod under foot. The entertainment the Nobility had out of this was, after they had tossed away the dishes, a view of the crowd in confusion, wallowing one over another, and contending for a dirty share of it."—*Life of Lord Keeper Guilford*, i. 141.

Note 3, page 3.

The law appears always to have been an expensive profession. In Sir John Fortescue's time, "no student could bee maintained for lesse expenses by the yeare than xx markes (13*l.* 6*s.* 8*d.*). And if he have a servaunte to waite uppon him, as moste of them have, then so much the greater will his charges be." Fortescue then proceeds to inform us, that by reason of these charges, the children of Noblemen only study the law, and that "the poore and common sorte of the people are not able to beare so greate charges for the exhibition of their children. And marchaunte menne can selldome fynde in theire heartes to hynder theire marchandize with so greate yerly expenses."—*De laudibus Legum Angliæ*, c. 49. It should be remembered that the salary of the Chief Justice of the King's Bench, in Fortescue's time, amounted only to 170 marks.

We learn the expenses of a student in the reign of Charles II., from the Memoirs of Lord Keeper Guilford. "The exhibition allowed his Lordship was at first sixty pounds per annum. But the family being hard pinched for supplies towards educating and disposing many younger children, and his parents observing him to pick up some pence by Court-keeping, besides an allowance of twenty pounds per annum from his grandfather, and a little by

practice, they thought fit to reduce him to fifty pounds."—*Life, &c., v.* 1. *p.* 49.

Note 4, page 7.

It is curious and entertaining to notice the changes which a century and a half have wrought in the amusements of the student at law. Mr. North does not enter into the subject, but Phillips, in his "*Directions*," discourses at some length on the recreations proper for the young lawyer. They are to be moderate, and such as do not require any long time, or labour the mind over much; not violent or laborious, nor, on the other hand, loose and effeminate. Wrestling, and even dancing are proscribed as too violent; but "shooting, leaping, riding, bowling, and the like," are recommended.

Shooting (viz. with the bow) is described as a quiet and harmless exercise, increasing the strength, and preserving the health. The concluding reason which Phillips alleges in favour of archery, is unanswerable. "In a word, it is the only recreation allowable in our law, and being a lawful recreation, is the most worthy of a lawyer's practice."—*p.* 199.

Shooting is strongly recommended to students by Ascham in his *Toxophilus*. "If a man would have a pastime wholesome and equal to every part of his body, pleasant and full of courage for the mind, not

vile and unhonest to give ill example to laymen, not kept in gardens and corners, not lurking in the night and in holes, but evermore in the face of men to rebuke it when it doth ill, or else to testify on it when it doth well, let him seek chiefly of all others for shooting."—*p.* 36.

Bowling, acccording to Lord Bacon, is useful for those who lead sedentary lives. "It is," says Phillips, "an instructor in the mathematics, an innocent recreation, doth moderately refresh the body, and very much quicken and sharpen the understanding." These opinions are opposed by no less an authority than that of Galen. "If a scholar should use bowls or tennis, the labour is vehement and unequal, which is condemned of Galen."—*Ascham's Toxophilus*, *p.* 35.

Angling is an amusement strongly recommended by Phillips to the lawyer: "It is a recreation that doth not at all take up the mind, but gives it liberty for any contemplation, therefore most befitting a student. Witness that angler that said,

> "My hand alone my work can do,
> So I can fish and study too."

Amongst other recreations, the young lawyer has always been much attached to theatrical entertainments. A century ago, the Templars were the great dramatic critics, and exercised a plenary power over

the judgment of the pit, a fact which we may gather from the *Spectator*, and the other periodical works of the day. They were remarkable at the same time for frequenting those coffee-houses which were the resort of the Wits, as Will's, Button's, &c., when coffee-houses were the fashionable resort of the literati. The students of our Inns of Court at this period appear to have possessed more of the *esprit de corps* than at the present day, when they are amalgamated with the general mass of society.

In the life of his brother, Mr. North has given us an amusing account of his lordship's diversions in early life. "His loose entertainments in this stage were as usual with gentlemen cadets of noble families in the country, sporting on horseback; for which there was opportunity enough at his grandfather's house, where was a very large and well stocked deer-park; and at least twice a year in the season there was killing of deer. The method then was for the keeper, with a large cross-bow and arrow, to wound the deer, and two or three disciplined park-hounds pursued till he dropped. There was most of the country sports used there for diverting a large family, as setting, coursing, and bowling, and he was in at all; and within doors back-gammon and cards with his fraternity and others, wherein his parts did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any

that by minority of age, or majority of folly, or self-conceit, were exposed to be so practiced upon. * * * In town he had his select of friends and acquaintance, and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him."—*Vol.* 1. *p.* 45.

Note 5, page 7.

Mr. North's observations are correct and sensible; the law is not so jealous a mistress as to exclude every other object from the mind of her devotee, although she will vindicate the first place in his affections. In fact, a total employment of the thoughts upon her, and upon her alone, would be injurious to her interests—the passion of a lover gathers strength from interruption. Numerous instances might be mentioned of eminent lawyers who have pursued, with zeal and industry, studies not within the strict pale of their profession, and whose legal acquirements are yet unquestioned; the late Mr. Fearne might be cited as an example. "He was," says his friend Mr. Butler, "profoundly versed in mathematics, chemistry, and mechanics. He had obtained a patent for dyeing scarlet, and had solicited one for a preparation of porcelain." A friend of Mr. B.'s having communicated to an eminent gunsmith a project of a musket of greater power and much less

size than that in ordinary use; the gunsmith pointed out to him its defects, and observed, that "a Mr. Fearne, an obscure law-man in Breame's Buildings, Chancery Lane, had invented a musket which, although defective, was much nearer to the attainment of the object."—*Butler's Reminiscences*, p. 126. Many instances will occur to any one who is at all conversant with legal biography, of celebrated lawyers distinguished by their proficiency in science and literature. It must, however, be admitted, that if a lawyer is known to pursue any foreign study, it is but too probable that his professional reputation, however unjustly, may suffer for the transgression. "The several books," says Osborn in his Advice to his son, "incomparable Bacon was known to read, besides those relating to the law, were objected to him as an argument of his insufficiency to manage the place of Solicitor General, and may lie as a rub in all their ways that shall out of a vain glory to manifest a general knowledge, neglect this caution." Osborn probably alludes to the correspondence between Bacon and Sir Edward Coke, in which the former charges the latter with having disparaged him and his law. Sir William Blackstone thought it necessary to take a formal leave of his muse, which he did in a copy of very easy and pleasing verses.

"Shakespeare no more, thy sylvan son,
Nor all the art of Addison,

Pope's heaven-strung lyre, nor Waller's ease,
Nor Milton's mighty self must please;
Instead of these, a formal band
In furs and coifs around me stand,
With sounds uncouth and accents dry,
That grate the soul of harmony.
Each pedant sage unlocks his store
Of mystic, dark, discordant lore,
And points with tottering hand the ways
That lead me to the thorny maze."

Lord Mansfield also, in his earlier life, appears to have suffered for his reputation as a man of letters. Every one recollects the two brother Serjeants who "shook their heads at Murray as a wit." Though these prejudices may have prevented many of our lawyers from openly avowing their attachment to lighter and more elegant pursuits, yet there are few who have not delighted to devote the hours of their privacy to the muses. A late very learned lawyer, whose name is never mentioned in the profession without respect, used to take great pleasure in walking up and down the room, and repeating the minor poems of Milton; and Mr. Butler tells us, that "every verse of Gray is imprinted upon his memory." Nay, even my Lord Coke himself assures us, that "to cite verses standeth well with the gravitie of our lawyers."

As a mere relaxation, however, there is perhaps no employment more captivating than the perusal of

a novel. It is so complete a change and occupation, without even the slightest tension, of the thoughts, that it operates as an admirable restorative to the mind. It is not surprising, therefore, that so many of our lawyers have been inveterate novel readers. Such was Lord Camden, who is said absolutely to have devoured every novel which was published, a task which, at his day, when the standard of novel writing was so much lower than at present, must have compelled him to swallow many an insipid or nauseous mouthful. His lordship was able to point out the best novels with the same accuracy and skill with which Sir Matthew Hale distinguished the most valuable cases in the *Year Books*. So ardently was Curran, when a young man, devoted to works of fiction, that he is stated to have carried his novel with him to his pillow, that he might enjoy the perusal of it the last thing at night and the first thing in the morning. A celebrated gentleman who has lately retired from the chancery bar has often declared, that his only studies are law and novels.

Note 6, page 8.

The attempts to parcel out a particular period of the day, or a certain number of hours as sufficient for the study of the law, is perfectly nugatory; it is as though a physician were to prescribe a certain dose of medicine for all his patients without regard

to their age, strength, or constitution. "Four hours in a morning close application to his books," says Mr. North, "is the sufficing quantum;" while, according to Sir Eardley Wilmot, "six hours severe application" is necessary. There are, no doubt, cases in which four hours' study would be more than sufficient, and others in which six hours would not be enough. It is not uncommon to see a man of quick apprehension and powerful memory, more effectually mastering the study with a small devotion of his time than another individual of a duller intellect, whose labours are unceasing. The only mode, therefore, of judging whether a sufficient time is devoted to the study, is by examining the progress made.

Note 7, page 8.

So in the *Life of Lord Keeper Guilford*; "this agrees with the direction to a student, said to have come from the Earl of Nottingham, *that he should study all the morning and talk all the afternoon*, because a ready speech, if it be not nature's gift, is acquirable only by practice, and is very necessary for a bar practiser."—*Vol. i. p. 25.* In the same place Mr. North mentions it to have been a practice with his brother, "by way of change and refreshment," to mix some "institutionary reading" with that of the Reports, "as after a fulness of the Reports in a morning, about noon to take a repast in Staunford,

Crompton, or Lord Coke's Pleas of the Crown and Jurisdiction of Courts, Manwood of the Forest Law, and Fitzherbert's Natura Brevium, and also to look over some of the Antiquarian books, as Britton, Bracton, Fleta, Fortescue, Hengham, the Old Tenures, Narrations, Novæ, the Old Natura Brevium, and the Diversity of Courts."

Not content with having pointed out the best time for study, some writers have taken the pains to inform us what places are best suited to the prosecution of such pursuits. Taking a sentence from Seneca as his text, *Ad studium multum confert locus*, Phillips, in his *Directions for the Study of the Law*, enters into a disquisition respecting the fittest *habitat* for the student—" where noise disturbs his busied thoughts, and puts him behind hand with himself, he cannot expect any solid progress in his studies." Hence he concludes, that " cities and places of confluence are offensive to study, for the noises, cries, and tones that fill every corner;" all which inconveniences are avoided in the country, " where the air is sharp and piercing, places silent and quiet, excellent walks, the comfort whereof, together with the fragrancy of the flowers and herbs, do much add to and supply the wasted spirits."—*p.* 203. It is on this ground that Sir John Fortescue commends the situation of the Inns of Court, " which are not situate within the citie where the confluence of the

people might disturb the quietness of the students." *De Laudibus, &c. c.* 48. It may be observed, however, that the faculty of attention depends so much upon habit, that noise soon ceases to "disturb the busied thoughts," and that it is by no means prudent to require silence and solitude for the full operation of the mental powers. A lawyer must learn to abstract his mind amidst all the tumult and turmoil of the courts. The situations in which the intellect most freely exerts itself, are almost entirely the result of habit. Montaigne's mind was most active during exercise—"My thoughts sleep if I sit still; my fancy does not go by itself as when my legs move it; and all those who study without a book are in the same condition."

Note 8, p. 8.

The study of English history, and indeed of history in general, may be accounted a collateral branch of a lawyer's education. "Now it is to be observed," says Sir Edward Coke, "that oftentimes for the better understanding of our bookes, the advised reader must take lights from historie and chronicles." *Co. Litt.* 43 *a*. As a science, if, indeed, in its present heterogeneous shape, it may merit so high a name, the law can only be properly studied by "taking light" from history. As a rule of action calculated to ensure the tranquillity and happiness

of the community, the original fitness or unfitness of any system of law can only be appreciated by a reference to the state of society at the time when that system took its rise. History may therefore be considered as the *Lapis Lydius* of the law, the touchstone by which its merits are to be ascertained. It may, perhaps, be thought that these enquiries are more properly within the province of the legislator than of the lawyer, but surely a right understanding of the principles of that system, in the administration of which he is an instrument, can never be considered foreign to the character of a lawyer. At the same time nothing can more effectually counteract the narrowing influence of a profession which depends so much upon arbitrary rules, than a free enquiry into the origin and utility of those rules. This branch of legal study has been happily termed, "censorial jurisprudence."

It is much to be regretted, that we possess no History of the English Law, written with a view to the illustration of censorial jurisprudence; such a work proceeding from a competent pen, would be an invaluable benefit to the country. Sir William Blackstone has unfortunately constituted himself the apologist rather than the candid investigator of our laws, and yet what hand could have rendered more essential service to the cause of improvement and reformation? Mr. Daines Barrington, in his Obser-

vations on the Ancient Statutes, has earned a better right to the title of a censor. "Mr. Barrington," observes Jeremy Bentham, "whose agreeable miscellany has done much towards opening men's eyes upon this subject, like an active general in the service of the public, storms the strong holds of chicane wheresoever they present themselves, and particularly fictions, without reserve."—*Preface to Fragment on Government, p.* 50.

It is most remarkable, that "the choice and tender business," as it is termed by Sir M. Hale, of reducing the law into a system, and cutting off those enormous excrescences which have rendered it a state disease, should two centuries ago have attracted the attention of Lord Bacon, and yet that when the evil is increased twenty fold, no steps should have been taken to check its dangerous progress. When Attorney-General, Bacon made a proposal for the amendment of the law, and afterwards, during his disgrace, tendered the assistance of his vast mind towards composing a digest of the law both common and statute. Sir Matthew Hale also, though by no means an innovator, has left behind him "Considerations touching the amendment or alteration of Laws," which evince how deeply his mind was impressed with the importance of this subject. *See Hargrave's Law Tracts,* p. 253.

Note 9, page 8.

The study of the civil law has been strongly recommended by many of our most eminent common lawyers. "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 little studied in England."—*Burnet's Life of Hale, p.* 24. Lord Holt also having occasion to cite the civil law, 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."—*Lane v. Cotton*, 12 *Mod.* 482.

Note 10, page 9.

In former times, there appear to have been considerable pains taken to accomplish the young lawyer. The polite arts were, in fact, a part of his forensic education. We learn from the text that music was studied "*in eodem subjecto* with the body

of the common law," and Fortescue gives a most captivating account of the elegant attainments of the students in his day. "And to speak uprightly, there is in these greater Innes, yea, and in the lesser too, beside the study of the lawes as it were, an universitie or schole of all commendable qualities requisite for noblemen. There *they learne to singe*, and to exercise themselfes in all kindes of harmony. There, also, they practice daunsinge and other noblemen's pastimes, as they use to doe, which are brought uppe in the kinges house. On the workynge dayes the moste parte of them applye themselves to the studye of the lawe. And on the holyedayes to the studie of the holye scripture; and out of the tyme of divine service, to the readynge of Chronicles."—*De laudibus Legum Angliæ, c.* 40. We know that Lord Keeper North was "a musician in perfection," and his biographer tells us that he has heard him say, "that if he had not enabled himself by these studies, and particularly his practice of music upon his base or lyra viol (which he used to touch lute-fashion upon his knees) to divert himself alone, he had never been a lawyer."—*Life of L. K. Guilford, vol.* 1, *p.* 15. And again we are told that "his most solemn entertainment was music, in which he was not only master, but doctor," (*p.* 46.) and that "he was in town a noted hunter of musick-meetings." Other instances might be men-

tioned of lawyers who have been no mean musicians. Nay, even Saunders, the most astute of all pleaders, used, we are told, "to play jigs upon an harpsichord, having taught himself with the opportunity of an old virginal of his landlady's."

Ascham, in his *Toxophilus*, seems to have considered it absolutely necessary that a lawyer should learn to sing. "Besides all these commodities truly, two degrees of men which have the highest offices under the king in all this realm, preachers and *Lawyers*, shall greatly lack the use of singing, because they shall not, without this, be able to rule their breasts for every purpose. For where there is no distinction in telling glad things and fearful things, gentleness and cruelness, softness and vehementness, and such like matters, there can be no great persuasion. For the hearers, as Tully saith, be much affectioned as he is that speaketh. At his words they are drawn; if he stand still in one fashion, their minds stand still with him: if he thunder, they quake; if he chide, they fear; if he complain, they sorrow with him; and finally, where a matter is spoken with an apt voice for every affection, the hearers for the most part are moved as the speaker would. But when a man is always in one tune like an humble-bee, or else now in the top of the church, now down, that no man knoweth where to have him, or piping like a reed, or roaring like a bull, as some

lawyers do, which think they do best when they cry loudest, these shall never greatly move, as I have known many learned have done, because their voice was not stayed afore with learning to sing. For all voices, great and small, base and shrill, weak or soft, may be holpen and brought to a good point by learning to sing."—*p.* 30.

Music is, in fact, an enjoyment eminently adapted to the professors of a laborious study.

> " A solemn air is the best comforter
> To an unsettled fancy."

Surely nothing can be imagined more reviving and tranquillizing to a fatigued mind than strains of sweet music. " Music (says Luther, in his Table-talk, p. 500) is the best solace for a sad and sorrowful minde, through which the heart is refreshed, and settled again in peace. * * * Music is an half discipline and school-mistress, that maketh people more gentle and meek-minded, more modest and understanding."

Nor was the art of dancing considered in any degree inconsistent with the gravity of our ancient lawyers. It is not easy to conjecture what was the precise nature of the revels, which upon certain solemn occasions used formerly to be held in the Inns of Court; but there seems reason to believe that they consisted of a series of stately measures. The

post-revels, indeed, which were performed "by the better sort of the young Gentlemen of the Society," consisted of galliards, corrantoes, and other regular dances. These revels were not merely a matter of choice, but of actual duty, as appears by the following order of the Society of Lincoln's Inn, made in 7 Jac. 1. "That the under-barristers be by decimation put out of Commons, for example's sake, because the whole bar were offended by their not dancing on Candlemas-day preceding, according to the ancient order of this Society, when the Judges were present."—*Herbert's Inns of Court*, 315. The last occasion upon which the ancient ceremony of dancing round the coal fire was performed, was in the year 1733, in the Inner Temple, when Lord Talbot took leave of that Society on receiving the Great Seal. The Lord Chancellor, Master of the Temple, Judges, and Benchers, led by the Master of the Revels, danced, or rather walked round about the coal fire, according to the old ceremony, three times, during which time they were aided in the figure of the dance by Mr. George Cooke, the Prothonotary, then of sixty; and all the time of the dance the ancient song, accompanied by music, was sung by one Toby Aston, dressed in a bar-gown, whose father had formerly been Master of the Plea Office in the King's Bench. See a particular account of this exhibition in the *Notes to Wynne's Eunomus*.

Sir John Davies, a celebrated lawyer in the reign of James I., and the author of the Reports in which the well-known case of Tanistry is contained, has left a poem of some length "on Dancing," in which he enters fully into the antiquity and excellency of the art, and shows it to be as old as the world; that it regulates pomps and solemnities, is found in all learned arts and great affairs, is the civilizer of man, the truest logic and best poetry, the only concord and harmony.

The following verse from this singular poem on the union of music and dancing, will not be considered misplaced in the present note:

"And thou, sweet music, dancing's only life,
The ear's sole happiness, the air's best speech,
Loadstone of fellowship, charming rod of strife,
The soft mind's paradise, the sick mind's leech,
With thine own tongue thou trees and stones can teach,
That when the air doth dance her finest measure,
Then art thou born the Gods' and men's sweet pleasure.

Some account of this poem and its author may be found in the *Retrospective Review, vol. 5, p. 44*, and likewise in Miss Aikin's *Memoirs of the Court of King James, vol. 1, p. 93.*

The saltatory excellences of Sir Christopher Hatton, who may indeed be said to have reached the woolsack *per saltum*, have been celebrated in the verses of Gray:—

"Full oft within the spacious walls,
When he had fifty winters o'er him,
My grave Lord Keeper led the brawls;
The seals and maces danced before him.

His bushy beard and shoe-strings green,
His high-crown'd hat and satin doublet,
Moved the stout heart of England's queen,
Though Pope and Spaniard could not trouble it."

"He was first taken notice of by the Queen," says one of Sir Christopher's biographers, "for the comeliness of his person, and for his graceful dancing in a masque at Court."

It must, however, be confessed, that there are not wanting authorities to show that dancing is an unfit exercise for the sober professors of the law. "Such recreations," says Phillips, "as require much labour, as wrestling, or the like, do not become *hominem literatum*, a learned man; *stultum enim est, mi Luculli, et minime conveniens literato viro, occupatio exercendi lacertos et delatandi cervicem ac latera formandi.* And the Lord Bacon saith, that such exercises are hurtful to the body, when strength is extended and strained to the utmost, as dancing, wrestling, and such like; for it is certain that the spirits being driven into straits, either by the swiftness of the motion, or by the straining of the forces, do afterwards become more eager and predatory."

Note 11, page 9.

For a biographical account of Selden, see his Life prefixed to the edition of his works, by Dr. David Wilkins, and *the Lives of John Selden, Esq. and Archbishop Usher, by John Aikin, M.D.*

Note 12, page 10.

Until the appearance of Sir W. Blackstone's *Commentaries*, the English law was, in fact, without any elementary or *institutionary* work which might facilitate the arduous progress of the student. Since the publication of that invaluable compilation, it has formed the manual of every young lawyer, and is generally the first book which is put into his hands. Should he, however, be desirous of acquiring a more extended and thorough knowledge of that vast system of real property which forms so very considerable a portion of our laws, it will be proper to trace it from its origin in feudal times, for which purpose, after a perusal of the fourth, fifth, and sixth chapters of the second volume of the Commentaries, the *Introduction to the Law of Tenures*, by Sir Martin Wright, and *the Lectures on the Constitution and Laws of England*, by Dr. Sullivan, should be read with attention. The student should then make himself thoroughly acquainted with the whole of the second volume of the Commentaries, and his time will afterwards be well employed upon Mr. Cruise's *Digest of the Law*

of Real Property. The perusal of this Digest, though laborious, will be found of the highest use. It is a valuable *institutionary* work, and will render the reader's mind sufficiently familiar with the doctrines of real property, to enable him, with advantage, to attack the older writers.

Amongst these writers Littleton stands pre-eminent. His text has become a first-rate authority, and the student who wishes to build his knowledge upon a sure foundation, cannot do better than make himself thoroughly acquainted with Littleton. To accomplish this, he must peruse and re-peruse the Tenures, until he has in some degree mastered their contents, a course strongly recommended by Mr. Butler in some excellent observations contained in his *Reminiscences*. The *Treatise of Tenures*, by Chief Baron Gilbert, which is, in fact, a Commentary upon Littleton, illustrating that author by a reference to feudal principles, should follow. This most important Treatise, though difficult and often obscure, ought to be most completely digested in the reader's mind, which will then be prepared for the reception of that extraordinary work, which, notwithstanding the remarks of our author, must ever be regarded as the Bible of the English lawyer—the Commentary upon Littleton. The chief merit of this inestimable book is the light which it throws upon the system of our ancient law. The grounds

and reasons of that system are there expounded with the most profound learning and ingenuity, so that the student may resort to it, as to an inexhaustible spring of legal knowledge. With all its want of method, and its occasional obscurity, it stands alone in his library the only Institute or general Textbook of the old law. Those who are best qualified to pass a judgment upon it, have spoken of the Commentary upon Littleton with the highest praise. The opinion of Mr. Butler, which cannot fail to have its due weight with every one to whom his profound knowledge of real property law is known, should never be absent from the recollection of the student —"that he has never yet met with a person thoroughly conversant with the law of real property, who did not think with him that *he* is the best lawyer, and will best succeed in his profession, who best understands Coke upon Littleton."—*Reminiscences*, *p.* 65. In mentioning this subject, Mr. Butler particularly cautions the student not to suspect for a moment that because he himself does not see the utility of what he reads in this work, or the application of the part of it which he is reading, to any practical purpose, that it is therefore useless. "There is not," adds Mr. B., "in the whole of the golden book, a single line which the student will not in his professional life find, on more than one occasion, eminently useful." Nor is the opinion of Sir

Eardley Wilmot, though it be not expressed in such glowing terms, less decisive. "I know," says he, "from experience, that the doses I took of Lord Coke about forty years ago, operate to this day."—*Life of Sir E. Wilmot, p.* 177. It is evident, that to become properly acquainted with a work of this character, a single perusal will be found quite insufficient; but of course the degree of intimacy must depend entirely on the student's diligence and ability. As soon as he has become tolerably familiar with the Commentary upon Littleton, he may proceed to the perusal of Sheppard's Touchstone, which contains, in fact, a great part of the substance of the Commentary disposed in more regular order. It is, however, merely a long string of legal propositions, divested of all allusions to their reason and origin, and it should not, therefore, be read, until those reasons have been presented to the mind of the reader. "The Touchstone" is, on this account, one of the most tiresome books in the law, and will be found to exact no inconsiderable portion of patience. Mr. Preston has annotated this work, and has bestowed upon it a share of his extensive learning. Having thus rendered himself familiar with the principles of the old law, the student may proceed to trace their development in the more modern decisions, as collected and arranged in the various text-books. He should peruse with great attention Mr. Sandars'

Essay on Uses and Trusts, the inimitable Essay on Contingent Remainders, by Mr. Fearne, and Mr. Sugden's Treatise on Powers; and, lastly, he should read Mr. Preston's Treatise on Conveyancing, which, though deficient in method, and perhaps in some other respects, is yet full of learning. Nor will the reader's time be mis-spent, if he peruse the "Treatise on the Law of Dower," by Mr. J. J. Park, a work displaying an intimate and sound acquaintance with the law of real property.

The foregoing course of study substantially agrees with that recommended by Mr. Butler in his *Reminiscences*, and it may be added, in the words of that gentleman, that "the student's own experience and feelings will direct his future studies." It may, however, be observed, that should leisure and opportunity be afforded him, the student will be amply repaid by even a more diligent enquiry into the older writers of the law, and should his inclination lead him into this path, he will still find no better guide than Sir Edward Coke. He should, therefore, turn his attention to the Reports of that learned writer, which were published avowedly with the design of guiding and instructing the student. He will there meet with the original sources from which the learning compressed into the Commentary upon Littleton was drawn, and he will find most of the points argued at length by the

counsel, and discussed by the judges. PLOWDEN'S *Commentaries*, a work full of matter, and of the greatest authority, may likewise be perused with much advantage. In studying the old law, the reader will meet with great difficulty, unless he possess some knowledge of the law of real actions,* and it will be well, therefore, for him to make himself acquainted with BOOTH'S treatise upon that subject, though a very imperfect work. He should also diligently consult FITZHERBERT'S *Natura Brevium*, and he may likewise apply for information upon that head to Chief Baron Comyns's *Digest*, and to that most valuable but shapeless mass of law, *Viner's Abridgment*.

At this stage, and not until this stage, will the student be enabled to make any substantial use of

* It is a singular fact, that in some parts of the United States of America, the law of real actions continues at the present day in full operation. "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, imparlances, sole-tenure, non-tenure, disclaimer, aid, view, defaults, distress, summons and severance, &c. &c."—*Hoffman's Course of Legal Study*, 144. *Baltimore*, 1817. There is, we believe, an American edition of Booth on Real Actions, with Notes by the Editor.

Mr. Reeves's *History of the English Law*. It is said in the preface to that laborious and excellent work, that it may "perhaps facilitate the student's passage from *Blackstone's Commentaries*, to *Coke upon Littleton*," but surely a more extraordinary mode of facilitating that passage was never devised. It is only when the student has obtained a very thorough comprehension of the law of real property, and indeed of the learning of real actions, that Mr. Reeves's book can even be intelligible to him. To attempt the perusal of it when he is merely on the threshold of his studies, is an absolute waste of time and patience. The greater part of Mr. Reeves's work is an able and faithful abstract of the treatises of Glanville, Bracton, and Fleta, and of the decisions in the Year Books, and the student is at once plunged into all the mysteries, both theoretical and practical, of the old law. It is only when the student is desirous of perfecting himself in his profession, and of seeking the very fountains of the law, that Mr. Reeves's History can be of any real utility to him; but in that case it will be found a most valuable guide to the pages of Glanville and Bracton.

It will not, perhaps, be thought impertinent to lengthen the present note, by adding a few observations on the study of Pleading.

Our author does not appear to assign sufficient importance to the study of pleading, which is the

foundation of the common-lawyer's knowledge. The exhortation of the learned Littleton to his professional children should be treasured up in the mind of every student. "*Saches, mon fils, que est un des pluis honorables, laudables et profitables choses en nostre ley, de aver le science de bien pleader en actions reals et personals; et pur ceo jeo toy counsaile especialment de metter ton courage et cure de ces apprender.*" An acquaintance with pleading is as essential to a lawyer, as a knowledge of anatomy to a physician. The principles, divisions, and distinctions in pleading, are founded upon, and arise out of, the general rules of law, or have in their turn given origin to those rules, and it is therefore impossible to be acquainted with the mode of pleading, and at the same time to be ignorant of the law of the case to which that pleading is applicable. It is, consequently, of the highest importance to obtain an insight into the theory and practice of this science, which, from its extent and occasional difficulty, exacts a considerable portion of diligence and perseverance. The Student of the Common Law ought therefore to bestow his best attention upon this science, which at the present day is properly accounted an essential part of professional education. Until very lately, there existed no work affording a comprehensive and scientific view of the elements of pleading, and the want of it was severely felt. With

the exception of the third volume of Blackstone's *Commentaries*, all the books on the subject were rather manuals for the practiser, than guides for the student. At length, however, a Treatise on the Principles of Pleading has been given to the public by Mr. J. H. Stephen, who has accomplished his useful but difficult task in a most satisfactory manner. His labours will, no doubt, materially facilitate the rugged approaches to the science, and his work should be placed in the hands of the student immediately after the perusal of the third volume of the Commentaries. The first volume of Mr. Chitty's useful Treatise on Pleading may then be read with advantage, and a frequent reference should be made to the forms of the pleadings contained in the second and third volumes. It will be well in the next place attentively to study the law of Nisi Prius, by Mr. Selwyn, in which the pleadings relative to the several heads of the law there treated of, are concisely but very ably commented upon. The student will now be prepared to attack a work, of which it is the highest praise to say that it fills the same station in the study of pleading as the Commentary upon Littleton in the Law of Real Property—the Reports of Saunders, with the Annotations of Mr. Serjeant Williams, the last edition of which, edited by Mr. Patteson and Mr. E. V. Williams, contains much new and valuable matter. To be familiar with these

volumes, is at once to become a good pleader, and the reader should therefore strive, *totis viribus*, to master their contents, and to impress them upon his memory. He must not hesitate to bestow a second, a third, or even a fourth perusal upon them, if he should find it necessary. The clearness, the accuracy, and the compression of Mr. Serjeant Williams's celebrated Annotations, render this work, of all others, the most useful manual for the young pleader. A vast deal of the *practice* of the courts will also be found in these notes, which will thus form a proper preliminary step to the study of Mr. Tidd's "*Practice*," one of the most valuable books in the law. To expect that the student should make himself intimately acquainted with those somewhat repulsive volumes, is perhaps unreasonable; yet it is quite essential that he should be able to trace his way through them. With the same view he may peruse Mr. Archbold's well-arranged *Treatise on the Practice of the Court of King's Bench.*

It should be remembered, that it is not a single perusal of these works which will suffice to communicate their contents to the brain of the student. When the impressions which they have made upon his mind become faint, he must peruse and re-peruse them, according to the exigencies of his ignorance. Actual practice in his profession is perhaps the surest means of giving firmness and tenacity to his

legal acquirements; but that practice in general offers itself so late, that there is no inconsiderable danger of his knowledge having evaporated before its arrival.

Note 13, page 10.

This Lord Keeper was Lord Keeper Guilford. "Every Christmas, during all the time of his practice, he read Littleton all over, and this he enjoined himself for a task; for that book having gained an authority as a tract of law, and the foundation of conveyancing, he judged it necessary to be punctually remembered, without giving time the advantage to obliterate or corrupt any part of it from his just thoughts."—*Life, vol.* 1, *p.* 99.

Note 14, page 11.

To the enquirer into the old law, and to the student of real property, the Profitable Book of Perkins will be found of considerable utility. "The authority of Mr. Perkins's name," says Mr. Hargrave, in his *Annotations upon Co. Lit.* 290, note 5, "ought, on account of the learning and ingenuity displayed in his *Profitable Book on the Laws of England,* in *general,* to have considerable weight, though one who wrote soon after Mr. Perkins, describes him to be a man that writeth of divers titles of our law rather subtilly than soundly."—*Fulb. Paral.* 40, *a.* That there are

some errors in the Profitable Book cannot be denied, but a new translation of the work, with a few judicious notes, would render it eminently useful. The following is the character of Perkins given by Fulbeck in his *Preparative, p.* 28 :—

"In Master Parkins his booke bee many commendable thinges delivered by a readie conceit and pleasant methods, and many excellent cases which savour of great reading and good experience. His Treatise is to young students acceptable and preciouse, to whom his very faults and errours bee delightful; but it might bee wished that he had written with lesse sharpnesse of witte, so hee had discoursed with more depth of judgment. For hee breaketh the force of weightie points with the shivers of nice diversities, yet many thinges are to be allowed in him, many to be praised, so that the reader be carefull in his choice, wherein he was too carelesse."

Note 15, page 12.

The modern Lawyer has but little occasion for a knowledge of the Norman French, which, by the bye, he can scarcely fail to understand, with the assistance of the modern French, and of his own language. The translations of which our author speaks with such contempt, have long ceased to be mere waste paper, and many more have been added to them since his time. The most useful reporters

who still preserve their old costume, are Anderson, Sir William Jones, Keilway, Moor, Rolle, and Syderfin. The Abridgments also remain untranslated, with the exception of Rolle's, the whole of which may be found in Viner.

Note 16, page 12.

Staunford's *Pleas of the Crown*, and Crompton's *Jurisdiction of Courts*, still remain in their original language, but Fitzherbert's *Natura Brevium* has been translated into English. To the 4to. edition of 1755, the commentary or notes of Sir Matthew Hale were first appended. In the 8vo. edition of 1794, some corrections have been made, but the text is still by no means accurate. The Natura Brevium is a book of very high authority, and is exceedingly valuable to the student of the old law, though deficient in point of arrangement. A vast portion of the law which it contains is of course become obsolete, and it would have been well, if in the last edition a few notes had been added, pointing out and illustrating such parts of the work as may still be found of practical utility. Mr. Reeve supposes that "hardly nine parts in ten (of the new Natura Brevium) make a portion of our present law;"—*Hist of the Law*, *iv.* 417—but by this he must be understood to mean that such portion of it has ceased to be practically useful, and not that it is no longer law.

Note 17, page 16.

For further information on this subject, see *Wright's Court-hand Restored.* "Turn your eye a little to court-hand," says Sir E. Wilmot, in a letter to his son, "the utility of it to a lawyer is great."

Note 18, page 16.

The *Old Tenures* will be found appended to the last edition of Coke's *Law Tracts.* It may perhaps be questioned whether Mr. North be judicious in recommending the *Old Tenures* to the perusal of the student at so early a stage, "on the foot of antiquity." The most safe and prudent method of study for one who intends to become a practising lawyer, is decidedly to give his attention to the modern law in the first instance, and to become well grounded in it before he attempts to trace the science to its origin. It is very true that "he who knows the elder, can distinguish what is new;" but it is of more importance that, knowing the new, he should be able to distinguish the elder. It is indeed Sir Edward Coke's own doctrine that the student should first read the later reports, and the neglect of this advice will impose no small degree of useless toil upon him. See some observations on this subject in *Eunomus, i.* 259.

Note 19, page 17.

The Doctor and Student, by Christopher Saint Germain, is a book of very considerable authority, and has passed through upwards of twenty editions; the last of which was published in 1787. Its object is chiefly to prove that the rules of law are reconcilable with reason and good conscience, and the arguments on this subject between the Doctor in Divinity, and the Student in the Laws of England, are treated in a clear and popular manner.

Note 20, page 17.

The Treatise *De laudibus legum Angliæ* is said to have been written by Sir John Fortescue during his exile in France, where he had taken refuge with other Lancastrians. It is, in fact, an ingenious defence of the common law of England against the attacks of the civil lawyers, and, upon matters of constitutional law and government, it contains some passages very honorable to the writer.

Note 21, page 17.

See *Life of Lord Keeper Guilford, i.* 24, where a similar course of reading is said to have been pursued by his lordship during his studies.

Note 22, page 18.

Certainly the most useful Book of Entries to the

student of the old law is Rastell's. It contains a very complete and systematic arrangement of forms, and consequently possesses great facilities for consultation. It is much more intelligible and useful than the *Vetus Liber Intrationum*, the oldest Book of Entries in the law, and it contains many divisions and heads, as well as many precedents which are not to be found in Coke's Entries. With reference to the Vetus Liber Intrationum, Rastell's are sometimes called the *New Book of Entries*, while at other times they are styled the *Old Book of Entries* with reference to Coke's, to which the name of the *New Entries* is sometimes given. The authority of *Rastell's Entries*, which were collected from various other books of precedents, is considerable, though perhaps somewhat shaken by what fell from Lord Ellenborough in a late case. In the King v. Wildey, 1 *Maule and Selwyn*, 188, one of the forms, under title Gaol Delivery, is declared by his lordship to be "one of the most vicious precedents he ever contemplated." The best edition of Rastell is that of 1670.

In points of authority, *Coke's Entries* certainly claim the first place. Every precedent has a reference to the court, year, term, number-roll, and record where it is to be found, and many of the forms are the records of the cases contained in the Reports. To this may be added the great authority of Sir Edward Coke's name. The records contained

in these entries are principally of the reigns of Elizabeth and James I., when real actions, as Coke tells us in one of his prefaces, were growing out of use; in studying that branch of the law, therefore, the reader will find greater assistance from consulting the pages of Rastell.

The utility of a frequent reference to legal forms is too obvious to require any further remark. "What availeth the sergeant or apprentice the general knowledge of the laws, if he know not withal the form and order of legal proceedings in particular cases, and how to plead and handle the same soundly, and most for his client's advantage?" With regard to modern precedents, the forms in the second and third volumes of Mr. Chitty's Treatise on Pleading will be found sufficient for the student's purpose. The voluminous Collection of Pleadings by Mr. Wentworth, is rendered almost useless by the want of a rational Index.

Note 23, page 18.

The Reports of Plowden are most valuable to the student of the old law. All the cases there reported are upon points of law tried and debated upon demurrers or special verdicts, so that "these Reports carry with them the greatest credit and assurance." In this respect they are of much higher value than those of Dyer, which often consist of the "sudden

sayings of the Judges," and of points raised and mooted without decision.

Note 24, page 19.

Sir Edward Coke, in more instances than one, has warned the student against the danger of relying upon abridgments. "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."—5 *Rep.* 25. "This I know, that abridgments in many professions have greatly profitted 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 of 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*.—*Preface to* 4 *Rep. x.*

The principal abridgments of the old law are those of Fitzherbert and Brooke. The following is the character of these two books given by Fulbeck in his *Preparative, p. 27, b.*

"Master Fitzherbert must needs be commended for great paines, and for well contriving that which was confusedly mingled together in many yeare

books, but he was more beholden to Nature than to Art, and whilest he laboured to be judiciall, he had no precise care of methodicall points; but as he was in conceit slowe, so he was in conclusion sure; and in the treatises which be of his own penning, he sheweth great judgement, sound reason, much reading, perfect experience, and in the whole conveyance of his discourses, gyveth sufficient proofe that he sought rather to decide than to devise doubtfull questions.

"Master Brooke is more polite, and by popular and familiar reasons, hath gayned singular credite, and in the facilitie and compendious forme of abridging cases, he carryeth away the garland. But where master Fitzherbert is better understood, he profiteth more, and his abridgment hath more sinewes, though the other hath more veines, but I am loath to make them countermates, and therefore leave the judgment thereof to others."

Fitzherbert has abridged many original cases which are now only to be found in his compilation, which renders it in this respect more valuable than that of Lord Brooke. The latter, however, may be accounted the more useful work. It possesses the advantage also of having marginal notes of the points decided. For a further character of these abridgments, see Mr. Reeves's *History of the English Law*, *vol.* 4, *p.* 417.

Note 25, page 19.

The Year-Books at last slumber in undisturbed tranquillity. They are seldom met with in the library of a modern lawyer, and should they happen to be found there, enjoy a complete exemption from molestation. The man who pretended to refer to them, or to cite them, would probably be regarded as a pedant, and in addition to this, the perusal of the Norman French, in which they are written, is an unpalatable and frequently a difficult task. How essential an acquaintance with these venerable volumes was formerly considered, may be gathered from the text, and from many passages in the older writers. Lord Hale appears to have made himself a complete master of their contents, and in his *Preface to Rolle's Abridgment*, has pointed out the volumes in which the most useful cases are to be found. This character he gives to the last part of Ed. 3., the Book of Assizes, the second part of Hen. 6. Ed. 4. and Hen. 7. Lord Keeper Guilford also had diligently studied these ancient authorities. "I do not know," says his biographer, "that his lordship had read over in course all the Year-Books, but I verily believe he had despatched the greatest part, and that he began with the book termed Henry 7, which hath some years in the antecedent reigns. That book, he used to say, was the most useful, or rather necessary for a student to take early in his hands,

and go through with, because he had observed much of the common law that had fluctuated before received a settlement in that time, and from thence, as from a copious fountain, it hath been derived through other authors to us, and now is in the state of common erudition, or maxims of the law. He thought a lawyer could not be well-grounded without a knowledge of these ancient Reports."—*Memoirs of Lord Keeper Guilford, vol.* 1, *p.* 27. When a reference to these antiquated authorities is requisite at the present day, the student will in general find the point of which he is in search more concisely and intelligibly stated in the Abridgments of Fitzherbert and Brooke, to both of which books references are added in the last edition of the Year-Books. At the same time he should recollect, that these abridgments of cases are by no means invariably correct, of which several instances are mentioned in the Reports of Sir Edward Coke. In consulting the Year-Books it is very difficult to distinguish the arguments of counsel from the opinions of the Judges. But little regularity appears to have existed in the mode of conducting a cause at this early period of our law. When a point was raised, it was usually discussed by the Judges and Counsel in a very conversational style, and as the titles of the Judges are seldom mentioned, it is necessary to refer to some work like the Chronica Ju-

ridicialia, before we can ascertain the authority of an opinion.

It is only within the last half century that the Year-Books have fallen so completely into disuse. Lord Mansfield said, that when he was young, few persons would confess that they had not read a considerable part at least of the Year-Books, but that at the time he was speaking, few would pretend to more than an occasional recourse to them in very particular cases.—*Butler's Reminiscences, p.* 134.

To the student unacquainted with the charms of the Year-Books, it may be useful to mention that "Sergeant Maynard had such a relish of them, that he carried one in his coach to divert his time in travel, and said he chose it before any comedy."—*Life of Lord Guilford, i.* 27.

Note 26, page 20.

Since this treatise was written, the number of Reports which have appeared, and are continuing to appear, has become a serious grievance to the lawyer, and it is difficult to discover where this *intemperantia librorum* will terminate. It is curious to trace the history of reporting. The compilers of the *Year Books*, the earliest Reports, are said both by Plowden and Coke to have been persons appointed by the king, with a stipend attached to their office. It does not very clearly appear what rank these re-

porters filled, though they are said by Sir William Blackstone to have been the Prothonotaries of the Courts. The names of some of these persons are still extant. At the conclusion of Michaelmas term, 21 Ed. III., we find the following words:—"*Icy ce finissent les Reports de Mons. Horewode.*" Many cases collected by these reporters have never been printed. The Year-Books terminate at the latter end of the reign of Henry VIII., at which period, if not before, the practice of appointing official reporters expired. It is, indeed, said, that in the reign of James I., Sir Thomas Hetley was appointed by Sir Francis Bacon and Sir Julius Cæsar (with a salary of one hundred pounds) to the office of reporter of the law, and the title-page of his Reports informs us, that he was "appointed by the king and judges as one of the reporters of the law." From the conclusion of the Year-Books to the present time, the great evil of the system has been the number of cotemporary Reports. At an earlier period, it should be remembered, the Reports were not published periodically as at present, but usually consisted of the collections of some learned judge, not published until after his decease. The authority of a celebrated name at once conferred a value upon the work, and the existence of the same cases already reported by other hands, was not considered a sufficient reason for consigning it to oblivion. The Reports of Sir James Dyer

were published after his death by his nephew to whom he bequeathed them, and in the same manner Sir George Croke's Reports were ushered into the world by Sir Harbottle Grimstone, to whom the author left "these precious fruits of his travel in the common laws of England."—*See the Preface.* Many others of the old Reports, as Anderson, Sir William Jones, Yelverton, &c., were not published until after the death of the compilers. In consequence of this practice, an old case may frequently be found reported in half a dozen different books. The causes which led to this having long since ceased, it would be very desirable that the system of cotemporary reporting should be altogether abolished. The growth of the Reports, if it has not equalled that of the Statutes in the last reign, is still absolutely appalling. The reporters during that period exceed seventy in number. In Sir Edward Coke's time, the whole Catalogue of Reports consisted of the Year-Books, to which, continues he, "you may add the exquisite and elaborate Commentaries of Master Plowden, a grave man, and singularly well learned; and the summary and fruitful observations of that famous and most revered Judge, Sir J. Dyer, Knt., late Chief Justice of the Common Pleas, and mine own simple labours, then have you fifteen books or treatises, and as many of the Reports."—*Preface to 4 Reports.* At present the number of Reports in a to-

lerable library amounts to upwards of four hundred volumes, a mass of decisions annually increased by the accession of ten or twelve volumes more, which in less than half a century, will nearly double the number. A complete index to the Reports would alone be a most voluminous and extensive work. This is an alarming prospect for the lawyers of the next century.

It may, however, afford some consolation to reflect that there actually is a race of people still more unfortunate than ourselves in this respect. In the United States of America, it is well known that the decisions of our courts are considered authority up to the period of the revolution, and that from that time they are allowed to be quoted by way of illustration. The consequence is, that many of our modern Reports are re-published on the other side of the Atlantic, frequently with annotations. Thus Mr. Campbell's Nisi Prius cases have been edited with Notes, by the Hon. S. Howe. In addition to these, the native Reports are rapidly increasing. The first American Reports were those published by Mr. Dallas, of Pennsylvania, in 1790, from which time, until the year 1803, the number of Reports increased slowly. Since the latter period, however, very numerous additions have been made to the catalogue, which in the year 1817 (including the Reports of the courts of the several States, and of the

Supreme Court of the United States) had swelled to the enormous number of ninety-nine volumes in this short space of time.—*See Hoffman's Course of legal Study*, p. 309.

The number of volumes at present required to form even a tolerable library, and the high price affixed by the booksellers to all new publications, have become a most serious grievance to the students of the law, who "cannot attaine to the knowledge of divers learnings, but to their great charges, by the buyinge of such bookes as they lust to study."

Note 27, page 21.

The second, third, and fourth Institutes.

Note 28, page 22.

In the *Life of Lord Keeper Guilford*, Mr. North passes a similar opinion upon the Commentary of Sir Edward Coke. That great lawyer does not appear to have been a favourite with our author; and it is not improbable that Sir Edward's political principles were one cause of this distaste. Mr. North's judgment on this point has been questioned in the preceding note. The following are his observations on the life of his brother the Lord Keeper. "And for that reason Coke's Comment upon Littleton ought not to be read by students, to whom it is at least unprofitable, for it is but a common-place, and

much more obscure than the bare text without it, And to say truth, that text needs it not, for it is so plain of itself, that a comment properly so called doth but obscure it."—*Vol.* 1, *p.* 21.

The character of Sir Edward Coke as a politician, has never been sufficiently appreciated. He lived at a period when an opposition to the enormous prerogatives claimed by the crown was as rare as it was dangerous, and yet he did not hesitate upon every occasion to stand forward as the bold assertor of the laws. No lawyer of that day, filling the elevated stations to which he was raised, sacrificed so little to court favour, and displayed so few marks of a servile or timid mind. Whatever reproach may be cast upon Coke's memory for his unjustifiable harshness towards Sir Walter Raleigh on his trial, no one can deny his high merits as a patriotic and constitutional lawyer. He uniformly opposed himself to the illegal encroachments of the High Commission Court, and the other arbitrary jurisdictions of that period, which found so much favour in the eyes of James and his courtiers. In the twelfth part of his Reports, he has related a scene between himself and the king, which illustrates with admirable fidelity the characters of both. In the year 1607, complaints were made to the king by Bancroft, Archbishop of Canterbury, respecting two prohibitions which had been granted by the Courts of Com-

mon Law to prevent the Ecclesiastical Courts from exceeding the bounds of their authority in certain cases, and James was informed by the archbishop, that where no express authority in law was to be found, the king might decide the question himself, and indeed he might take what causes he should please from the determination of his judges, and decide upon them in his own person; adding, that this was clear in divinity, and that such authority belongs to the king by the word of God in the Scripture. This doctrine Coke, in the presence of the king, the archbishop, and all his brother judges, stoutly denied, "and it was greatly marvelled," adds he, "that the archbishop *durst* inform the king that such absolute power and authority as is aforesaid, belonged to the king by the word of God." James, however, had a strong desire to expound the law in his proper person, and observed, "that he thought the law was founded upon reason, and that he and others had reason as well as the judges." To this Coke answered, that "true it was that God had endowed his majesty with excellent science and great endowments of nature; but his majesty was not learned in the laws of his realm of England: and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law, which law is an act which re-

quires long study and experience before that a man can attain to the cognizance of it, and that the law was the golden met-wand and measure to try the causes of the subjects, *and which protected his Majesty in safety and peace.*" "With which," says Coke, "the King was greatly offended, and said, that then he should be under the laws, which was treason to affirm, as he said; to which I said that Bracton saith, "*Quod Rex non debet esse sub homine sed sub Deo et Lege.*"

It is curious to compare Coke's own account of this transaction with the reports of it which were current at the day, and which may be found in a Letter to the Earl of Shrewsbury, preserved in *Lodge's Illustrations, iii.* 364. "On Sunday before the king's going to Newmarket my Lord Coke, and all the judges of the common law, were before his majesty to answer some complaints of the civil lawyers for the general granting of prohibitions. I heard that the Lord Coke, amongst other offensive speech, should say to his majesty, that his highness was defended by his laws, at which saying, with other speech then used by the Lord Coke, his majesty was very much offended, and told him that he spake foolishly, and said that he was not defended by his laws but by God, and so gave the Lord Coke in other words a very sharp reprehension both for that and other things, and withal told him that Sir

Thomas Crompton (the Judge of the Admiralty Court was as good a man as Coke."

The firm and patriotic conduct of Sir Edward Coke in this and in other instances well merits the high eulogium of a modern writer, that "the liberties of England are to no man so much indebted as to Sir Edward Coke."—*Godwin's History of the Commonwealth.*"

Those who are desirous of enquiring further into the history of Sir Edward Coke, will find an able memoir of him in Dr. Kippis's *Biographia Britannica.* It should be observed, however, that some very important cases in the twelfth Report, which throw much light upon the character of Coke as a politician, appear to have escaped the notice of the writer of that article.

Note 29, page 24.

It may perhaps be useful to notice more particularly the character of one of the Reporters mentioned in the text. KEBLE, who according to Mr. North, is "esteemed under value," is said by Lord Hardwicke to be "though far from an accurate, yet a pretty good Register," *Redw. Ca. temp. Hardw.* 100. and by Mr. Justice Burnet to be "an inaccurate Reporter, though a tolerable historian of the law." *Batchelor v. Rigg,* 3 *Wils.* 330. In another place this Reporter is said in argument to be of no au-

thority." *Rex v. Genge, Cowp.* 15. and in Doe v. Porter, 3 *T. R.* 17. he is called by Lord Kenyon "a bad Reporter."

Note 30, page 24.

See the author's observations on common-placing in the Life of Lord Keeper Guilford (*vol.* 1. *p.* 20). The Lord Keeper used to say, that the advantage of his Common-Place Book was not like a parson's Concordance, to help him to cases, but when he remembered he had read a book, to help him to find it. The system of common-placing is strongly recommended by every writer on the Study of the Law. "It is," says Fulbeck, in his *Preparative*, p. 44, "a profitable course under titles to digest the cases of the lawe, into which they may transfer such things as they have either heard or read, neither is it safe to trust to other men's abridgments, which are little available to such as have read a little, but that which we by our owne sweat and labor do gaine we do firmly retaine, and in it we do principally delight, and I am persuaded that there hath never been any learned in the lawe, and judicial, who hath not made a collection of his owne though he hath not neglected the abridgment of others." Lord Hale insists strongly on the necessity of common-placing in the *Preface to Rolle's Abridgment*, and Phillips, in his *Treatise on the Study of the Law*, enters at large into the same

subject (*p.* 151). Any one who has ever witnessed the readiness and facility, with which a person who has been for some time in the habit of common-placing the law, refers to this source of information, will at once become a convert to the system.

Note 31, page 26.

The skeleton of a legal Common-Place Book with divisions and sub-divisions printed in sheets, and capable of being enlarged to any extent would, if a judicious arrangement were adopted, be a most valuable acquisition to the student.

Note 32, page 29.

See the *Life of Lord Keeper Guilford, vol.* 1. *p.* 26, where the same anecdote is related. It was with the object of encouraging the *ars lavlativa* that the Temple cloisters were built. "I remember that after the fire of the Temple, it was considered whether the old cloister walks should be rebuilt, or rather improved into chambers; which latter had been for the benefit of the Middle Temple. But in regard it could not be done without the consent of the Inner House; the Masters of the Middle House waited upon the then Mr. Attorney Finch to desire the concurrence of his society upon a proposition of some benefit to be thrown in on that side; but Mr. Attorney would by no means give way to it, and re-

proved the Middle Templars very wittily and eloquently upon the subject of students walking in the evenings there and putting cases, which he said was done in his time as mean and low as the buildings were then. "However it comes," said he, "that such a benefit to students is now made so little account of—and thereupon the cloisters by the order and disposition of Sir Christopher Wren were built as they now stand." *Ibid.* The cloisters are celebrated also as the scene of one of Sir Roger de Coverley's adventures.

At an earlier period the Temple church, like the "pervyse of Powles," was used as a promenade and place of meeting. See *Drake's Shakespeare and his Times.*

Note 33, page 32.

See *Note* 26.

Note 34, page 33.

Mr. North is extremely inconsistent as well as unjust in his strictures on the character of Sir Matthew Hale. Here we find him "encouraging arguing, when it was to the purpose," and "managing matters of law," so that the court seemed "an Academy of Sciences as well as the seat of Justice." While in the Life of Lord Keeper Guilford, it is said that "although he was very grave in his own person, he loved the most bizarre and irregular wits in the

practice of the law before him most extravagantly." *Vol.* 1. *p.* 117.

Note 35, page 34.

It is singular that at a period when the science of the law was not spread over one-fourth of the surface which it now occupies, seven years should have been employed in the study of it, while at present it seldom happens that one half of that time is devoted to the initiation of the young lawyer. It is possible that at an earlier period a man was brought into practice more quickly than in modern times. Sir Edward Coke issues a grave injunction against the *prepostera lectio* and the *prepropera praxis*, but at the present day there is little danger of the young lawyer falling into the latter error. For many years after a student is called to the bar, he enjoys most ample leisure and opportunity for adding to his stores of legal knowledge, and it seldom happens therefore that a professional education is protracted beyond three or four years. Sir Edward Coke was called to the bar after studying for six years, which was at that time considered a short probation. With regard to the time which, by the ancient rules of the Inns of Court, the student was compelled to wait before he could be called to the bar, see *Dugdale's Orig. Jurid. and Wynn's Eunomus, i.* 275.

Note 36, page 39.

The Lord Keeper Guilford. See his *Life*, vol. I. p. 32. "I have heard his Lordship say, he thought this court-keeping business (which he used to recommend to others) did him a great deal of service, for it shewed him the humours of the country people, and accustomed him to talk readily with them, and to meet with their subtelties—they seldom came forwards without some formed stratagem to be too hard for Mr. Steward. Some would insist to know their fine, which he would not tell till they were admitted, and then he insisted for his fees; no—they would know the fine, and some cunning fellow would jog and advise them to pay the fees, and not dispute that. And abundance more of their contrivances he used to speak of."

THE END.

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