THE LAW

IN

SHAKESPEARE.

BY

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Affectio tua nomen imponit operi tuo.—BRACTON.

Why may not that be the skull of a lawyer?—HAMLET.

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INTRODUCTION.

SHAKESPEARE'S persistent and correct use of law terms was long ago noticed and caused the conjecture that he must have studied in an attorney's office. What is the truth in this respect will probably never be certainly known; but that he was more addicted to the employment of legal nomenclature than any English writer (excepting, of course, the jurists) is incontestable.

The work of winter evenings, commenced long ago, as an incident to habitual study of the works of him "who converted the elements which awaited at his command into entertainments," is submitted with little speculation upon questions concerning which there have been many words and few demonstrations. It is not pretended that every legal phrase which he used is here presented. The aim has been not to extend the task beyond the necessity of proof into a wearisome repetition of expressions which often recur in scores. To the lawyer many of the

notes will be needless, though some of them will be found helpful. I have not hesitated to present the definitions of the commonest legal terms. To those unversed in law lore, they will present at a glance the argument intrinsic in the text. Some of the quotations, taken alone, are doubtless of trifling probative force. They are given because, in cumulative testimony, each independent fact is a multiplier.

We seem to have here something more than a sciolist's temerity of indulgence in the terms of an unfamiliar art. No legal solecisms will be found. The abstrusest elements of the common law are impressed into a disciplined service with every evidence of the right and knowledge of commanding. Over and over again, where such knowledge is unexampled in writers unlearned in the law, Shakespeare appears in perfect possession of it. In the law of real property, its rules of tenure and descents, its entails, its fines and recoveries, and their vouchers and double vouchers; in the procedure of the courts, the methods of bringing suits and of arrests, the nature of actions, the rules of pleading, the law of escapes, and of contempt of court; in

the principles of evidence, both technical and philosophical; in the distinction between the temporal and the spiritual tribunals; in the law of attainder and forfeiture; in the requisites of a valid marriage; in the presumption of legitimacy; in the learning of the law of prerogative; in the inalienable character of the crown,—this mastership appears with surprising authority.

It is not necessary in accounting for this to assault truth with a paradox, or to put a mask upon the face of the first of men. The law books of that time were few. Shakespeare's French is nearly as bad as the law French in which many of them were written; and it is not to be forgotten that to learn must have been easy to this man, whose mental endowments were so universal that the best intellects of after times have vainly essayed to admeasure them.

Coleridge has remarked "that a young author's first work almost always bespeaks his recent pursuits." He might have said with equal correctness that any author's works can never entirely hide his former pursuits. These may be betrayed by the style, or by prejudices, affections, antipathies, or af-

fectations. Gibbon thought that his experience as an officer in the Hampshire militia was of assistance to him in describing that vast nutation in history whereby the Roman world, by a process almost physical in appearance, shifted from temperate simplicity, grandeur, civilization, and solidity to tropical luxury, effeminacy, barbarism, and quick decay. Were every detail of Falconer's and Somerville's lives unknown, it would be certain from their works that the one was a sailor and the other a sportsman. Sir Walter Scott had been called to the bar and his works attest his legal proficiency. We see Fielding's experience as a magistrate in the examination of Partridge, in the conspiracy between Lady Booby and Lawyer Scout against Fanny, and in that masterpiece of savage irony, the life of the late Mr. Jonathan Wild the Great. We know from the details of mercantile routine in Robinson Crusoe and Colonel Jack that Defoe must have been a merchant. That Thackeray had been an artist is very apparent in his works. Donne, (1572–1631,) who had been a student at Lincoln's Inn, satirized a barrister's wooing in law phrase:

——" he throws,
Like nets or lime twigs, wheresoe'r he goes,
His title of barrister on every wench,
And woos in language of the pleas and bench.
A motion, lady! Speak, Coscus. I have been
In love e'er since tricesimo the queen.
Continual claims I've made, injunctions got
To stay my rival's suit, that he should not
Proceed; spare me, in Hilary term I went;
You said if I returned next 'size in Lent,
I should be in remitter of your grace.
In th' interim my letters should take place
Of affidavits."

The argument on the present question rests mainly, of course, upon the general and constant employment by Shakespeare of the terms of a science which, in his time, was crabbed and harsh, and which has at any time few points of contact with the graces of literature.

There is another special argument of great force, in presenting which my inadequate resources for comparison restrict me to the use of Hamlet, though I have no doubt that corroborative results will be yielded to any one who may make a more extended investigation.

Hamlet was published in quarto in 1603. Compared with the final version which appeared in the folio of 1623, it is a magnificent imperfection, but

invaluable because it shows how the hand of the master wrought upon his work. From the one to the other we see Shakespeare's mind in operation. Its creative processes are disclosed. Its industry is demonstrated. Here are the blotted lines Jonson wished for. We see the growth of immortal blossoms from barren common-places. It is as if some sculptor, with an enchanter's power, had wrought upon an unadorned Milan cathedral through one night, so that the morning showed thousands of carvings and statues where the day before were only walls of unadorned simplicity.

If Shakespeare's use of legal learning were not that of a full man, with pride in his skill, we should not expect to see, in the changes by which he brought the play to perfection, any additions or elaborations in that respect. But that they do appear most remarkably, the following, in which the text of the quarto is given, together with that of the finished version, will show:

> Who by a seale compact, well ratified by law
> And heraldrie, did forfeit with his life all those
> His lands which he stood seazed of to the conqueror,
> Against the which a moiety competent
> Was gaged by our king (*Quarto.*)

To this Shakespeare added:

——— which had returned
To the inheritance of Fortinbras,
Had he been vanquisher; as by the same covenant
And carriage of the article designed,
His fell to Hamlet.

He hath, my lord, wrung from me a forced graunt.
(*Quarto.*)

He hath, my lord, wrung from me my slow leave,
By laborsome petition, and at last
Upon his will I sealed my hard consent.
(*Standard Version.*)

Or that the Everlasting had not fix'd
His canon 'gainst self-slaughter! (*Not in Quarto.*)

Oph. My lord, he hath made many tenders of his love to me.
Cor. Tenders. I, I, tenders you may call them.
Oph. And withall such earnest vowes.
Cor. Springes to catch woodcocks.
What, do I not know when the blood doth burne
How prodigall the tongue lends the heart vowes.
In brief, be more scanter of your maiden presence,
Or tendering thus you'l tender mee a foole. (*Quarto.*)

Oph. He hath, my lord, of late made many tenders
Of his affection to me.
Pol. Affection! Pooh! You speak like a green girl
Unsifted in such perilous circumstance.
Do you believe his tenders, as you call them?
Oph. I do not know, my lord, what I should think.
Pol. Marry, I'll teach you: think yourself a baby:
That you have ta'en these tenders for true pay
Which are not sterling. Tender yourself more dearly:
Or—not to crack the wind of the poor phrase,
Running it thus—you'll tender me a fool,
(*Standard Version.*)

"Do not believe his vows, for they are brokers,
Not of that dye which their investments show,
But mere implorators of unholy suits,
Breathing like sanctified and pious bawds,
The better to beguile." (*Not in Quarto.*)

I did repel his letters, deny his gifts,
As you did charge me. (*Quarto.*)

I did repel his letters, and denied
His access to me. (*Standard Version.*)

For in that dreame of death, when we awake,
And borne before our everlasting judge,
From whence no passenger euer returned,
The undiscovered country, at whose sight
The happy smile and the accursed damn'd. (*Quarto.*)

The undiscovered country from whose bourne
No traveller returns. (*Standard Version.*)

Yet you cannot
Play upon me, besides to be demanded by a spunge.
(*Quarto.*)

Besides, to be demanded of a spunge: what replication
Should be made by the son of a king? (*Standard Version.*)

King. Now must your conscience my acquittance seal.

* * * * * * *

Laer. It will appear: but tell me
Why you proceeded not against these feats
So crimeful and so capital in nature. (*Not in Quarto.*)

First Clo. I say no, she ought not to be buried
In Christian burial.

Sec. Clo. Why, sir?

First Clo. Marry, because shee's drown'd.

Sec. Clo. But she did not drowne her selfe.

First Clo. No, that's certaine, the water drown'd her.

Sec. Clo. Yea, but it was against her will.

First Clo. No, I deny that; for looke you, sir; I stand here; If the water come to me I drowne not my selfe; But if I goe to the water, and am then drown'd, *Ergo*, I am guiltie of my owne death. Y'are gone; goe, y'are gone, sir.

Sec. Clo. I; but see, she hath Christian burial Because she is a great woman. (*Quarto.*)

First Clo. Is she to be buried in Christian burial that wilfully seeks her own salvation?

Sec. Clo. I tell thee she is: and therefore make her grave straight: the crowner hath sat on her, and finds it Christian burial.

First Clo. How can that be, unless she drowned herself in her own defence?

Sec. Clo. Why, 'tis found so.

First Clo. It must be 'se offendendo;' it cannot be else. For here lies the point: if I drown myself wittingly, it argues an act: and an act hath three branches: it is, to act, to do, to perform: argal, she drowned herself wittingly.

Sec. Clo. Nay, but hear you, goodman delver,—

First Clo. Give me leave. Here lies the water; good: here stands the man; good: if the man go to this water, and drown himself, it is, will he, nill he, he goes,—mark you that; but if the water come to him and drown him, he drowns not himself; argal, he that is not guilty of his own death shortens not his own life.

Sec. Clo. But is this law?

First Clo. Ay, marry, is't; crowner's quest law.

Sec. Clo. Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out o' Christian burial. (*Standard Version.*)

Ham. Looke you, there's another, Horatio.
Why mai't not be the scull of some Lawyer?

Me thinkes he should indite that fellow
Of an action of Batterie, for knocking
Him about the pate with's shovel: now where is your
Quirkes and quillets now, your vouchers and
Double vouchers, your leases and free-holde
And tenements? Why that same box will scarce
Hold the conveiance of his land, and must
The honor lie there? O pittifull transformance!
I prithee tell me, Horatio,
Is parchment made of sheep-skinnes?

Hor. I, my lorde, and of calves-skinnes too.

Ham. I 'faith they proove themselves sheepe and calves
That deale with them or put their trust in them. (*Quarto.*)

Ham. There's another: why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures, and his tricks? why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Hum! This fellow might be in 's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will hardly lie in this box; and must the inheritor himself have no more, ha?

Hor. Not a jot more, my lord.

Ham. Is not parchment made of sheep-skins?

Hor. Ay, my lord, and of calf-skins too.

Ham. They are sheep and calves which seek out assurance in that. (*Standard Version.*)

Ham. An earnest conjuration from the king,
As England was his faithful tributary,
As love between them like the palm might flourish,
As peace should still her wheaten garland wear

And stand a comma 'tween their amities,
And many such-like 'As'es of great charge,
That, on the view and knowing of these contents,
Without debatement further, more or less,
He should the bearers put to sudden death,
Not shriving-time allow'd.
Hor. How was this seal'd?
Ham. Why, even in that was heaven ordinant.
I had my father's signet in my purse,
Which was the model of that Danish seal:
Folded the writ up in form of the other,
Subscribed it, gave't the impression, placed it safely,
The changeling never known. (*Not in Quarto.*)

Hor. No, I am more an antike Roman
Than a Dane; here is some poison left.
Ham. Upon my love I charge thee let it goe.
O fie, Horatio, and if thou shoulds't die
What a scandale woulds't thou leave behind;
What tongue should tell the story of our deaths,
If not from thee. (*Quarto.*)
Ham. Had I but time—as this fell sergeant, Death,
Is strict in his arrest—O, I could tell you—
But let it be. Horatio, I am dead;
Thou livest; report me and my cause aright
To the unsatisfied.
Hor. Never believe it;
I am more an antique Roman than a Dane;
Here is yet some liquor left.
Ham. As thou'rt a man,
Give me the cup: let go; by heaven, I'll have't.
O good Horatio, what a wounded name,
Things standing thus unknown, shall live behind me!
If thou didst ever hold me in thy heart,
Absent thee from felicity awhile,
And in this harsh world draw thy breath in pain,
To tell my story. (*Standard Version.*)

It thus appears that Shakespeare amplified the statement of the compact with Fortinbras; changed Polonius' term, "a forced graunt," to a more formal and elaborate legal expression; inserted the word "canon" to express a divine law; forced the word "tender" to an ampler use; called lover's oaths "brokers;" caught the *idem sonans* of the word "borne" and changed it to "bourne" as the boundary of that undiscovered country; took the suggestion of the word "demanded" and asked what "replication" shall be made; added the request for a "sealed acquittance," and the demand why "capital" crimes had not been "proceeded against;" rewrote the dialogue between the clowns solely to enlarge it and make it more accurate in its legal meaning, and more relevant to the case in Plowden; reconstructed Hamlet's meditations on the lawyer's skull; corrected the inaccurate suggestion of an indictment for an action of battery; struck out the words "leases and free-holde and tenements;" added to the enumeration of the devices of money-lenders the words "buyer of land," "statutes,' "recognizances," "fines," "recoveries,"—all with the greatest pains-taking to be full and accurate; added to the

purport of the king's letter to England and, where Hamlet, in the quarto, merely resists Horatio's attempt to drink the cup by expressing a desire that he should live to tell the story, changed this to an injunction to his friend to live to

> —— report me and my cause aright
> To the unsatisfied.

By an unlearned writer such a task of correction and amplification would never have been attempted. By one who was learned in the subject, and who either delighted in it or had the tendency of practice in its employment, it was inevitable that this should be done.

In the scene between Hamlet and his father's ghost the effect of the "juice of cursed hebenon" is stated with much detail. This passage was also retouched, but no material change was made. No symptom or effect was added. The legal statements were changed throughout. But the former needed correction, for it is very inaccurate. The introduction of poison into the circulation through the porches of the ear, so that the effect will be an instantaneous incrustation of the skin, was a conception of Shakespeare and has no foundation in medical science.

It is especially to be noticed that this legal learning is accurately sustained in many passages with cumulative and progressive application. The word employed becomes suggestive of other words, or of a legal principle, and these are at once used so fully that their powers are exhausted. In one scene the lover, wishing a kiss, prays for a grant of pasture on his mistress' lips. This suggests the law of common of pasture, and she replies that her lips are no common. This suggests the distinction between tenancy in common and tenancy in severalty, the lips being several, and she adds, "though several they be." Miranda and Ferdinand simply betroth themselves; sanctimonious ceremonies are intended to follow. In the case of Florizel and Perdita the contract before witnesses is proposed, but the disguised father interrupts the proceedings and prevents a marriage. In the case of Mariana there is a contract of marriage, followed by consummation in the legal and physical sense, and it is not even suggested that this is not a valid marriage. In describing the wager of battle everything is correctly and orderly set forth. The appeal is made; gloves are thrown down and taken

up; the lists are set upon the green; proclamation is made; the judges take their places; the king stops the combat by throwing down his warder. The regularity of the process in *Shylock* v. *Antonio* is fully pointed out elsewhere. The trial of Queen Catherine opens with a proposition to read the commissions of the judges, citation is made, her appearance is demanded, and she refuses it, because to appear will be a submission to the jurisdiction of the court. This is precisely the ground upon which Mary Stuart stood at her trial, and so insurmountable did her prosecutors deem it to be, that she was cajoled into doing that which Catherine refused. The barbarous penalty of Shylock's bond is a reminiscence of the Twelve Tables, by which the creditors of a delinquent debtor were allowed to cut him into pieces. The Italian novel upon which the play is founded attributes the same penalty to the bond. So does the old ballad of Gernutus. It has been contended that the ballad is the offspring of the play, but incorrectly, because the former contains nothing concerning any woman as a judge,—a circumstance too effective to have been omitted by any ballad maker who drew his in-

spiration from the play. When Hamlet surmises that the skull may be that of a lawyer, a lender of money, he enumerates at once the methods by which loans were secured. The words "factor" and "broker" are used with perfect understanding of the technical differences in their meaning. Tamora claims her Roman citizenship through her incorporation into a Roman family under the principle of adoption by marriage. Lear partitions his kingdom, and delivers it by livery of seizin. He entails the crown by apt words. Hermione is accused of adultery, and therefore of treason, according to the statute of Edward III. The validity of the acts of a king *de facto* and the duty of obedience to him are stated with the most precise understanding of the distinction between officers *de facto* and those *de jure*. Helena is a feudal ward. Cade makes a bestial pun, suggested by tenancy *in capite*, and by an infernal privilege of stupration, which is one of the recondite curiosities of the law. Dromio asserts that there is no time for a bald man to recover his hair. This having been written, the law phrase suggested itself, and he was asked whether he might not do it by fine and recovery, and this sug-

gested the efficiency of that proceeding to bar heirs; and this started the conceit that thus the lost hair of another man would be recovered. A 'quest of thoughts all tenants to the heart is impaneled to decide the question of title to the visage of the beloved one between the heart and the eye, where the defendant denies the plea, and the verdict is a moiety to each. The remembrance of things past is summoned up to the sessions of sweet, silent thought.

These illustrations have been given as they occur to the memory from hundreds of passages to enforce the argument of the probative force of accumulated circumstances from diverse sources, when there can be no doubt of the circumstances themselves. There is no question here of fabricated evidence. While the simulation of evidence by perverting or inventing circumstances is a device of all fabricators from the time of the exhibition of Joseph's coat to Jacob, the noting the mole on Imogen's snow-pure breast, the smearing by Lady Macbeth of the grooms' faces with blood, and the use of the handkerchief by Iago, are done with legal craft, and form Shakespeare's judgment upon

what is called circumstantial evidence, which after all the judicial cant upon the subject, such as the assertion that circumstances cannot lie, can be made the most illusory of all testimony; for while circumstances cannot lie, they can be feigned, invented, distorted, half-stated, misapplied, mistaken, or lied about with most infernal skill. It is upon circumstantial evidence so misunderstood that the claims of all impostors have been maintained from the *falsi Neronis ludibrio* which moved the hosts of Parthia to the pretensions of the claimant in the Tichborne case. The least mistake makes all the difference in the world. Suppose, for instance, that in the perspective of ages events should be so foreshortened that the years which cover Shakespeare's life-time and that of Milton should blend, it might be argued from the extracts from Comus, which are hereinafter set out, from an assumption that Shakespeare was an obscure and illiterate man, and from Milton's commanding intellectual force and erudition, that the latter wrote the plays in that heyday of his youth when, according to his own statement, he delighted in the *sinuosi pompa theatri;* or it might be maintained

with nearly equal force that Shakespeare wrote Areopagitica or Paradise Lost in his later years, after he had forsaken the vanities of his youth, had become devout, and had thrown all the forces of his mighty intellect into the polemics incident to a great political and religious revolution. These considerations are also relevant to what it is intended to submit relative to the theory that Francis Bacon was Shakespeare.

We can apply here the tests which decide our ordinary actions, and which in courts are found sufficient to adjudicate the most momentous questions. In the daily conduct of our lives we act upon the results of a calculation of probabilities. We frequently make it for ourselves, but as to our habitual actions it was made for us, perhaps thousands of years ago, and its results constitute what we call experience. In any such case, it is found from observation that a certain series of events is followed by certain consequences, so that an aggregate of circumstances being given we assume that but one result can follow. So unvarying are such results that, for all practical purposes, they are cer-

tainties. These experiences form the path in which we traverse life. They guide our business conduct. They map the course of storms upon the sea. They know where planets will shine, what eclipses will occur, what comets will return, for all time to come. It is thus that order is introduced into what is apparently inextricable confusion, and relationship is established between subjects separated by vast intervals of time and space. This is the great triumph of comparative philology which demonstrated the affinity of languages, traced diverse peoples to a common origin, and went far to mark the stages of their progress from the table lands of Asia through all the centuries from the morning of time. From this the unity of many nations was deduced, and a substantial identity of their religious conceptions, primal laws and domestic habits became established facts. All this is the result of what Whewell calls the "consilience of inductions."

One fact seldom proves much beyond itself, but two facts may prove a third, and when among a hundred or a thousand separate facts, each shows a relation, not dependent on another but independent of it, to all the rest, and also a relation to some

other fact not susceptible of actual observation, but which is the object to be demonstrated; when each fact points to one cause or result, and to no other; when an analysis of the elements of each fact shows the same unvarying convergence to one point; when any one fact may be removed from any function in the process and the result remain the same; when research and addition to the mass of circumstances, instead of displacing its probative direction only renders it more steady,—the certainty that the object which they indicate is the solution of the question becomes so great that the most stupendous figures are inadequate to express the infallibility of the result. Every one remembers the problem of the blacksmith who engaged to shoe a horse for one cent for the first nail, two cents for the next, four cents for the next, and so on, doubling the preceding number for each nail until all the nails should be computed for. The result is an illustration of the high power of proof to which the accumulated and progressive force of many circumstances can be raised. It is true that one positively established fact, out of many, which points conclusively to another result, may entirely invalidate

the demonstration, and this is the fallacy of circumstantial evidence as it is commonly understood to be. The witness may be false, he may be mistaken, he may not be clear, he may unintentionally pervert or suppress something. But in matters of textual criticism, such as are now under consideration, there is no possibility of such perturbations.

I regard Paley's Horae Paulinae as one of the most helpful books that a law student can read. It trains him for the most strenuous dialectics of his profession. Paley's thesis is that all the epistles which the canon attributes to St. Paul were written by one man, and with a power of analysis and application of proofs which has never been surpassed, he proves it by citing examples from each epistle of undesigned coincidences, minute, obscure, latent, and oblique, which abound throughout the Pauline writings. He says "they form no continued story; they compose no regular correspondence; they comprise not the transactions of any particular period; they carry on no connection of argument; they depend not upon one another; no study or care has been employed to preserve the appearance of consistency amongst them; they were not intended by

the person, whoever he was, that wrote them to come forth or be read together; they appeared at first separately and have been collected since." If these tests are applied to the books of the Evangelists, it will appear, upon the most cursory examination, that they were each written by a different man.

Some of the most interesting discoveries in astronomical science have been predicted by the application of the calculus of probabilities. For instance, Michell, in 1767, noticed that many fixed stars had companions close to them. Such a conjunction as to one or two stars would have no probative force, for they might be at a great distance from each other and lie on the same line of sight. But this optical union was so apparent in many stars that he asserted the existence of a bond between most of the double stars. Struve computed the odds to be 9,570 to 1 that any two stars of not less than the seventh magnitude could fall within the apparent distance of four minutes of each other by chance, and yet ninety-one of such cases had been observed when his computation was made, and many more have been since discovered. There were also four known triple stars, and the odds against the casual con-

junction of these were 173,524 to 1. Michell's conjecture was verified nearly a century after it was made by the discovery that many of the double stars are directly connected with each other under the law of gravitation.

Nearly all of the planetary movements have similarity of direction. In the time of Laplace eleven planets were known, and the directions were known for the sun, six planets, the satellites of Jupiter, Saturn's ring, and one of his satellites. There were thus known forty-three concurring motions; that is, the orbital motions of eleven planets and eighteen satellites and fourteen axial rotations. The probability that this number of independent motions should coincide by chance is as an odds of about 4,400,000,000,000 to 1.

The application of the doctrine of probabilities to the argument that Shakespeare was learned in the law is manifest. The nature of the subject, of course, makes the odds inexpressible by numerical notation. But the *principle* of increment of probative force is the same here as in the case of the visible and ponderable bodies, concerning which Struve and Laplace made their computations.

Suppose that within the last year all of these writings had been collected from scattered sources; some from libraries and family archives in England; some from old repositories in Massachusetts and Virginia. The authorship by one person or by many persons being the question, what testimony could be more convincing that they were written by one man than these undesigned, unstudied, obscure, oblique, latent, and cumulative legal expressions which occur in each play?

This being settled, the next question would be what manner of man was he who produced this incomparable body of thought and imagination? Was he merely a man of letters, or was he also a physician, or a lawyer, or a soldier? The same process of induction can be employed. It is found that the test of the use of technical phrases is applicable. It is found that they abound. Their use is accurate, unstudied, cumulative, incidental, undesigned for any purpose except their special employment in the places where they occur; is so subtle in illustrative function, as often to require special research to apply it; that the productions in which they occur form no continued story; that they were orig-

inally separate productions; that many of them were not published at all in the life-time of the author, but were handed out to actors to be learnt; that they cover the term of a long literary life; that they do not comprise the transactions of any one period; that they carry on no connection of argument, nor do they depend upon one another; that they exhibit no such familiarity with other arts, sciences, or vocations, but that as to them they are full of errors and carelessness. All this makes out a case by demonstration so absolute that no hypothesis is left except that the writer was learned in the law. The most persuasive argument concerning the authorship of the letters of Junius is the familiarity which they display with the routine of the war office, in which Francis was employed. Chatterton hoaxed profound scholars by his wonderful simulation of coincidences and archaisms, apparently undesigned, and was detected by the inaccuracies which cannot be avoided in any such attempt. Sir John Coleridge broke down the Tichborne claimant by a cross-examination which proved his ignorance of facts, or the details of events, which must have been known to him had he been what he pretended to be.

The dyer's hand is always subdued to what it works in. Professor Greenleaf examined the testimony of the Evangelists by the rules of evidence administered in courts of justice. That St. Matthew was a native Jew, familiar with the opinions, ceremonies, and customs of his countrymen, conversant with their sacred writings, and of little learning except what he derived from them, he holds to be established by the internal evidence of his gospel. That St. Mark wrote at Rome for the use of the Gentile converts, he argues from the numerous Latinisms which he employs and from the explanations he gives, which would be useless to a Jew. That St. Luke was a physician, he maintains, is apparent from his gospel, which shows that he was an acute observer, who had given particular and even professional attention to all of our Savior's miracles of healing; that where Matthew and Mark describe a man simply as a leper, he writes that he was full of leprosy; that he whom they mention as having a withered hand is described by him as having his right hand withered; that he alone, with a physician's accuracy, says that the virtue went out of Jesus and healed the sick; that he alone relates

the fact that the sleep of the disciples in Gethsemane was induced by excessive sorrow, and attributes the blood-like sweat of our Redeemer to the intensity of His agony, and that he alone relates the miraculous healing of Malchus' ear.

It has been maintained that the company of players to which Shakespeare belonged visited Scotland in the autumn of 1601, and that they were at Aberdeen in October of that year. It has been argued that Shakespeare in Macbeth displays a knowledge of the topography of the country around Forres and of the local superstitions and traditions, so much beyond any information given in Holinshed's Chronicle, that he must have accompanied the players, and it must be admitted that a most plausible showing is made.

This branch of the argument can best be enforced by the words of an eminent text-writer on the law of evidence:

"In estimating the force of a number of circumstances tending to the proof of the disputed fact, it is of essential importance to consider whether they be dependent or independent. If the facts A, B, C, D, be so essential to the particular inference to

be derived from them, when established, that the failure of the proof in any one would destroy the inference altogether, they are dependent facts. If, on the other hand, notwithstanding the failure in proof of one or more of those facts, the rest would still afford the same inference or probability as to the contested fact which they did before, they would be properly termed independent facts. The force of a particular inference drawn from a number of dependent facts is not augmented, neither is it diminished, in respect of the number of such dependent facts, provided they be established; but the probability that the inference itself rests upon sure grounds, is, in general, weakened by the multiplication of the number of circumstances essential to the proof; for the greater the number of circumstances essential to the proof is, the greater latitude is there for mistake or deception. On the other hand, where each of a number of independent circumstances, or combination of circumstances, tends to the same conclusion, the probability of the truth of the fact is necessarily greatly increased in proportion to the number of those independent circumstances."

"The probability derived from the concurrence of a number of independent probabilities increases not in a merely cumulative, but in a compound and multiplied, proportion. This is a consequence derived from pure abstract arithmetical principles. For although no definite arithmetical ratio can be assigned to each independent probability, yet the principle of increase must obtain wherever independent probabilities in favor of an event occur, although they cannot be precisely measured by space or numbers; and even although every distinct probability which is of a conclusive tendency exceeds every merely definite numerical ratio."

"The *nature* of such coincidences is most important. Are they natural ones, which bear not the marks of artifice and premeditation? Do they occur in points obviously material, or in minute and remote points which were not likely to be material, or in matters the importance of which could not have been foreseen? The number of such coincidences is also worthy of the most attentive consideration. Human cunning, to a certain extent, may fabricate coincidences, even with regard to minute points, the more effectually to deceive; but the co-

incidences of art and invention are necessarily circumscribed and limited; while those of truth are indefinite and unlimited. The witnesses of art will be copious in their detail of circumstances as far as their prevision extends. Beyond this, they will be sparing and reserved for fear of detection, and thus their testimony will not be even and consistent throughout; but the witnesses of truth will be equally ready and equally copious upon all points."

Paley also remarks that "the undesignedness of coincidences is to be gathered from their latency, their minuteness, their obliquity; the suitableness of the circumstances in which they consist to the places in which those circumstances occur, and the circuitous references by which they are traced out, demonstrate that they have not been produced by meditation or by any fraudulent contrivance; but coincidences from which these causes are excluded, and which are too close and numerous to be accounted for by accidental concurrence of fiction, must necessarily have truth for their foundation."

Shakespeare had a lawyer's conservatism. He respected the established order of things. He chisels the republican Brutus in cold and marble beauty, but paints with beams of sunlight the greatness, bravery, and generosity of imperial Cæsar. Coriolanus is the impersonation of patrician contempt for popular rights. Shakespeare passes unnoticed the causes which led to Cade's insurrection because he cares not for them,—causes so just that honorable terms were exacted by the insurgents. His portrait of Joan of Arc, the virgin mother of French nationality, who raised it to glory because the people believed in her, is a great offence. There is nowhere a hint of sympathy with personal rights as against the sovereign, nor with parliament, then first assuming its protective attitude towards the English people, nor with the few judges who, like Coke, showed a glorious obstinacy in their resistance to the prerogative. In all his works there is not one direct word for liberty of speech, thought, religion, —those rights which in his age were the very seeds of time, into which his eye, of all men's, could best look to see which grain would grow and which would not. In all ages great men and great women have

died for humanity, but none of these have been commemorated by him. The fire of no martyr gleams in his pages.

That the stage was under censorship cannot explain or excuse all this. Such was the disposition of the man. He had noble conceptions of national grandeur, but they were of great kings and their conquests. Macbeth, Richard, and Claudius enthrone themselves through assassination, and there is not a word for the popular distress which such crimes always inflict. Every revolt is to him a riot. The leaders are contemptible miscreants. There is no pity for common suffering, no lash for the great man's contumely towards the lowly; only a languid murmur against the insolence of office, contemptuous pity for the whipped and carted strumpet, and nothing which would have hindered his promotion had he entered the debasing scramble of favoritism which disgraced his time. He pleased Elizabeth, he pleased James, he would have pleased Napoleon.

The plea cannot be made for him that he was not superior to his age. His greatest cotempora-

ries were contained within it, but he, the man of whom Jonson wrote that—

> He was not for a day, but for all time;

who has set his serene firmament, with all its suns and stars, over all men and all ages, who stands in his works like the angel Uriel in the sun, is as unsympathetic as the planets themselves with those plebeian calamities which constitute the sorrows of common life.

It has been lamented that we do not know the man. It is true that we do not know him as Boswell has made us to know Johnson, and often to respect him less than he deserves. But, as Emerson has shown, we do know him. "What trait of his private mind has he hidden in his dramas? One can discern in his ample pictures of the gentleman and the king what forms and humanities pleased him: his delight in troops of friends, in large hospitality, in cheerful giving." "So far from Shakespeare being the least known, he is the one person in all modern history known to us. What point of morals, of manners, of ceremony, of philosophy, of religion, of taste, of the conduct of life, has he not settled? What mystery has he not signified his

knowledge of? What office or function or district of man's work has he not remembered? What king has he not taught state as Talma taught Napoleon? What maiden has not found him finer than her delicacy? What lover has he not outloved? What sage has he not outseen? What gentleman has he not instructed in the rudeness of his behavior?" All this is true, but it is not the whole truth. We see a man who revered womanhood, who has given us the finest types of manhood, who was generous, gentle, blameless, who saw through shams clearer than Montaigne, who scourged lust, gluttony, lying, slander, cowardice, pedantry, and all personal meanness with more than the wit of Rabelais, and yet who was silent concerning those great agitations for personal right and liberty which so shortly after he died subverted the monarchy, put aside the peerage, overthrew the church, and for ever established that the state is made for man and not man for the state.

And now comes some one and says that here is more proof that Shakespeare is a mere *alias* for Francis Bacon. It is difficult to touch or let alone

this vagary with any patience. One is inclined simply to protest in the words of Shakespeare's epitaph—

> Good frend for Iesvs sake forbeare
> To digg the dust encloased heare,

and pass on, deeming all secure against a desecration worse than that which the poet cursed. But the identity has been the subject of so much assertion that it may be well to pause before the unreal mockery and exorcise a few of its fantastic shapes.

It is not true that Shakespeare was an unlearned man. He was learned, but was not a man of finished learning. Bacon was a perfected scholar. Compare Shakespeare's classical allusions with the Wisdom of the Ancients and the difference is manifest. The one is the learning of a "marvelous boy," the other that of the completed scholar. Nor is it true that he was an obscure man. He is the first English author who made a fortune with his pen. In his last years he wrote himself, gentleman.

In 1592 he received from Greene one of those malevolent attacks which are made upon none but authors of established renown. Spenser praised him, and he praised Spenser. In 1598, Meres classed

him with Plautus and Seneca. Davies in 1607 addressed him as the English Terence. Fuller's account of him is known to every one. His works were gathered with pious care and published by his friends within seven years after he died. Ben Jonson was one of the most learned men of his time. He so much resembles Samuel Johnson in personal and mental traits that it is Ben whom we seem to see with Garrick and his friends at the theater. He was a fierce critic, a good hater, learned in the classics "as any man in England," a despot in conversation, gross, gluttonous, and scrofulous, his face was seamed with scars, he was passionate, was abject in repentance, feared no man, and loved but few, yet he *loved* Shakespeare, and claiming him as a child of eternity, has pictured him to us in lines which nothing but great love working upon great sorrow could have produced from such a man.

Jonson, we know, was the friend of Francis Bacon, and to him these men were different beings.

Milton, who was a child when Shakespeare died, who lived in London, and enjoyed its theatrical pleasures, and must have talked with many of Shakespeare's cotemporaries, installs him into an

inheritance of everlasting fame more durable than pyramids or any tombs of kings.

It is certain that the influence of Shakespeare on the youthful Milton was very impressive, and that it lasted until it was removed by those great events which made the laureate of Paradise an ascetic patriot. The associations of his early days seem to have revived in that magnificent lamentation of Samson Agonistes,

> Eyeless,—in Gaza,—at the mill,—with slaves,

(as Landor finely read the lines,) over a commonwealth destroyed, himself proscribed, and the time forever gone when the bold Ascalonite of prelacy and the divine right of kings,

> —— fled from his lion ramp.

Milton's epitaph upon Shakespeare stands in the folio of 1632. In 1637 we find him writing from London the first elegy *ad Carolum Deodatum*, in which he informs his friend how his time is spent, and attests his habitual attendance at the theater:

> Excipit hinc fessum sinuosi pompa theatri,
> Et vocat ad plausus garrula scena suos.
> Seu catus auditur senior, seu prodigus hæres,
> Seu procus, aut posita casside miles adest,
> Sive decennali fœcundus lite patronus
> Detonat inculto barbara verba foro!

Sæpe vafer gnato succurrit servus amanti,
Et nasum rigidi fallit ubique patris;
Sæpe novos illic virgo mirata calores,
Quid sit amor nescit, dum quoque nescit, amat.
Sive cruentatum furiosa Tragœdia sceptrum
Quassat, et effusis crinibus ora rotat,
Et dolet et specto, juvat et spectasse dolendo.
Interdum et lacrymis dulcis amaror inest:
Seu puer infelix indelibata reliquit
Gaudia, et abrupto flendus amore cadit:
Seu ferus e tenebris iterat Styga criminis ultor
Conscia funereo pectora torre movens.

The last four lines have been thought to refer to Romeo, and to Banquo's ghost or to the one in Hamlet.

Comus is filled with undisguised borrowings from Shakespeare.

Ere the blabbing eastern scout
The nice morn.

is Shakespeare's

Gaudy, blabbing, and remorseful day.

The possessor of chastity is "clad in complete steel;" so is the ghost in Hamlet.

With Milton philosophy is

—— musical as is Apollo's lute.

With Shakespeare love is

—— as sweet and musical
As bright Apollo's lute strung with his hair.

Comus' dissertation on virginity is a manifest adaptation of Parolles' discourse upon that subject.

Sabrina sets her

——— printless feet
O'er the cowslips' velvet head.

And Prospero's elves

——— on the sands with printless feet
Do chase the ebbing Neptune.

The spirit is another Ariel who

——— can soar as soon
To the corners of the moon,

like Hecate, who says that

Great business must be wrought ere noon
Upon the corner of the moon.

These extracts have been adduced to show that Shakespeare was clearly seen by the greatest man of the next generation.

Charles I. was sixteen years of age when Shakespeare died. Bacon dedicated to him his history of Henry VII. Shakespeare, in Macbeth, nobly magnified the house of Stuart by a prophecy of its perpetuity. The works of Shakespeare were the closet companion of Charles, who was reproached for this by Milton at a time when the fierce zealots of rebellion had come to look upon the drama as sinful. Falkland was Charles' councillor, and it is

from him that we have respecting Caliban the first critical estimate extant of any character in Shakespeare. And yet from prince, king, courtier, poet, or scholar, we hear no hint which can give this modern theory the slightest support.

Bacon was actively engaged in the court of chancery for many years before he became lord chancellor. It was then that the memorable war of jurisdiction was waged between Ellesmere and Coke, and yet there is not in the works of Shakespeare, to the best of my belief, a single phrase or word, much less any application of any principle, peculiar to the chancery.

Shakespeare dedicated Venus and Adonis, and the Rape of Lucrece, to the Earl of Southampton, with strong expressions of affection, and it is a tradition that he was munificently treated by that nobleman. No one has ever denied that the author of these poems is also the author of the plays. But if Bacon was Shakespeare, it is incredible that within a few years the former should have appeared as volunteer counsel against Essex and Southampton in that trial which has so stained Bacon's name, or that he should have undertaken after-

wards, in his Declaration of the Treason of Robert, Earl of Essex, the task of proving the complicity of his friend and patron in that conspiracy.

It is also remarkable that in this same production, in order to fasten guilt upon the conspirators, Bacon lays especial stress upon the fact "that the afternoon before the rebellion, Merick, with a great company of others, that afterwards were all in the action, had procured to be played before them the play of deposing King Richard the Second. Neither was it casual, but a play bespoken by Merick; but when it was told him by one of the players that the play was old, and that they should have loss in playing it, because few would come to it, there were forty shillings extraordinary given to play it, and so thereupon played it was. So earnest was he to entirely satisfy his eyes with the sight of that tragedy, which he thought soon after his lordship should bring from the stage to the state, but that God turned it upon their own heads."

If Francis Bacon wrote Richard II. it was a piece of matchless effrontery for him to maintain that his own production had been displayed as a

counterfeit presentment in aid of a treason in which his friend was engaged.

And in the face of all this and much more we are asked to believe that Bacon, colluding with Shakespeare, practiced this stupendous imposture for nearly twenty-five years, and that it was undetected and unsuspected until after more than two centuries had passed away.

If we look to the intrinsic evidence wrenched and misapplied by conjecture from the treasures which these men left to us, we find nothing "but a foolish and extravagant spirit, full of forms, figures, shapes, objects, ideas, apprehensions, motions, revolutions, begot in the ventricle of memory, nourished in the womb of *pia mater*, and delivered upon the mellowing of occasion."

Bacon's prose has less rhythmus than Hooker's or Raleigh's. We have specimens of his versification. He translated seven of the psalms into English verse, and here is his first verse:

> Who never gave to wicked reed
> A yielding and attentive ear;
> Who never sinner's path did tread
> Nor sat him down in scorner's chair,
> But maketh it his whole delight

> On law of God to meditate,
> And therein spendeth day and night,
> That man is in a happy state.

Sternhold could not make this worse. Compare it with the crudest lines Shakespeare ever wrote.

The differences between these most august of intellectual beings are manifest. Both were sages; one was a poet, the other a philosopher. It is the difference between Homer and Plato. Both had great imaginations, but Bacon's was a reasoning imagination, which disclosed its logical processes. That of Shakespeare was intuitive, and left little trace of its trackless paths of development. It is the difference between two continents of vast area, watered by great and fertilizing rivers, full throughout of nature's wonders; but one is temperate, orderly, subject to little variation, while the other is tropical, ravaged by storms, the home of the greatest beauties sleeping in the very dens of the greatest terrors, and both beneficent and enduring. Each was a discoverer. But Bacon made his quest in the material world, while Shakespeare voyaged through the mind and soul of man and reached their destinies. One is the Columbus and the other the Dante of

thought. The results have been different. The intrepid experimental investigation of causes upon which Bacon insisted as the only force which could break down the prison walls of knowledge, placed thought upon a line of logical consequences leading directly to much that we now enjoy so completely of social, political, and religious rights. This is the greatest boon ever bestowed upon humanity by one man. Bacon's genius triumphed in his closet over the servility of his disposition, and, so triumphing, impelled the race to results to which he, living, never could have led it.

The consequences which have flowed from Shakespeare have been even more diffused. They are not mere results. The man and his effects live and touch persons. His works are known to all men. Bacon's are known to few. Bacon is to us impersonal precisely where his influence is greatest, and is real where he has ceased to act. We know the supple courtier, the false friend, the pliant lawyer, and the corrupt judge. But the philosopher, in the midst of whose system we stand to-day, is nearly an ideal conception. Shakespeare, colorless as he is in all that regards material knowledge or politi-

cal and religious rights, is with us always; speaks to us every day; interprets us to ourselves; is immanent in our literature as its presiding spirit.

"Bacon little knew or suspected that there was then existing (the only one that ever did exist) his superior in intellectual power. Position gives magnitude. While the world was rolling above Shakespeare, he was seen imperfectly. When he rose above the world, it was discovered that he was greater than the world. The most honest of his contemporaries would scarcely have admitted this, even had they known it. But vast objects of remote altitude must be looked at a long while before they are ascertained. Ages are the telescope-tubes that must be lengthened out for Shakespeare, and generations of men serve but as single witnesses to his claims." (*Landor.*)

The strongest proof that Shakespeare's legal knowledge was very great consists in the confident and cumulative use of these terms, not only in the general fact that they so recur in every play, in all the poems, and even in the dedications, but also in their exhaustive use in many passages where to ex-

plain some principle, to carry out some comparison or analogy to its likeness to the finest lines and features of the thought, to push some conceit to the remotest extravagance, so that it is necessary for a well-read lawyer to make special investigation into the law and statutes of that time before he can follow it, Shakespeare exhausts the capacity of the terms he employs.

We turn from these exhibitions of thorough technical skill to see whether he displays anything like such familiarity in other departments of knowledge. We find little that tends to show proficiency in medicine, and this is everybody's science. In geography he is as perfectly without location as his "still vex'd Bermoothes," which no research has been able to map. No dogma stains his plain belief in Him who was

——— nailed
For our advantage to the bitter cross.

With time and place his tricks are more magical than that by which Puck girdled the earth in forty minutes. He is utterly indifferent to the devil and hell-fire, excepting in Henry VI. in Hamlet, and in that terrific use of the witches in Macbeth, who seem

to have received from him a power beyond their own to call up from futurity the coroneted baby-brows, the two-fold balls, and treble scepters. In music he discloses little technical learning, although he could make the concourse of sweet sounds quire with the young-ey'd cherubim, so divinely was his soul attuned who expressed the whole compass of our language in harmonies which we hear from him only. We find little knowledge of tactics or maneuvers and less of nautical terms, although it was an age of wars by land and sea, and his works are filled with soldiery. There is next to nothing of the ancient philosophies; not one of Plato's glorious and cloudy dreams was ever smitten by the light of this glorifying sun.

The wonder at this use of legal expressions is not so much that Shakespeare understood them so well, as it is that the man who commanded the most copious vocabulary that any English writer has ever been able to wield, should have used them with such persistence. Surely *he* did not need them as instruments of expression. His resources in the treasuries of words were too vast for that. These law terms were present in his mind as standards

of comparison with things which nothing but his own despotic imagination could have brought into relevancy.

I know of no writer who has so impressed into his service the terms of any science or art. They come from the mouth of every personage: from the queen; from the child; from the Merry Wives of Windsor; from the Egyptian fervor of Cleopatra; from the love-sick Paphian goddess; from violated Lucrece; from Lear, Hamlet, and Othello; from Shakespeare himself, soliloquizing in his sonnets; from Dogberry and Prospero; from riotous Falstaff and melancholy Jacques. He utters them at all times as standard coin, no matter when or in what mint stamped. These emblems of his industry are woven into his style like the bees into the imperial purple of Napoleon's coronation robes.

It may be suggested that this figure, so frequently woven into Shakespeare's diction, may test whether certain plays, which have been attributed to him, come from other hands than his. Thus, I have little doubt that Sir John Oldcastle, if not wholly written by him, bears the imprint of his golden hand. The passage concerning the royal buck, the

scene where Harpool forces the sumner to eat the citation he has come to serve, and the other legal phrases, taken together, seem to indicate this. If he did not compose the entire play, he mingled in its composition, like a skillful teacher who corrects the awkward execution of a pupil, by letting his hand fall for a moment upon the keys to strike chords of recognized harmony.

The soundest English and German critics agree that he wrote the first act of the Two Noble Kinsmen, and that the rest of the play is by Fletcher, who took the organ from the master after the prelude had filled the arches of the imagination with its melody. If the first act is tested by comparison with all that follows it, we have the results we should expect in such familiar expressions, as "the tenor of thy speech," "prorogue," "fee," "moiety," "canon," "seal the promise."

Legal learning and language are essentially unpoetical, and the other dramatists of that time were sparing in their use. Ben Jonson was a scholar. He delighted in the exhibition of accurate knowledge, but he does not approach the precision or ease of his great cotemporary in his representa-

tions of legal proceedings, or in his use of legal terms. An examination of the court scene in the Fox will establish the truth of this remark.

Fletcher had been a student at Cambridge, and Beaumont at Oxford. The latter was the son of a judge of the court of common pleas, and was himself bred to the law. But we can find in their works no such disposition or facility in the use of law terms, or the procedure of the courts. In the Little French Lawyer, La Wit, who turns duelist and challenges everybody, including the venerable judge who has ruled against him, uses little of the vocabulary of his vocation. In the Spanish Curate, the lawyer Bartolus is a very important character, and considerable legal knowledge appears in his sayings and doings, particularly in the scene where his debtors sit down to the feast he has made for them, and are arrested for debt by the waiters, who are disguised officers, under warrants which appear as the only repast upon the plates when they are uncovered, but the performance is broad, and has not the incidental accuracy which appears again and again in Shakespeare.

So Massinger in the Old Law, brings to trial

the unfilial son and the profligate wife, but the scene, as a forensic representation, is crude, lacks detail, and displays none of that pomp of justice which all courts of any dignity exhibit.

The affiliation between the disciples of Themis and Thespis was a marked feature of those times. Many students of law forsook it and became dramatists. So common was this transition that Greene, in his Groat's Worth of Wit, published before 1593, in a passage which has been thought to reflect directly upon Shakespeare, speaks of these re-enforcements to the play-writers as those "who have left the trade of Noverint," (know all men, etc.) Sir Christopher Hatton wrote a play entitled Tancred and Gismund, and afterwards became lord chancellor. So noteworthy were these accessions from the law students that Ben Jonson begins the Poetaster, in which he lampoons a rival dramatist and the lawyers, with a scene between Ovid and his father, who detects the young law student writing plays and poems.

There is so much similarity between the opening lines of the Poetaster—

Then when this body falls in funeral fire,
My name shall live and my best part aspire,

and Shakespeare's assertion of undying fame in the sonnet—

Not marble nor the gilded monuments
Of princes shall outlive this powerful rhyme,

that one is tempted to conjecture that Jonson intended to impersonate Shakespeare in Ovid; but the alluring supposition is too fanciful, for we know from Ovid himself that—

Sæpe pater dixit, studium quid inutile tendes,
Mæonides nullas ipse reliquit opes.
* * * * * * *
Non me verbosas leges discere, non me
Ingrato voces prostituisse foro.

John Shakespeare, coming to London, and detecting his son in the composition of plays, would have been a far better theme for an imaginary conversation than Landor chose when he gave us the examination of William Shakespeare before Sir Thomas Lucy for deer-stealing.

Henry Wriothesly, to whom Shakespeare dedicated "the first heir of his invention," was the grandson of a common-law lawyer, who was lord chancellor from 1544 to 1547.

The relations of the most dramatic profession of

real life to that which mimics life was then much like the construction of the amphitheater of Curio, which was elliptical, but built in equal sections, which could be revolved so that each became a theater, displaying a different spectacle, but could be turned in a moment into the unity of the original shape, and confuse two representations and two audiences. The inns of court were the scenes of spectacular dramas of great magnificence, the expenses of which were borne by the lawyers. These revels, as they were called, laid the best dramatic genius under contribution, and, though they have long since ended, the ancient sympathy has survived the insubstantial pageants and the actors, which have melted into thin air.

It is not difficult to account for this intimacy. The dramatists of that time were unquestionably the most brilliant men who ever lived together in one city. Intellectual society was limited. The physicians have left no memorials. The stage was abhorred by the clergy. The editor was yet to come. But there was the bar, whose members knew life and human nature as they are, and who played their parts in all their real comedies and trage-

dies; university men, ripe and sweet with all classical learning, cynical and humorous, tainted with no cant. The taverns were the clubs. And thus it was that the most cultivated scholarship and the most brilliant imaginations of England met in encounters, which kindled into conflagrations of wit, humor, learning, ribaldry, and wisdom.

There was everything in that romantic age to stir the imagination. There was a spirit of chivalry abroad which marched in quest of something more substantial than mouldy relics, and fulfilled vows sworn to something grander than the achievement of pious absurdities. Frobisher had sailed northward into the silence of the eternal seas of ice. El Dorado lifted against the western skies its shafts and domes of gold. The Armada had vanished like a portentous phantom, smitten by the valor of Englishmen, and chased far off into the Hebridean fogs by the waves of the exasperated sea, which fought for its island nursling. Hawkins, pirate and admiral, had thrown his fortune into the pit which threatened to swallow up his country, and had died under the displeasure of his stingy yet mag-

nificent queen. Raleigh, having seen his dreams of the new world die out, lay in the Tower, writing his history, doubtless smoking the consoling weed, while awaiting the end of so much bravery, so much rashness, and so many cares, in the summons of "eloquent, just, and mighty Death." Drake had spoiled the seas and the cities thereof. Captain John Smith had told of great empires in the west, and their swarthy emperors. Mary, Queen of Scots, that changeful enchantress, as we see her now,—at one time the French lily, all sweet, and pure, and fragrant; and again the Scottish thistle, spinous and cruel to all who touched her,—had woven the cords of love into the chains of empire, and had pressed the cup of her sorceries to the lips of many men, until her own glorious head bowed to

——— the long divorce of steel.

History, among all the women who have been crowned with the thorns of sorrow, presents no figure of which Shakespeare could have made so much. But what could any dramatist do for *her* in the life-time of Elizabeth, or in that of the pusillanimous and unfilial Sawney who succeeded her?

A reverend church had been subverted through-

out the land, and beliefs and ceremonies, which its believers asserted to be as old as the apostles, were forbidden as crimes.

Hooker, anticipating Locke, had declared that all governments exist by the consent of the governed, "without which consent there were no reason that one should take on him to be lord or judge over another." Bacon, thinking that "the knowledge whereof the world is now possessed, especially that of nature, extendeth not to the magnitude of works," had declared that there should be "one method of cultivating the sciences and another of discovering them," and by this fiat liberated experimental philosophy into the limitless fields in which it has since worked. There never was a time when so many causes confederated to stimulate the human mind to the exhibition of its greatest powers in all departments, and the result was that the soldier became a historian, the divine a statesman, the statesman a philosopher, and the lawyer the first of poets.

THE LAW

IN

SHAKESPEARE.

No. 1.

Now the condition.
This king of Naples, being an enemy
To me inveterate, hearkens my brother's suit;
Which was, that he, in lieu o' the premises,
Of homage, and I know not how much tribute,
Should presently extirpate me and mine
Out of the dukedom; and confer fair Milan,
With all the honours, on my brother.

The Tempest, Act 1, Scene 2.

Premises. That part in the beginning of a deed in which are set forth the names of the parties, and in which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the contract then entered into is founded. (*Bouv. Law Dict.*)

(See No. 178.)

The words seem to be used here with legal exactness, and the meaning is that in lieu of the prem-

ises, which are agreements for homage and tribute which the king was bound to render to Prospero, he should extirpate the latter from his dukedom and confer Milan upon the brother.

Homage. (See Nos. 124, 273.)

No. 2.

Ay, ay; and she hath offer'd to the doom
Which, unreversed, stands in effectual force,
A sea of melting pearl, which some call tears,
Those at her father's churlish feet she tender'd.

The Two Gentlemen of Verona, Act 3, Scene 1.

Doom. Judgment, judicial sentence. (*Johnson; Webster.*)
(See Nos. 22, 249.)

This is the primary meaning. (See "doomster," *Heart of Mid-Lothian, c. 24.*) The word "unreversed" is, in its connection with the word "doom," used in a strictly judicial sense.

Tendered. (See No. 289.)

No. 3.

Besides, her intercession chafed him so,
When she for thy repeal was suppliant.

The Two Gentlemen of Verona, Act 3, Scene 1.

Repeal. Recall from exile. (*Johnson.*)
(See Nos. 130, 205.)

Valentine had been banished and the supplications of Sylvia were for his "repeal." Byron has used the word in the same sense:

"—— that deep gulf without repeal."

The Prophecy of Dante, Canto 1.

No. 4.

Shal. Sir Hugh, persuade me not; I will make a Star-Chamber matter of it; if he were twenty Sir John Falstaffs, he shall not abuse Robert Shallow, Esquire.

Slen. In the county of Gloster, justice of peace, and *Coram.*

Shal. Ay, cousin Slender, and *Custalorum.*

Slen. Ay, and *Rato-lorum* too; and a gentleman born, master parson; who writes himself *Armigero;* in any bill, warrant, quittance, or obligation, *Armigero.*

The Merry Wives of Windsor, Act 1, *Scene* 1.

Justice Shallow threatens to have Falstaff punished for contempt, and this was, as in the chancery, a mode of procedure in the Star Chamber. (*3 Bl. Comm. marg. p. 444.*) It punished any disrespect to any acts of state, or to the person of statesmen. (*Clarendon.*) Also for scandalous reports of persons in power. (*1 Hallam's Const. Hist. 67.*)

Coram. In presence of; before. (*Bouv. Law Dict.*)

Shakespeare here shows his exact knowledge by playing upon a technical word, for Slender undoubtedly means that Shallow is a justice of the *quorum,* another legal word applicable to justices of

the peace. The justices of the peace were appointed in each county by special commission under the great seal, the form of which was settled by all the judges in the year 1590. The commission required them all jointly and severally to keep the peace; and any two or more of them to inquire of and determine felonies and misdemeanors, in which number some particular justices, or one of them, were directed to be always included, (were of the *quorum*,) and no business could be done without their presence; the commission running thus: *Quorum aliquem vestrum—unum esse volumus.*

There is the same perversion in the word *Custalorum*. *Custos rotulorum* is the word which Shallow attempts, and which Slender fails to give correctly. The *custos rotulorum* was the principal justice of the peace in the county, and keeper of the records of the county. The idea of the interlocutors is to exalt Shallow's official dignity, so that Falstaff's contempt of it may authorize them, in their simplicity, to think it a Star-Chamber matter.

Armigero. Esquire.

Bill. A common engagement for money given to another. A single bond without a condition.

Formerly it was all one with an obligation, save only its being called a bill when in English, and an obligation when in Latin.

Warrant. A precept under hand and seal to some officer.

(See Nos. 110, 114.)

Acquittance. A discharge in writing of a sum of money or a debt due.

(See Nos. 45, 274.)

Obligation. A bond containing a penalty with a condition annexed. It differs from a bill, which is generally without a penalty or condition, although a bill may be obligatory. (*Tomlin's Law Dict.*)

(See No. 158.)

No. 5.

Why, I'll exhibit a bill in the parliament for the putting down of men.

The Merry Wives of Windsor, Act 2, Scene 1.

Exhibit. To offer or propose in a formal or public manner. (*Johnson.*)

Bill. (See No. 142.)

He suffered his attorney general to exhibit a charge of high treason against this earl. (*Clarendon.*)

Formerly all bills were drawn in the form of petitions, which were entered on the parliament rolls

with the king's answer subjoined. (*Tomlin's Law Dict., Parliament.*)

Where the phrase "introduce a bill" would now be used, it was then correct to say, "exhibit a bill or petition."

No. 6.

The spirit of wantonness is, sure, scared out of him; if the devil have him not in fee-simple, with fine and recovery, he will never, I think, in the way of waste, attempt us again.

The Merry Wives of Windsor, Act 4, Scene 2

Fee-simple. Tenant in fee-simple is he who has land and tenements to hold to him, and his heirs and assigns, forever. (*Littleton.*)

(See Nos. 63, 159, 247, 312.)

Fine and recovery. *Fine*—An instrument of record of an agreement concerning lands, tenements, and hereditaments, duly made by the king's license, and acknowledged by the parties to the same, upon a writ of covenant, writ of right, or such like, before the justices of the common pleas, or others thereunto authorized, and engrossed of record in the same court; to end all controversies thereof, both between themselves, which be parties and privies to the same, and all strangers not suing or claiming in due time. (*Shep. Touchst. c. 3.*)

The recovery was a judgment in a fictitious suit. A conveyance by fine and recovery barred all the world.

The meaning of the merry wife is that the devil has acquired an absolute title to Falstaff by a proceeding barring everybody, in remainder, reversion, or entail, which was the operation of a fine and recovery.

(See Nos. 63, 85, 276.)

Waste. A spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee-simple or fee-tail. (*2 Bl. Comm. marg. p. 281.*)

No. 7.

You orphan heirs of fixed destiny,
Attend your office, and your quality.
Crier Hobgoblin, make the fairy o-yes.

Merry Wives of Windsor, Act 5, Scene 5.

O-yes. Hear ye! Immediately before he makes proclamation the crier of the court cries, Oyez, oyez, which is generally corruptly pronounced *o-yes.* (*Bouv. Law Dict.*)

(See No. 194.)

No. 8.

Go thou and seek the coroner, and let him sit o' my coz; for he's in the third degree of drink, he's drowned; go, look after him.

Twelfth Night, Act 1, Scene 5.

No. 9.

Has been told so: and he says, he'll stand at your door like a sheriff's post, and be the supporter of a bench, but he'll speak with you.

Twelfth Night, Act 1, *Scene* 5.

(See No. 239.)

No. 10.

Fab. I will prove it legitimate, sir, upon the oaths of judgment and reason.

Sir To. And they have been grand jury-men since before Noah was a sailor.

Twelfth Night. Act 3, *Scene* 2.

No. 11.

First Off. This is the man; do thy office.
Sec. Off. Antonio, I arrest thee at the suit
Of count Orsino.

Twelfth Night, Act 3, *Scene* 4.

Arrest. (See Nos. 17, 86, 87, 137, 138, 277*a*, 295, 300.)

No. 12.

Nay, let him alone, I'll go another way to work with him; I'll have an action of battery against him, if there be any law in Illyria: though I struck him first, yet it's no matter for that.

Twelfth Night, Act 4, *Scene* 1.

Action of battery. (See Nos. 12, 20, 276.)

No. 13.

Thou shalt be both the plaintiff and the judge of thine own cause.

Twelfth Night, Act 5, *Scene* 1.

Plaintiff. (See No. 39.)

Cause. (See Nos. 60, 149, 184, 200, 277*a*.)

No. 14.

A contract of eternal bond of love,
Confirm'd by mutual joinder of your hands,
Attested by the holy close of lips,
Strengthen'd by interchangement of your rings;
And all the ceremony of this compact
Seal'd in my function, by my testimony.

Twelfth Night, Act 5, Scene 1.

Confirmed. (See Nos. 185, 238.)

No. 15.

Claud. Thus stands it with me: upon a true contract,
I got possession of Julietta's bed;
You know the lady; she is fast my wife,
Save that we do the denunciation lack
Of outward order: this we came not to,
Only for propagation of a dower
Remaining in the coffer of her friends;
From whom we thought it meet to hide our love,
Till time had made them for us.

Measure for Measure, Act 1, Scene 2.

The common law considered marriage solely as a civil contract, requiring no ecclesiastical ceremony or sanction. It was valid in all cases where the parties were willing and able to and actually did contract. Any such contract made *per verba de presenti*, or in words in the present tense, and, in case cohabitation followed, *per verba de futuro*, was a valid marriage. (*Bl. Comm. marg. pp. 435, 439.*)

The word dower is used for the word *dowry*, which

was that which the wife brings her husband in marriage, otherwise called *maritagium* or marriage goods. The word is often confounded with dower, though it has a different meaning. (*Tomlin's Law Dict.*)

In the Collier folio of 1632 the word is "procuration," instead of "propagation." It is evident that this marriage was *per verba de futuro*. Upon such a contract Claudio got possession of Isabella's bed. Such a marriage to be valid must be followed by consummation of this character. Nothing is wanting in Claudio's statement of the facts to make out a case of valid marriage.

The words "true contract" are doubtless a corruption in the text. *Pre-contract* should be substituted, and this is the word employed in Measure for Measure. (See No. 29.) The employment of this phrase of antecedence shows that the distinction between marriage *per verba de presenti* and that *per verba de futuro* was plainly drawn in Shakespeare's mind.

(See No. 82.)

No. 16.

We have strict statutes, and most biting laws,
The needful bits and curbs to headstrong steeds,
Which for these fourteen years we have let sleep,
Even like an o'ergrown lion in a cave,
That goes not out to prey. Now, as fond fathers
Having bound up the threatening twigs of birch,
Only to stick it in their children's sight,
For terror, not to use, in time the rod
Becomes more mock'd than fear'd: so our decrees,
Dead to infliction, to themselves are dead;
And liberty plucks justice by the nose;
The baby beats the nurse, and quite athwart
Goes all decorum.

Measure for Measure, Act 1, *Scene* 3.

No. 17.

He (to give fear to use and liberty,
Which have, for long, run by the hideous law,
As mice by lions,) hath pick'd out an act,
Under whose heavy sense your brother's life
Falls into forfeit: he arrests him on it;
And follows close the rigour of the statute,
To make him an example: all hope is gone,
Unless you have the grace by your fair prayer
To soften Angelo.

Measure for Measure, Act 1, *Scene* 4.

Arrest. (See Nos. 11, 86, 87, 137, 138, 277*a*, 295, 300.

Forfeit. (See Nos. 25, 52, 56, 259, 306.)

No. 18.

'Tis one thing to be tempted, Escalus,
Another thing to fall. I not deny,

The jury, passing on the prisoner's life,
May, in the sworn twelve, have a thief or two
Guiltier than him they try. What's open made to justice,
That justice seizes: what know the laws,
That thieves do pass on thieves?

Measure for Measure, Act 2, *Scene* 1.

The phraseology here is legal. An "act" has been picked out under which a life has "fallen into forfeit;" an "arrest" is made on it. The rigour of the "statute" is followed. The jury, in "passing on the prisoner's life," is a "sworn twelve," and "thieves may pass on thieves."

No. 19.

Elb. Come, bring them away: if these be good people in a commonweal, that do nothing but use their abuses in common houses. I know no law; bring them away.

Ang. How now, sir! what's your name? and what's the matter?

Elb. If it please your honour, I am the poor duke's constable, and my name is Elbow; I do lean upon justice, sir, and do bring in here before your good honour two notorious benefactors.

Ang. Benefactors? Well; what benefactors are they? are they not malefactors?

Elb. If it please your honour, I know not well what they are: but precise villains they are, that I am sure of; and void of all profanation in the world, that good Christians ought to have.

Escal. This comes off well; here's a wise officer.

Measure for Measure, Act 2, *Scene* 1.

Elbow brings before "his honour" two notorious "benefactors," as he calls them; "malefactors," according to the correction of Angelo. Such perversion of terms occurs often, and is noticed in more striking instances.

Malefactors. (See No. 38.)

No. 20.

Elb. First, an' it like you, the house is a respected house; next, this is a respected fellow; and his mistress is a respected woman.

Clo. By this hand, sir, his wife is a more respected person than any of us all.

Elb. Varlet, thou liest; thou liest, wicked varlet: the time is yet to come that she was ever respected with man, woman, or child.

Clo. Sir, she was respected with him before he married with her.

Escal. Which is the wiser here? Justice or Iniquity? Is this true?

Elb. O thou caitiff! O thou varlet! O thou wicked Hannibal! I respected with her, before I was married to her? If ever I was respected with her, or she with me, let not your worship think me the poor duke's officer. Prove this, thou wicked Hannibal, or I'll have mine action of battery on thee.

Escal. If he took you a box o' the ear, you might have your action of slander too.

Elb. Marry, I thank your good worship for it. What is't your worship's pleasure I shall do with this wicked caitiff?

Escal. Truly, officer, because he hath some offences in him, that thou wouldst discover if thou couldst, let him continue in his courses, till thou knowest what they are.

Measure for Measure, Act 2, Scene 1.

There is here in the use of the word "respected" for "suspected," the same kind of perversion noted in No. 19 and elsewhere.

Elbow threatens an "action of battery" for a slander, and Escalus suggests in pleasantry that he may *e converso* have an action of slander for a battery.

(See Nos. 12, 276.)

No. 21.

Serv. He's hearing of a cause; he will come straight.
I'll tell him of you.

Measure for Measure, Act 2, Scene 2.

Cause. A contested question before a court of justice. (*Bouv. Law Dict.*)

"Hearing a cause" is the precise phrase to be used here.

No. 22.

Under your good correction, I have seen,
When, after execution, judgment hath
Repented o'er his doom.

Measure for Measure, Act 2, Scene 2.

Execution. (See Nos. 231, 91.)

Doom. (See Nos. 2, 249.)

No. 23.

Condemn the fault and not the actor of it!
Why, every fault's condemn'd ere it be done:
Mine were the very cipher of a function,
To fine the faults whose fine stands in record,
But let go by the actor.

Measure for Measure, Act 2, Scene 2.

This is a very exact application of a legal conception. The meaning is that the criminal has been convicted, and the judgment record against him made up, and that mere abstract condemnation of the fault, while pardoning the convicted offender, makes the power of the ruler a cipher.

Fine. (See Nos. 56, 248.)

No. 24.

Well, believe this,
No ceremony that to great ones 'longs,
Not the king's crown, nor the deputed sword,
The marshal's truncheon, nor the judge's robe,
Become them with one half so good a grace
As mercy does.

Measure for Measure, Act 2, Scene 2.

Mercy. (See Nos. 25, 48, 56.)

No. 25.

Ang. Your brother is a forfeit of the law,
And you but waste your words.
Isab. Alas, alas!
Why, all the souls that were, were forfeit once;
And He that might the vantage best have took,
Found out the remedy. How would you be,
If He, which is the top of judgment, should
But judge you as you are? O, think on that;
And mercy then will breathe within your lips,
Like man new made.
Ang. Be you content, fair maid;
It is the law, not I, condemns your brother;
Were he my kinsman, brother, or my son,
It should be thus with him: he must die to-morrow.
Isab. To-morrow! O, that's sudden! Spare him, spare him!
He's not prepared for death! Even for our kitchens
We kill the fowl of season; shall we serve heaven
With less respect than we do minister
To our gross selves? Good, good my lord, bethink you:
Who is it that hath died for this offence?
There's many have committed it.
Lucio. Ay, well said.
Ang. The law hath not been dead, though it hath slept:
Those many had not dared to do that evil,
If the first man that did the edict infringe,
Had answer'd for his deed; now, 'tis awake;
Takes note of what is done; and like a prophet,
Looks in a glass that shows what future evils
Either new, or by remissness new-conceived,
And so in progress to be hatch'd and born,
Are now to have no successive degrees,
But, ere they live, to end.
Isab. Yet show some pity.
Ang. I show it most of all, when I show justice;

For then I pity those I do not know,
Which a dismiss'd offence would after gall;
And do him right, that, answering one foul wrong,
Lives not to act another. Be satisfied;
Your brother dies to-morrow; be content.

Isab. So you must be the first that gives this sentence;
And he, that suffers: O, it is excellent
To have a giant's strength; but it is tyrannous
To use it like a giant.

Measure for Measure, Act 4, Scene 2.

Edict. (See Nos. 135, 170, 232.)

Forfeit. (See Nos. 17, 52, 56, 259, 306.)

Mercy. (See Nos. 24, 48, 56.)

No. 26.

Thieves for their robbery have authority,
When judges steal themselves.

Measure for Measure, Act 2, Scene 2.

No. 27.

I'll teach you how you shall arraign you conscience,
And try your penitence, if it be sound,
Or hollowly put on.

Measure for Measure, Act 2, Scene 3.

Arraign. To call a man to answer in form of law. A prisoner is arraigned when he is indicted and brought to trial. (*Tomlin's Law Dict.*)

(See Nos. 78, 79, 239, 286.)

No. 28.

Must die to-morrow! O, injurious love,
That respites me a life, whose very comfort
Is still a dying horror!

Measure for Measure, Act 2, Scene 3.

Respite. Reprieve; suspension of a capital sentence.

(See No. 232.)

No. 29.

> Nor, gentle daughter, fear you not at all.
> He is your husband on a pre-contract:
> To bring you thus together, 'tis no sin,
> Sith that the justice of your title to him
> Doth flourish the deceit.
>
> *Measure for Measure, Act 4, Scene 1.*

As noted in No. 15, the use here of the word *pre-contract* in relation to this marriage *per verba de futuro*, followed by consummation, shows accurate legal knowledge by Shakespeare of the requisites of marriage, which at common law were by mere civil forms of contract, and, in case of marriages *per verba de futuro*, performance of the contract by consummation, (*subsequente copula.*)

The duke correctly advises Mariana that the proposed consummation will be no sin.

(See Nos. 15, 82.)

No. 30.

> I hope it is some pardon or reprieve,
> For the most gentle Claudio.
>
> *Measure for Measure, Act 4, Scene 2.*

Pardon. The remitting or forgiving of an offense committed against the king. (*Tomlin's Law Dict.*)

The words "respite," "reprieve," "countermand," and "pardon" are used in this play in the most accurate technical sense.

Reprieve. (See Nos. 32, 242.)

No. 31.

Have you no countermand for Claudio yet,
But he must die to-morrow?

Measure for Measure, Act 4, Scene 2.

Countermand. Is where a thing formerly executed is afterwards, by some act or ceremony, made void by the party that first did it. (*Tomlin's Law. Dict.*)

The word signifies a change of orders which have been given. (*Bouv. Law Dict.*)

Shakespeare has here, and in Nos. 28, 30, and 32, exhausted the powers of legal terms on the subject of the hope of criminals whose only hope is in the exercise of the prerogative of mercy.

No. 32.

His friends still wrought reprieves for him.

Measure for Measure, Act 4, Scene 2.

Reprieves. (See Nos. 30, 242.)

No. 33.

My business in this state
Made me a looker-on here in Vienna,
Where I have seen corruption boil and bubble,
Till it o'er-run the stew: laws, for all faults;
But faults so countenanc'd that the strong statutes
Stand like the forfeits in a barber's shop,
As much in mock as mark.

Measure for Measure, Act 5, Scene 1.

No. 34.

Dogb. Are you good men and true?

Verg. Yea, or else it were pity but they should suffer salvation, body and soul.

Dogb. Nay, that were a punishment too good for them, if they should have any allegiance in them, being chosen for the prince's watch.

Verg. Well, give them their charge, neighbor Dogberry.

Dogb. First, who think you the most desartless man to be constable.

1 *Watch.* Hugh Oatcake, sir, or George Seacole; for they can write and read.

Dogb. Come hither, neighbor Seacole. God hath blessed you with a good name; to be a well-favoured man is the gift of fortune; but to write and read comes by nature.

2 *Watch.* Both which, master constable,——

Dogb. You have; I knew it would be your answer. Well, for your favor, sir, why, give God thanks, and make no boast of it; and for your writing and reading, let that appear when there is no need of such vanity. You are thought here to be the most senseless and fit man for the constable of the watch; therefore bear you the lantern: this is your charge; you shall comprehend all vagrom men: you are to bid any man stand, in the prince's name.

2 *Watch.* How if a' will not stand?

Dogb. Why then, take no note of him, but let him go; and

presently call the rest of the watch together, and thank God you are rid of a knave.

Verg. If he will not stand when he is bidden, he is none of the prince's subjects.

Dogb. True, and they are to meddle with none but the prince's subjects:—you shall also make no noise in the streets; for, for the watch to babble and talk, is most tolerable, and not to be endured.

2 *Watch.* We will rather sleep than talk; we know what belongs to a watch.

Dogb. Why, you speak like an ancient and most quiet watchman; for I cannot see how sleeping should offend: only, have a care that your bills be not stolen:—Well, you are to call at all the ale-houses, and bid those that are drunk get them to bed.

2 *Watch.* How if they will not?

Dogb. Why then, let them alone till they are sober; if they make you not then the better answer, you may say, they are not the men you took them for.

2 *Watch.* Well, sir.

Dogb. If you meet a thief, you may suspect him, by virtue of your office, to be no true man: and, for such kind of men, the less you meddle or make with them, why, the more is for your honesty.

2 *Watch.* If we know him to be a thief, shall we not lay hands on him?

Dogb. Truly, by your office, you may: but I think, they that touch pitch will be defiled: the most peaceable way for you if you do take a thief, is, to let him show himself what he is, and steal out of your company.

Verg. You have been always called a merciful man, partner.

Dogb. Truly, I would not hang a dog by my will; much more a man who hath any honesty in him.

Verg. If you hear a child cry in the night, you must call to the nurse, and bid her still it.

2 *Watch.* How if the nurse be asleep, and will not hear us?

Dogb. Why, then, depart in peace, and let the child wake her with crying: for the ewe that will not hear her lamb when it baes, will never answer a calf when he bleats.

Verg. 'Tis very true.

Dogb. This is the end of the charge. You, constable, are to present the prince's own person; if you meet the prince in the night you may stay him.

Verg. Nay, by'r lady, that I think a' cannot.

Dogb. Five shillings to one on't, with any man that knows the statues, he may stay him: marry, not without the prince be willing: for, indeed, the watch ought to offend no man; and it is an offence to stay a man against his will.

Verg. By'r lady, I think, it be so.

Dogb. Ha, ha, ha! Well, masters, good night: an there be any matter of weight chances, call up me: keep your fellows' counsels and your own, and good night.—Come, neighbour.

2 *Watch.* Well, masters, we hear our charge: let us go sit here upon the church-bench till two, and then all to bed.

Dogb. One word more, honest neighbours: I pray you, watch about signior Leonato's door; for the wedding being there to-morrow, there is a great coil to-night: adieu, be vigilant, I beseech you.

Much Ado About Nothing, Act 3, *Scene* 3.

No. 35.

We are like to prove a goodly commodity, being taken up of these men's bills.

Much Ado About Nothing, Act 3, *Scene* 3.

No. 36.

Dogb. One word, sir; our watch, sir, have, indeed, comprehended two aspicious persons, and we would have them this morning examined before your worship.

Leon. Take their examination yourself, and bring it me; I am now in great haste, as it may appear unto you.

Dogb. It shall be suffigance.

Leon. Drink some wine ere you go; fare you well.

Enter a Messenger.

Mess. My lord, they stay for you to give your daughter to her husband.

Leon. I will wait upon them; I am ready.

[*Exeunt* Leonato *and* Messenger.

Dogb. Go, good partner, go; get you to Francis Seacole, bid him bring his pen and inkhorn to the gaol; we are now to examination these men.

Verg. And we must do it wisely.

Dogb. We will spare for no wit, I warrant you; here's that shall drive some of them to a *non com:* only get the learned writer to set down our excommunication, and meet me at the gaol.

Much Ado About Nothing. Act 3, *Scene* 5.

Examine. (See Nos. 38, 61.)

No. 37.

Trust not my reading, nor my observations,
Which with experimental seal doth warrant
The tenor of my book; trust not my age,
My reverence, calling, nor divinity,
If this sweet lady lie not guiltless here
Under some biting error.

Much Ado About Nothing. Act 4, *Scene* 1.

Seal. (See Nos. 52, 56, 108, 126, 158, 204, 207, 256, 274, 288.)

Tenor. (See Nos. 56, 189, 223, 232.)

No. 38.

Dogb. Is our whole dissembly appeared?

Verg. O, a stool and a cushion for the sexton!

Sex. Which be the malefactors?

Dogb. Marry, that am I and my partner.

Verg. Nay, that's certain; we have the exhibition to examine.

Sex. But which are the offenders that are to be examined? Let them come before master constable.

Dogb. Yea, marry, let them come before me.—What is your name, friend?

Bora. Borachio.

Dogb. Pray write down—Borachio.——Yours, sirrah?

Con. I am a gentleman, sir, and my name is Conrade.

Dogb. Write down—master gentleman Conrade.—Masters, do you serve God?

Con. Bora. Yea, sir, we hope.

Dogb. Write down—that they hope they serve God:—and write God first; for God defend but God should go before such villains!—Masters, it is proved already that you are little better than false knaves; and it will go near to be thought so shortly. How answer you for yourselves?

Con. Marry, sir, we say we are none.

Dogb. A marvellous witty fellow, I assure you; but I will go about with him.—Come you hither, sirrah; a word in your ear, sir; I say to you, it is thought you are false knaves.

Bora. Sir, I say to you, we are none.

Dogb. Well, stand aside.—'Fore God, they are both in a tale: have you writ down—that they are none?

Sex. Master constable, you go not the way to examine: you must call forth the watch that are their accusers.

Dogb. Yea, marry, that's the eftest way:—Let the watch come forth:—Masters, I charge you, in the prince's name, accuse these men.

1 *Watch.* This man said, sir, that Don John, the prince's brother, was a villain.

Dogb. Write down—prince John a villian:—Why this is flat perjury, to call a prince's brother—villain.

Bora. Master constable,—

Dogb. Pray thee, fellow, peace; I do not like thy look, I promise thee.

Sex. What heard you him say else?

2 *Watch.* Marry, that he had received a thousand ducats of Don John, for accusing the lady Hero wrongfully.

Dogb. Flat burglary, as ever was committed.

Verg. Yea, by the mass, that it is.

Sex. What else, fellow?

1 *Watch.* And that count Claudio did mean, upon his words, to disgrace Hero before the whole assembly, and not marry her.

Dogb. O villian! thou wilt be condemned into everlasting redemption for this.

Sex. What else?

2 *Watch.* This is all.

Sex. And this is more, masters, than you can deny. Prince John is this morning secretly stolen away: Hero was in this manner accused, in this very manner refused, and upon the grief of this, suddenly died.—Master constable, let these men be bound, and brought to Leonato's; I will go before, and show him their examination. [*Exit.*

Dogb. Come, let them be opinioned.

Verg. Let them be in band!

Con. Off, coxcomb!

Dogb. God's my life! where's the sexton? let him write down—the prince's officer, coxcomb.—Come, bind them:—Thou naughty varlet!

Con. Away! you are an ass, you are an ass!

Dogb. Dost thou not suspect my place? Dost thou not suspect my years?—O that he were here to write me down—an ass!—but, masters, remember that I am an ass; though it be not written down, yet forget not that I am an ass:—No, then

villain, thou art full of piety, as shall be proved upon thee by good witness. I am a wise fellow, and, which is more, an officer; and, which is more, a householder: and, which is more, as pretty a piece of flesh as any is in Messina; and one that knows the law, go to; and a rich fellow enough, go to; and a fellow that hath had losses; and one that hath two gowns, and everything handsome about him:—Bring him away. O, that I had been writ down—an ass.

Much Ado About Nothing, Act 4, Scene 2.

Examine. (See Nos. 36, 61.)

Malefactors. (See No. 19.)

Perjury. (See No. 149.)

No. 39.

Dogb. Come, you sir; if justice cannot tame you, she shall ne'er weigh more reasons in her balance; nay, an you be a cursing hypocrite once, you must be looked to.

D. Pedro. How now, two of my brother's men bound! Borachio, one!

Claud. Hearken after their offence, my lord!

D. Pedro. Officers, what offence have these men done?

Dogb. Marry, sir, they have committed false report; moreover, they have spoken untruths; secondarily, they are slanders; sixth and lastly, they have belied a lady; thirdly, they have verified unjust things; and, to conclude, they are lying knaves.

D. Pedro. First, I ask thee what they have done; thirdly, I ask thee what's their offence; sixth and lastly, why they are committed; and, to conclude, what you lay to their charge?

Claud. Rightly reasoned, and in his own division; and, by my troth, there's one meaning well suited.

D. Pedro. Whom have you offended, masters, that you are thus bound to your answer? This learned constable is too cunning to be understood: What's your offence?

* * * * * * *

Dogb. Come, bring away the plaintiffs; by this time our sexton hath reformed signior Leonato of the matter; and masters, do not forget to specify, when time and place shall serve, that I am an ass.

* * * * * * *

Dogb. Moreover, sir, (which, indeed, is not under white and black,) this plaintiff here, the offender, did call me ass: I beseech you, let it be remembered in his punishment: and also, the watch heard them talk of one Deformed: they say, he wears a key in his ear, and a lock hanging by it, and borrows money in God's name; the which he hath used so long, and never paid, that now men grow hard-hearted, and will lend nothing for God's sake: pray you, examine him upon that point.

Leon. I thank thee for thy care and honest pains.

Dogb. Your worship speaks like a most thankful and reverend youth; and I praise God for you.

Leon. There's for thy pains.

Dogb. God save the foundation!

Leon. Go, I discharge thee of thy prisoner, and I thank thee.

Dogb. I leave an arrant knave with your worship; which, I beseech your worship, to correct yourself, for the example of others. God keep your worship; I wish your worship well; God restore you to health: I humbly give you leave to depart; and if a merry meeting may be wished, God prohibit it.—Come, neighbour.

Much Ado About Nothing, Act 5, Scene 1.

Plaintiff. (See No. 13.)

No. 40.

The. But, oh, methinks, how slow
This old moon wanes! she lingers my desires,
Like to a step-dame, or a dowager,
Long withering out a young man's revenue.
* * * * * *
Either to die the death, or to abjure
Forever the society of men.
* * * * * *
Her. So will I grow, so live, so die, my lord,
Ere I will yield my virgin patent up
Unto his lordship, whose unwished yoke
My soul consents not to give sovereignty.
The. The sealing-day betwixt my love and me,
For everlasting bond of fellowship.
* * * * * *
Dem. And, Lysander, yield
Thy crazed title to my certain right
* * * * * *
Ege. Scornful Lysander! true, he hath my love;
And what is mine my love shall render him:
And she is mine; and all my right of her
I do estate unto Demetrius.
Lys. I am my lord, as well deriv'd as he,
* * * * * *
Why should not I then prosecute my right?
Demetrius, I'll avouch it to his head,
Made love to Nedar's daughter, Helena,
And won her soul.
* * * * * *
Her. If then true lovers have been cross'd,
It stands as an edict in destiny.

A Midsummer-Night's Dream, Act 1, *Scene* 1.

Abjure. (See No. 103.)

Bond. (See Nos. 51, 52, 56, 99, 131, 306.

Avouch. (See Nos. 106, 258.)

The first scene of A Midsummer-Night's Dream abounds in legal phraseology. The waning moon is a "dowager" who is a "widow endowed." (*Tomlin's Law Dict.*) She keeps the young long out of their revenue. Hermia is condemned to "abjure" the society of men. Her "virgin patent" is in question; a "sealing day" is fixed for an everlasting "bond;" the title of Lysander to Hermia is a "crazed one;" Egeus, the father, "estates unto" Demetrius "all his right" of Hermia. Lysander asserts that he is as well "derived" as Demetrius, and questions why he shall not "prosecute" his "right," and proposes to "avouch" his charge against Demetrius.

The crossing of true lovers stands as "an edict" in destiny. Here is not an instance of the occasional use of a legal term mingled with untechnical language, nor is there any use of untechnical equivalents. Throughout the scene, which is in the form of a trial, the parties are summoned to "stand forth," and they plead their cause in the language of forensic discussion.

No. 41.

What hast thou done? thou hast mistaken quite,
And laid the love-juice on some true-love's sight,
Of thy misprision must perforce ensue
Some true-love turn'd and not a false turn'd true.

A Midsummer-Night's Dream, Act 3, Scene 2.

Misprision. A neglect—oversight. (*Tomlin's Law Dict.*)

This is the primary legal meaning of this word, though it is also a general word for all such high offenses as are under the degree of capital, but nearly bordering thereon. It is here used in its primary sense. The love-juice has been laid on true-love's sight by mistake.

No. 42.

You three, Biron, Dumain, and Longaville,
Have sworn for three years' term to live with me,
My fellow scholars, and to keep those statutes
That are recorded in this schedule here.
Your oaths are passed, and now subscribe your name.

Love's Labour's Lost, Act 1, Scene 1.

Term. A limitation of time—estate. (*Tomlin's Law Dict.*) (See No. 43.)

In these four lines, "statutes" "recorded" in a "schedule" are to be kept for a "term," and "oaths" which are "passed" so to do are to be "subscribed."

Statutes. (See No. 198.)

No. 43.

But there are other strict observances:
As not to see a woman in that term;
Which, I hope well, is not enrolled there:
And, one day in a week to touch no food;
And but one meal on every day beside;
The which, I hope, is not enrolled there:
And then, to sleep but three hours in the night,
And not be seen to wink of all the day—
When I was wont to think no harm all night,
And make a dark night too of half the day—
Which, I hope well, is not enrolled there.

Love's Labour's Lost, Act 1, *Scene* 1.

The word "term" again occurs, and the word "enrolled" is used three times in the sense of an enrolled statute or record. It is peculiarly a term of art. The untechnical words are "written," "inscribed."

Enrolled. (See No. 206.)

No. 43*a*.

Why all delights are vain; but that most vain,
Which with pain purchased doth inherit pain.

Love's Labour's Lost, Act 1, *Scene* 1.

As to the distinction between estates by inheritance and those by purchase, see No. 213.

No. 44.

So to the laws at large I write my name,
And he that breaks them in the least degree
Stands in attainder of eternal shame.

Love's Labour's Lost, Act 1, *Scene* 1.

Attainder. A man is said to be attainted, (*attinctus*,) for that by his attainder of treason or felony his blood is so stained and corrupted, as, first, his children cannot be heirs to him, nor any ancestor through him. * * * If he were noble or gentle before, he and all his children and posterity are by this attainder made base and ignoble. * * * This corruption of blood is so high that it cannot be absolutely salved and taken away but by authority of parliament. (*Co. Litt. 391b.*) He is already dead in law. (*3 Inst. 213.*)

(See No. 130.)

No. 44*a*.

Cost. The matter is to me, sir, as concerning Jaquenetta. The manner of it is, I was taken with the manner.

Biron. In what manner?

Cost. In manner and form following, sir: all those three: I was seen with her in the manor-house, sitting with her upon the form, and taken following her into the park: which put together is in manner and form following. Now, sir, for the manner,—it is the manner of a man to speak to a woman: for the form,—in some form.

Biron. For the following, sir?

Cost. As it shall follow in my correction: and God defend the right.

Love's Labour's Lost, Act 1, *Scene* 1.

Taken with the manner. (See No. 131*a*.)

No. 45.

Prin. You do the king my father too much wrong,
And wrong the reputation of your name,
In so unseeming to confess receipt
Of that which hath so faithfully been paid.

King. I do protest, I never heard of it;
And, if you prove it, I'll repay it back,
Or yield up Aquitaine.
Prin. We arrest your word:
Boyet, you can produce acquittances,
For such a sum, from special officers
Of Charles his father.

Love's Labour's Lost, Act 2, *Scene* 1.

Acquittances. (See Nos. 4, 274.)

No. 46.

Boyet. So please your grace, the packet is not come,
Where that and other specialties are bound,
To-morrow you shall have a sight of them.

Love's Labour's Lost, Act 2, *Scene* 1.

Specialties. A bond, bill, or such like instrument; a writing or deed under the hand and seal of the parties. (*Tomlin's Law Dict.*)

(See No. 66.)

No. 47.

Boyet. So you grant pasture for me. [*Offering to kiss her.*
Mar. Not so, gentle beast;
My lips are no common, though several they be.
Boyet. Belonging to whom?
Mar. To my fortunes and me.

Love's Labour's Lost, Act 2, *Scene* 1.

Grant is at common law a conveyance of incorporeal things. (*Co. Litt. 9.*)

Common of pasture is a right of feeding one's beasts on another's lands. (*2 Bl. Comm. marg. p. 32.*)

Several. He that holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any person being joined or connected with him in point of interest during his estate therein. (*2 Bl. Comm. marg. p. 191.*)

Without a thorough knowledge of the legal terms employed, Maria's repartee is absolutely meaningless.

No. 48.

Or for love's sake, a word that loves all men;
Or for men's sake, the authors of these women,
Or women's sake, by whom we men are men,
Let us once lose our oaths, to find ourselves,
Or else we lose ourselves to keep our oaths.
It is religion to be thus forsworn,
For charity itself fulfils the law,
And who can sever love from charity?

Love's Labour's Lost, Act 4, Scene 3.

Mercy. (See Nos. 24, 25, 56.)

No. 49.

My ventures are not in one bottom trusted.

The Merchant of Venice, Act 1. Scene 1.

(See No. 109.)

No. 50.

That he hath a neighborly charity in him, for he borrowed a box of the ear of the Englishman, and swore he would pay him again when he was able: I think the Frenchman became his surety and sealed under for another.

The Merchant of Venice, Act 1, Scene 2.

Surety. A person who binds himself for the payment of a sum of money, or for the performance of something else, for another who is already bound for the same. (*Bouv. Law Dict.*)

(See No. 306.)

No. 51.

Shy. I think I may take his bond.

Bass. Be assured you may.

Shy. I will be assured I may; and, that I may be assured, I will bethink me.

The Merchant of Venice, Act 1, *Scene* 3.

Bassanio gives Shylock his personal assurance or opinion that he may take the bond. Shylock is thinking of legal assurance, and so repeats the word "assured."

Assured. (See No. 301.)

Bond. (See Nos. 40, 52, 56, 99, 131, 306.)

No. 52.

Shy. This kindness will I show:—
Go with me to a notary, seal me there
Your single bond; and, in a merry sport,
If you repay me not on such a day,
In such a place, such sum, or sums, as are
Express'd in the condition, let the forfeit
Be nominated for an equal pound
Of your fair flesh, to be cut off and taken
In what part of your body pleaseth me.

Ant. Content, i' faith: I'll seal to such a bond,
And say there is much kindness in the Jew.

Bass. You shall not seal to such a bond for me;
I'll rather dwell in my necessity
Ant. Why, fear not, man; I will not forfeit it;
Within these two months, that's a month before
This bond expires, I do expect return
Of thrice three times the value of this bond.
Shy. O father Abram, what these Christians are;
Whose own hard dealings teaches them suspect
The thoughts of others! Pray you, tell me this;
If he should break his day, what should I gain
By the exaction of the forfeiture?

The Merchant of Venice, Act 1, *Scene* 3.

Notary. A person who takes notes or makes a short draft of contracts, obligations, or other writings or instruments. (*27 Ed. III, st. 1, c. 1; Tomlin's Law Dict.*)

Single bond. A bond without a condition. (*Tomlin's Law Dict.*)

Seal. A seal is necessary to constitute a bond. Subscribing is not essential, sealing being sufficient. (*Tomlin's Law Dict.*)

(See Nos. 37, 52, 108, 126, 158, 204, 207, 256, 274, 288.)

Forfeit, forfeiture. On failure of performance of the condition the bond was, in legal phrase, forfeited. (*Co. Litt. 208, 210, 340.*)

(See Nos. 17, 25, 56, 259, 306.)

No. 53.

The devil can cite scripture for his purpose.
An evil soul producing holy witness,
Is like a villain with a smiling cheek;

A goodly apple rotten at the heart;
O, what a goodly outside falsehood hath!
The Merchant of Venice, Act 1, *Scene* 3.

In legal proceedings books of authority are "cited" and witnesses are "produced."

No. 54.

In law, what plea so tainted and corrupt,
But, being season'd with a gracious voice,
Obscures the show of evil?
The Merchant of Venice, Act 3, *Scene* 2.

Plea. (See Nos. 294, 297, 298.)

No. 55.

——— see thou render this
Unto my cousin's hand, Doctor Bellario.
The Merchant of Venice, Act 3, *Scene* 4.

Render. To yield; give again or return. (*Tomlin's Law Dict.*)

Render unto Cæsar the things which are Cæsar's.

"Rendering and yielding as rent" is the phrase in leases.

No. 56.

Venice. *A court of Justice. Enter the* Duke, *the Magnificoes;* Antonio, Bassanio, Gratiano, Salarino, Salanio, *and others.*
Duke. What, is Antonio here?
Ant. Ready, so please your grace.
Duke. I am sorry for thee; thou art come to answer
A stony adversary, an inhuman wretch

Uncapable of pity, void and empty
From any dram of mercy.
Ant. I have heard,
Your grace hath ta'en great pains to qualify
His rigorous course; but since he stands obdurate
And that no lawful means can carry me
Out of his envy's reach, I do oppose
My patience to his fury; and am arm'd
To suffer, with a quietness of spirit,
The very tyranny and rage of his.
Duke. Go one, and call the Jew into the court.
Salan. He's ready at the door: he comes, my lord.
Enter Shylock.
Duke. Make room, and let him stand before our face.—
Shylock, the world thinks, and I think so too,
That thou but lead'st this fashion of thy malice
To the last hour of act; and then, 'tis thought
Thou'lt show thy mercy, and remorse, more strange
Than is thy strange apparent cruelty:
And where thou now exact'st the penalty
(Which is a pound of this poor merchant's flesh,)
Thou wilt not only lose the forfeiture,
But touch'd with human gentleness and love,
Forgive a moiety of the principal;
Glancing an eye of pity on his losses,
That have of late so huddled on his back;
Enough to press a royal merchant down,
And pluck commiseration of his state
From brassy bosoms, and rough hearts of flint,
From stubborn Turks, and Tarters, never train'd
To offices of tender courtesy.
We all expect a gentle answer, Jew.
Shy. I have possess'd your grace of what I purpose;
And by our holy sabbath have I sworn,
To have the due and forfeit of my bond.

If you deny it, let the danger light
Upon your charter, and your city's freedom.
You'll ask me, why I rather choose to have
A weight of carrion flesh, than to receive
Three thousand ducats: I'll not answer that:
But, say, it is my humour; Is it answer'd?
What if my house be troubled with a rat,
And I be pleas'd to give ten thousand ducats
To have it baned? What, are you answer'd yet?
Some men there are, love not a gaping pig;
Some, that are mad, if they behold a cat;
And others, when the bag-pipe sings i' the nose,
Cannot contain their urine; For affection,
Mistress of passion, sways it to the mood
Of what it likes, or loaths: Now, for your answer:
As there is no firm reason to be render'd,
Why he cannot abide a gaping pig;
Why he, a harmless necessary cat;
Why he, a swollen bag-pipe; but of force
Must yield to such inevitable shame,
As to offend, himself being offended:
So can I give no reason, nor I will not,
More than a lodg'd hate, and a certain loathing
I bear Antonio, that I follow thus
A losing suit against him. Are you answer'd?

Bass. This is no answer, thou unfeeling man,
To excuse the current of thy cruelty.

Shy. I am not bound to please thee with my answer.

Bass. Do all men kill the things they do not love?

Shy. Hates any man the thing he would not kill?

Bass. Every offence is not a hate at first.

Shy. What, would'st thou have a serpent sting thee twice?

Ant. I pray you, think you question with the Jew:
You may as well go stand upon the beach,
And bid the main flood bate his usual height:

You may as well use question with the wolf,
Why he hath made the ewe bleat for the lamb;
You may as well forbid the mountain pines
To wag their high tops, and to make no noise,
When they are fretted with the gusts of heaven;
You may as well do anything most hard,
As seek to soften that (than which what's harder?)
His Jewish heart:—Therefore, I do beseech you,
Make no more offers, use no further means,
But, with all brief and plain conveniency,
Let me have judgment, and the Jew his will.
Bass. For thy three thousand ducats here is six.
Shy. If every ducat in six thousand ducats
Were in six parts, and every part a ducat,
I would not draw them, I would have my bond.
Duke. How shalt thou hope for mercy, rendering none?
Shy. What judgment shall I dread, doing no wrong?
You have among you many a purchas'd slave,
Which, like your asses, and your dogs and mules,
You use in abject and in slavish parts,
Because you bought them:—Shall I say to you,
Let them be free, marry them to your heirs?
Why sweat they under burdens? let their beds
Be made as soft as yours, and let their palates
Be season'd with such viands? You will answer,
The slaves are ours:—So do I answer you:
The pound of flesh, which I demand of him,
Is dearly bought, is mine, and I will have it:
If you deny me, fie upon your law!
There is no force in the decrees of Venice:
I stand for judgment: answer; shall I have it?
Duke. Upon my power, I may dismiss this court,
Unless Bellario, a learned doctor,
Whom I have sent for to determine this,
Come here to-day.

Salar. My lord, here stays without
A messenger with letters from the doctor,
New come from Padua.
Duke. Bring us the letters; Call the messenger.
Bass. Good cheer, Antonio! What, man? courage yet!
The Jew shall have my flesh, blood, bones, and all,
Ere thou shalt loose for me one drop of blood.
Ant. I am a tainted wether of the flock,
Meetest for death; the weakest kind of fruit
Drops earliest to the ground, and so let me:
You cannot better be employ'd, Bassanio,
Than to live still and write mine epitaph.

Enter Nerissa, *dressed like a lawyer's clerk.*

Duke. Came you from Padua, from Bellario?
Ner. From both, my lord: Bellario greets your grace.
[*Presents a letter.*
Bass. Why dost thou whet thy knife so earnestly?
Shy. To cut the forfeiture from that bankrupt there.
Gra. Not on thy sole, but on thy soul, harsh Jew,
Thou mak'st thy knife keen: but no metal can,
No, not the hangman's axe, bear half the keenness
Of thy sharp envy. Can no prayers pierce thee?
Shy. No, none that thou hast wit enough to make.
Gra. O, be thou damn'd, inexorable dog!
And for thy life let justice be accused.
Thou almost mak'st me waver in my faith,
To hold opinion with Pythagoras,
That souls of animals infuse themselves
Into the trunks of men: thy currish spirit
Govern'd a wolf, who, hang'd for human slaughter,
Even from the gallows did his fell soul fleet,
And, whilst thou lay'st in thy unhallow'd dam,
Infus'd itself in thee; for thy desires
Are wolfish, bloody, starv'd, and ravenous.
Shy. Till thou canst rail the seal from off my bond,

Thou but offend'st thy lungs to speak so loud;
Repair thy wit, good youth, or it will fall
To cureless ruin.—I stand here for law.

Duke. This letter from Bellario doth commend
A young and learned doctor to our court;—
Where is he?

Ner. He attendeth here hard by,
To know your answer, whether you'll admit him.

Duke. With all my heart;—some three or four of you,
Go give him courteous conduct to this place.—
Meantime, the court shall hear Bellario's letter.

[*Clerk reads.*] Your grace shall understand, that, at the receipt of your letter, I am very sick; but in the instant that your messenger came, in loving visitation was with me a young doctor of Rome, his name is Balthazer; I acquainted him with the cause in controversy between the Jew and Antonio the merchant; we turned o'er many books together; he is furnished with my opinion; which, better'd with his own learning, (the greatness whereof I cannot enough commend,) comes with him, at my importunity, to fill up your grace's request in my stead. I beseech you let his lack of years be no impediment to let him lack a reverend estimation, for I never knew so young a body with so old a head. I leave him to your gracious acceptance, whose trial shall better publish his commendation.

Duke. You hear the learn'd Bellario, what he writes;
And here, I take it, is the doctor come.—

Enter Portia, *dressed like a doctor of laws.*

Give me your hand: Came you from old Bellario?

Por. I did, my lord.

Duke. You are welcome: take your place.
Are you acquainted with the difference
That holds this present question in the court?

Por. I am informed thoroughly of the cause.
Which is the merchant here, and which the Jew?

Duke. Antonio and old Shylock, both stand forth.
Por. Is your name Shylock?
Shy. Shylock is my name.
Por. Of a strange nature is the suit you follow;
Yet in such rule, that the Venetian law
Cannot impugn you, as you do proceed.—
You stand within his danger, do you not? [*To* Antonio.
Ant. Ay, so he says.
Por. Do you confess the bond?
Ant. I do.
Por. Then must the Jew be merciful.
Shy. On what compulsion must I? tell me that.
Por. The quality of mercy is not strain'd;
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice bless'd;
It blesseth him that gives, and him that takes;
'Tis mightiest in the mightest; it becomes
The throned monarch better than his crown;
His scepter shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this scepter'd sway,
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show likest God's,
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this,—
That in the course of justice, none of us
Should see salvation; we do pray for mercy;
And that same prayer doth teach us all to render
The deeds of mercy. I have spoke thus much,
To mitigate the justice of thy plea;
Which if thou follow, this strict court of Venice
Must needs give sentence 'gainst the merchant there.
Shy. My deeds upon my head! I crave the law,

The penalty and forfeit of my bond.
Por. Is he not able to discharge the money?
Bass. Yes, here I tender it for him in the court,
Yea, twice the sum; if that will not suffice,
I will be bound to pay it ten times o'er,
On forfeit of my hands, my head, my heart;
If this will not suffice, it must appear
That malice bears down truth. And I beseech you,
Wrest once the law to your authority;
To do a great right, do a little wrong;
And curb this cruel devil of his will.
Por. It must not be; there is no power in Venice
Can alter a decree established;
'Twill be recorded for a precedent;
And many an error, by the same example,
Will rush into the state; it cannot be.
Shy. A Daniel come to judgment! yea, a Daniel!—
O wise young judge, how do I honour thee!
Por. I pray you, let me look upon the bond.
Shy. Here 'tis, most reverend doct , here it is.
Por. Shylock, there's thrice thy money offer'd thee.
Shy. An oath, an oath, I have an oath in heaven;
Shall I lay perjury upon my soul?
No, not for Venice.
Por. Why, this bond is forfeit;
And lawfully by this the Jew may claim
A pound of flesh, to be by him cut off
Nearest the merchant's heart:—Be merciful;
Take thrice thy money; bid me tear the bond.
Shy When it is paid according to the tenor.—
It doth appear you are a worthy judge;
You know the law; your exposition
Hath been most sound; I charge you by the law,
Whereof you are a well deserving pillar,
Proceed to judgment; by my soul I swear,

There is no power in the tongue of man
To alter me; I stay here on my bond.
Ant. Most heartily I do beseech the court
To give the judgment.
Por. Why then, thus it is.
You must prepare your bosom for his knife.
Shy. O noble judge! O excellent young man
Por. For the intent and purpose of the law
Hath full relation to the penalty,
Which here appeareth due upon the bond.
Shy. 'Tis very true: O wise and upright judge!
How much more elder art thou than thy looks!
Por. Therefore, lay bare your bosom.
Shy. Ay, his breast;
So says the bond;—Doth it not, noble judge?—
Nearest his heart, those are the very words.
Por. It is so. Are there balance here to weigh
The flesh?
Shy. I have them ready
Por. Have by some surgeon, Shylock, on your charge,
To stop his wounds, lest he do bleed to death.
Shy. Is it so nominated in the bond?
Por. It is not so express'd: But what of that.
'Twere good you do so much for charity.
Shy. I cannot find it; 'tis not in the bond.
Por. Come, merchant, have you anything to say?
Ant. But little; I am arm'd and well prepar'd.—
Give me your hand, Bassanio; fare you well!
Grieve not that I am fallen to this for you;
For herein fortune shows herself more kind
Than is her custom; it is still her use,
To let the wretched man out-live his wealth,
To view with hollow eye, and wrinkled brow,
An age of poverty; from which lingering penance
Of such a misery doth she cut me off.

Commend me to your honourable wife;
Tell her the process of Antonio's end,
Say, how I lov'd you, speak me fair in death;
And, when the tale is told, bid her be judge,
Whether Bassanio had not once a love.
Repent not you that you shall lose your friend,
And he repents not that he pays your debt;
For if the Jew do cut but deep enough,
I'll pay it instantly with all my heart.
Bas. Antonio, I'm married to a wife,
Which is as dear to me as life itself;
But life itself, my wife, and all the world,
Are not with me esteem'd above thy life;
I would lose all, ay, sacrifice them all
Here to this devil, to deliver you.
Por. Your wife would give you little thanks for that,
If she were by, to hear you make the offer.
Gra. I have a wife, whom I protest I love;
I would she were in heaven, so she could
Entreat some power to change this currish Jew.
Ner. 'Tis well you offer it behind her back;
The wish would make else an unquiet house.
Shy. These be the Christian husbands: I have a daughter;
'Would any of the stock of Barabbas
Had been her husband, rather than a Christian! [*Aside.*
We trifle time; I pray thee pursue sentence.
Por. A pound of that same merchant's flesh is thine;
The court awards it, and the law doth give it.
Shy. Most rightful judge!
Por. And you must cut this flesh from off his breast;
The law allows it, and the court awards it.
Shy. Most learned judge!—A sentence; come, prepare.
Por. Tarry a little:—there is something else.—
This bond doth give thee here no jot of blood;
The words expressly are a pound of flesh;

Take then thy bond, take thou thy pound of flesh;
But, in the cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are, by the laws of Venice, confiscate
Unto the state of Venice.
Gra. O upright judge!—Mark, Jew;—O learned judge!
Shy. Is that the law?
Por. Thyself shall see the act;
For, as thou urgest justice, be assur'd
Thou shalt have justice more than thou desir'st.
Gra. O learned judge!—Mark, Jew;—a learned judge!
Shy. I take this offer then;—pay the bond thrice
And let the Christian go.
Bass. Here is the money.
Por. Soft;
The Jew shall have all justice;—soft!—no haste;—
He shall have nothing but the penalty.
Gra. O Jew! an upright judge, a learned judge!
Por. Therefore, prepare thee to cut off the flesh.
Shed thou no blood; nor cut thou less nor more,
But just a pound of flesh; if thou tak'st more,
Or less than a just pound,—be it but so much
As makes it light, or heavy, in the substance,
Or the division of the twentieth part
Of one poor scruple; nay, if the scale do turn
But in the estimation of a hair,—
Thou diest, and all thy goods are confiscate.
Gra. A second Daniel, a Daniel, Jew!
Now, infidel, I have thee on the hip.
Por. Why doth the Jew pause? take thy forfeiture.
Shy. Give me my principal and let me go.
Bass. I have it ready for thee; here it is.
Por. He hath refused it in the open court;
He shall have merely justice, and his bond.
Gra. A Daniel, still say I; a second Daniel!—

I thank thee, Jew, for teaching me that word.
Shy. Shall I not have barely my principal?
Por. Thou shalt have nothing but the forfeiture,
To be so taken at thy peril, Jew.
Shy. Why then the devil give him good of it;
I'll stay no longer question.
Por. Tarry, Jew;
The law hath yet another hold on you.
It is enacted in the laws of Venice,—
If it be prov'd against an alien,
That by direct, or indirect attempts,
He seek the life of any citizen,
The party 'gainst the which he doth contrive,
Shall seize one-half his goods; the other half
Comes to the privy coffer of the state;
And the offender's life lies in the mercy
Of the Duke only, 'gainst all other voice.
In which predicament, I say thou stand'st:
For it appears by manifest proceeding,
That, indirectly, and directly too,
Thou hast contrived 'gainst the very life
Of the defendant; and thou hast incurr'd
The danger formerly by me rehears'd.
Down, therefore, and beg mercy of the duke.
Gra. Beg, that thou may'st have leave to hang thyself;
And yet, thy wealth being forfeit to the state,
Thou hast not left the value of a cord;
Therefore, thou must be hanged at the state's charge.
Duke. That thou shalt see the difference of our spirit,
I pardon thee thy life before thou ask it;
For half thy wealth, it is Antonio's;
The other half comes to the general state,
Which humbleness may drive unto a fine.
Por. Ay, for the state; not for Antonio.
Shy. Nay, take my life and all, pardon not that;

You take my house, when you do take the prop
That doth sustain my house; you take my life,
When you do take the means whereby I live.
Por. What mercy can you render him, Antonio?
Gra. A halter gratis; nothing else, for God's sake.
Ant. So please my lord the duke, and all the court,
To quit the fine for one-half of his goods;
I am content, so he will let me have
The other half in use,—to render it,
Upon his death, unto the gentleman
That lately stole his daughter:
Two things provided more,—That for this favor
He presently become a Christian;
The other, that he do record a gift,
Here in the court, of all he dies possess'd,
Unto his son Lorenzo, and his daughter.
Duke. He shall do this; or else I do recant
The pardon, that I late pronounced here.
Por. Art thou contented, Jew; what dost thou say?
Shy. I am content.
Por. Clerk, draw a deed of gift.
Shy. I pray you, give me leave to go from hence;
I am not well; send the deed after me,
And I will sign it.
Duke. Get thee gone, but do it.
Gra. In christening thou shalt have two godfathers;
Had I been judge, thou should'st have had ten more,
To bring thee to the gallows, not the font.
[*Exit* Shylock.
Duke. Sir, I entreat you home with me to dinner.
Por. I humbly do desire your grace of pardon;
I must away this night toward Padua,
And it is meet I presently set forth.
Duke. I am sorry that your leisure serves you not.
Antonio, gratify this gentleman;

For, in my mind, you are much bound to him.

[*Exeunt* Duke, *magnificoes, and train.*

Bass. Most worthy gentleman, I and my friend
Have, by your wisdom, been this day acquitted
Of grevious penalties; in lieu whereof,
Three thousand ducats due unto the Jew,
We freely cope your courteous pains withal.

Ant. And stand indebted, over and above,
In love and service to you evermore.

Por. He is well paid, that is well satisfied;
And I, delivering you, am satisfied,
And therein do account myself well paid;
My mind was never yet more mercenary.
I pray you, know me when we meet again;
I wish you well, and so I take my leave.

Bass. Dear sir, of force I must attempt you further;
Take some remembrance of us, as a tribute,
Not as a fee; grant me two things, I pray you,
Not to deny me, and to pardon me.

Por. You press me far, and therefore I will yield.
Give me your gloves, I'll wear them for your sake;
And, for your love, I'll take this ring from you;—
Do not draw back your hand; I'll take no more;
And you in love shall not deny me this.

Bass. This ring, good sir,—alas, it is a trifle;
I will not shame myself to give you this.

Por. I will have nothing else but only this;
And now, methinks, I have a mind to it.

Bass. There's more depends on this than on the value.
The dearest ring in Venice will I give you,
And find it out by proclamation;
Only for this, I pray you, pardon me.

Por. I see, sir, you are liberal in offers:
You taught me first to beg; and now, methinks,
You teach me how a beggar should be answer'd.

Bass. Good sir, this ring was given me by my wife;
And when she put it on she made me vow
That I should neither sell, nor give, nor lose it.
Por. That 'scuse serves many men to save their gifts.
An if your wife be not a mad woman,
And know how well I have deserv'd this ring,
She would not hold out enemy forever,
For giving't to me. Well, peace be with you.
[*Exeunt* Portia *and* Nerissa.
Ant. My lord Bassanio, let him have the ring;
Let his deservings, and my love withal,
Be valued 'gainst your wife's commandment,
Bass. Go, Gratiano, run and overtake him,
Give him the ring; and bring him, if thou canst,
Unto Antonio's house:—away, make haste. [*Exit* Gratiano.
Come, you and I will thither presently;
And in the morning early will we both
Fly toward Belmont. Come, Antonio. [*Exeunt.*

SCENE II.—The same. A street. Enter Portia *and* Nerissa.

Por. Inquire the Jew's house out, give him this deed.
And let him sign it; we'll away to-night,
And be a day before our husbands home:
This deed will be well welcome to Lorenzo.

Enter Gratiano.

Gra. Fair sir, you are well overtaken.
My lord, Bassanio, upon more advice,
Hath sent you here this ring; and doth entreat
Your company at dinner.
Por. That cannot be.
This ring I do accept most thankfully,
And so, I pray you, tell him. Furthermore,
I pray you, show my youth old Shylock's house.
Gra. That will I do.
Ner. Sir, I would speak with you—
I'll see if I can get my husband's ring, [*To* Portia.

Which I did make him swear to keep forever.

Por. Thou may'st, I warrant. We shall have old swearing,
That they did give the rings away to men;
But we'll outface them, and outswear them too.
Away, make haste; thou know'st where I will tarry.

Ner. Come, good sir, will you show me to this house?

The Merchant of Venice, Act 4, Scene 1, 2.

The trial scene in the Merchant of Venice has that interest which in fiction and dramatic representation is always awakened by a representation of the proceedings of a court of justice. In any case, the interest greatly depends upon fidelity of representation, and this requires exact special knowledge. In this respect this act is so complete that it will not bear mutilation.

At the outset the duke notices that Antonio "is here," who says he is "ready." This word is the sole phrase to express that the party using it is ready for trial, and such has been its use from the time of the Year-Books down to the present day.

Berrewik. Answer to this trespass.

Hunt. We did not come and we did not commit any tort, ready, etc. It was answered by Mutford that B. was neither a borough nor a vill *Lanfer*—the place is known by that name, ready, etc. (*Y. B. Edward I., p.* 168, *Horwood's Ed.*, 1863.)

The duke directs some one to "call into court the Jew." Calling the plaintiff was a proceeding in a

trial, and if he failed to appear he became nonsuited. Shylock appears. In the remonstrance which the duke addresses to him it is stated that the "penalty" of the bond is the pound of flesh, and the condition is the payment of three thousand ducats. This appears, though less plainly, in Shylock's proposition to Antonio. (See No. 52.) The "penalty" of a bond becomes due in case the obligor fails to perform the condition. The duke hopes that Shylock will forgive a "moiety" of the "principal." Shylock admits that he follows "a losing suit" in claiming the "forfeit" of his bond, but "stands for judgment." He whets his knife to cut the forfeiture from the "bankrupt." He knows the sanctity of a "seal," and the incontrovertible presumption which it imputes of a consideration, and proposes to stand upon his security until "the seal" is railed from off the bond. Bellario in his letter calls the matter "a cause in controversy." Portia commands the "parties to stand forth." The only question for proof is the execution of the bond by Antonio, who "confesses" it. This closes the testimony, and Shylock's case is proved. Por-

tia admits the "justice of the plea" of Shylock under the strict law of Venice, but urges him to "mitigate" it. But Shylock craves the law,

"The penalty and forfeit of my bond."

Portia asks if Antonio is not able to "discharge" the money, but the condition of payment not having been performed at the day, the Jew is entitled to his penalty, notwithstanding Bassanio makes "tender" for him "here," "in the court." Shylock demands payment "according to the tenor" of his bond, and "*tenor*," in legal definition, is exactness. He declares that Portia's "exposition" of the law has been "most sound," and she decides that the intent and purpose of the law relate to the "penalty." Shylock refuses to have a surgeon by because it is not so "nominated in the bond." Portia, before giving judgment, asks Antonio if he has "anything to say." She "awards" judgment. She tells Shylock that he shall see "the act" which prohibits shedding blood in cutting the flesh, and then declares that he shall have nothing but the "penalty." She asks Shylock why he does not take his "forfeiture," who then asks for his "principal."

She then applies to him another rule "enacted in the laws of Venice." Antonio prays that Shylock's "fine" may be "quit" for one-half his goods, upon condition of a gift by Shylock to his son and daughter, and the "clerk" is directed to "draw a deed of gift." Bassanio then craves leave to give the judge a present, "as a tribute, not as a fee," and Portia takes his gloves and a ring, in the manner in which presents were made to judges in Shakespeare's time. (*Bacon's Works, Montague's Ed. vol. 1, p. 95.*)

Shakespeare doubtless knew the story of the attempt to recompense Sir Thomas More by Mrs. Croker, in whose favor he had decided a case. She gave him a pair of gloves, in which were forty pounds. He told her that it were ill manners to refuse a lady's present, and therefore he would keep the gloves, but he made her take back the money. (*Lives Lord Chan. vol. 2, p. 54.*)

It is also to be noted that the duke appears first as a judge, but afterwards delegates that function to Portia. This, too, is based upon common law, for in early times the English kings in person often

heard and determined causes, but had power to and did delegate their judicial functions.

The whole of this exquisite act is forensic. The author's mind, in its employment of legal terms, has, like the dyer's hand, been subdued to what it has worked in. There is not a trace of that affected familiarity and unavoidable inaccuracy which always appears when a writer is using a nomenclature with which he has been obliged to cram for the occasion. Had Shakespeare described in The Tempest the incidents of a voyage,—the weighing anchor, the daily routine of ship-life, or the wreck,—with the same accuracy and familiarity with which he has here and elsewhere given the proceedings of a court, it might well be suspected that he had sailed with Drake, or had been one of those captains who "shattered the Armada's pride." In The Tempest he is constrained in his use of nautical terms, uses them inaccurately and recklessly, and passes from them as quickly as he can. So, in his use of medical or anatomical and military terms, he betrays considerable information, but little or no technical knowledge. Sir Walter Scott, in regard to legal

matters, shows similar accuracy. If the memorials of his life were as blank as those of Shakespeare, we would know from the trials of Effie Deans and Rebecca, and from the disquisitions of Mr. Bartoline Saddletree, as certainly as we are in fact informed by the abundant details of his biography that he had studied law so thoroughly as to qualify him for admission to the bar. We can infer from Fielding's use of legal terms that he was a magistrate. On the other hand, Dickens, who could learn more from observation than any writer of our time, in his attack upon the court of chancery does not even attempt any display of technical knowledge in his treatment of Jarndyce *versus* Jarndyce. Besides all this, there is the noble definition of the relations of mercy to justice which age cannot wither nor custom stale. Here and elsewhere Shakespeare speaks like a philosophical jurist. We seem to hear mercy herself claiming her prerogative by words from her own angel lips.

It may be observed here that the law language of Shakespeare is that of the common law, and not of the equity jurisprudence. The word *subpœna*, or any other word peculiar to the chancery, is not, so far as I

am aware, used by him. Yet he wrote after the time when Waltham had enjoined the Shylocks of his day from exacting their penalties, and compelled them to take their principal, after Wolsey had expanded the jurisdiction of that court, and after More had administered its benevolent justice in such cases. He was cotemporary with Ellesmere, and with that memorable contest between the courts of equity and law in which the former insisted upon its power to give relief, against the strict letter of the common law, from penalties and forfeitures, even after judgment. Had Shakespeare been a chancery lawyer he might have caused an injunction to be served on Shylock, and avoided the unsatisfactory and quibbling process by which Portia rescued the merchant from the knife of the Jew.

Act. (See Nos. 162, 198.)

Exposition of the Law. (See No. 232.)

Fine. (See Nos. 23, 248.)

Forfeit. (See Nos. 17, 25, 52, 259, 306.)

Mercy. (See Nos. 24, 25, 48.)

Moiety. (See Nos. 132, 259, 298.)

No. 57.

As I remember, Adam, it was upon this fashion bequeathed me, by will, but a poor thousand crowns, and, as thou say'st, charged my brother, on his blessing, to breed me well; and there begins my sadness.

As You Like It, Act 1, *Scene* 1.

A legacy is bequeathed; lands are devised.

(See No. 293.)

No. 58.

More villain thou.—Well, push him out of doors;
And let my officers of such a nature
Make an extent upon his house and lands:
Do this expediently, and turn him going.

As You Like It, Act 3, *Scene* 1.

Extent. A writ of execution against the body, lands, or goods of the debtor. An extent in chief was formerly a summary seizure by the sovereign for the recovery of his own debt. (*Tomlin's Law Dict.*)

It was not final process after judgment or on *scire facias*, but it was the first proceeding. It became a grievous means of oppression. In this scene the duke orders a summary extent in chief to be made.

No. 59.

Orl. Who stays it still withal?

Ros. With lawyers in the vacation; for they sleep between term and term, and then they perceive not how time moves.

As You Like It, Act 3, *Scene* 2.

Term. (See No. 139.)

No. 60.

Orl. Then, in mine own person, I die.

Ros. No, faith, die by attorney. The poor world is almost six thousand years old, and in all this time there was not any man died in his own person, *videlicit*, in a love-cause.

As You Like It, Act 4, Scene 1.

Attorney. Is one appointed by another man to act for him. (*Tomlin's Law Dict.*)

In such case the principal is said to have acted by his attorney. Where one acts for himself he is said to do so in his own person.

Videlicit. To-wit. (*Tomlin's Law Dict.*)

Cause. (See Nos. 13, 149, 60, 184, 200, 277*a*.)

No. 61.

Well, Time is the old justice that examines all such offenders, and let Time try: Adieu!

As You Like It, Act 4, Scene 1.

Examine. Justices of the peace, before committing or bailing any person charged before them with felony or misdemeanor, shall take down the examination. (*Tomlin's Law Dict.*)

(See Nos. 36, 38.)

There is no equivalent for the phrase "examine" as applied to proceedings before justices against persons charged with crime.

No. 62.

And I, in going, madam, weep o'er my father's death anew: but I must attend his majesty's command, to whom I am now in ward, evermore in subjection.

All's Well That Ends Well, Act 1, *Scene* 1.

In ward. Primer seisin was the right which the king had upon the death of a tenant seized of a knight's fee to receive of the heir one year's profits of the lands, and to do this he had the right to enter and possess the land. This, however, was the case only when the heir was of full age. If under the age of twenty-one, being a male, or of fourteen, being a female, the lord was entitled to the wardship of the heir, which consisted in having the custody of the body and goods of the heir without being accountable for profits until, in the case of the female ward, she reached sixteen years of age. (*2 Bl. Comm. marg. p. 67.*)

No. 63.

Sir, for a *quart d'ecu* he will sell the fee-simple of his salvation, the inheritance of it; and cut the entail from all remainders, and a perpetual succession for it perpetually.

All's Well That Ends Well, Act 4, *Scene* 3.

Fee-simple. (See Nos. 6, 159, 247, 312.)

Remainder. An estate limited in lands to be enjoyed after the expiration of another particular estate, and a remainder may be either for a certain time or in fee. (*Tomlin's Law Dict.*)

Entail. An estate tail is an estate of inheritance to a man or woman, and his or her heirs of

his or her body, or heirs of his or her body of a particular description. (*Bouv. Law Dict.*)

(See Nos. 161, 237.)

If a man makes a feoffment to the use of himself for life, remainder to the heirs male of his body, this is an estate tail executed in him. (*1 Mod. 159.*)

The effect of a fine and recovery was to bar the issue in tail by a fiction of law adopted for the purpose of destroying perpetuities of this character, whereby all tenants in tail were enabled, by pursuing the proper form, to bar the estates tail. (*10 Rep. 37.*)

Parolles wishes to express how completely Dumain will sell his title to salvation, and he applies the analogy of an estate so encumbered by limitations, entails, and remainders that the most abstruse devices of the English law were necessary to enable the possessor to give a valid title in fee-simple. Mistress Page (No. 6) describes the devil's title to Falstaff in similar law phrase. (See, also, No. 85.)

Inheritance. (See No. 127.)

No. 64.

Hor. Rise, Grumio, rise; we will compound this quarrel.

Gru. Nay, 'tis no matter, what he 'leges in Latin,—if this be not a lawful cause for me to leave his service.

The Taming of the Shrew, Act 1, Scene 2.

'Leges in Latin. By the statute 36 Edw. III., and which remained in force until the time of Cromwell, all allegations in pleading were in Latin. (*3 Bl. Comm. marg. p. 318.*)

Compound. (See No. 67.)

No. 65.

And do as adversaries do in law,—
Strive mightily, but eat and drink as friends.

The Taming of the Shrew, Act 1, Scene 2.

No. 66.

Pet. Then, tell me, if I get your daughter's love,
What dowry shall I have with her to wife?

Bap. After my death, the one half of my lands
And, in possession, twenty thousand crowns.

Pet. And for that dowry, I'll assure her of
Her widowhood, be it that she survive me,
In all my lands and leases whatsoever:
Let specialties be therefore drawn between us,
That covenants may be kept on either hand.

The Taming of the Shrew, Act 2, Scene 1.

Dowry formerly meant that which a woman brings her husband in marriage. (*Bouv. Law Dict.*)

(See Nos. 15, 67, 165.)

Assure. (See No. 67.)

Specialties. (See No. 46.)

Covenants. The agreement or consent of two or more by deed in writing, sealed and delivered. (*Tomlin's Law Dict.*)

(See Nos. 126, 217.)

The parties are considering a marriage settlement, whereby Petruchio, in consideration of Katherine's dowry, proposes to "assure" her by "specialties," containing "covenants" to that effect, an equal amount in all his lands and leases, provided she "survives" him.

Assure. (See No. 67.)

No. 67.

Content you, gentlemen; I will compound this strife:
'Tis deeds must win the prize; and he, of both,
That can assure my daughter greatest dower
Shall have Bianca's love.
Say, signior Gremio, what can you assure her?

The Taming of the Shrew, Act 2, Scene 1.

Here is a pun on the word "deed"—deeds of land instead of deeds of arms.

Assure. (See No. 66.)

Compound. (See No. 64.)

Dower. (See Nos. 15, 66, 69.)

No. 68.

But for my bonny Kate, she must with me.
Nay, look not big, nor stamp, nor stare, nor fret
I will be master of what is mine own:
She is my goods, my chattels; she is my house,
My household-stuff, my field, my barn,
My horse, my ox, my ass, my any thing;
And here she stands, touch her whoever dare
I'll bring my action on the proudest he
That stops my way in Padua.

The Taming of the Shrew, Act 3, Scene 2.

No. 69.

Bap. And, therefore, if you say no more than this,
That like a father you will deal with him
And pass my daughter a sufficient dower,
The match is fully made, and all is done:
Your son shall have my daughter with consent.
Tra. I thank you, sir. Where then do you know best,
We be affied; and such assurance ta'en,
As shall with either part's agreement stand?

The Taming of the Shrew, Act 4, Scene 4.

Affied. (See No. 226.)

Assurance. (See Nos. 99, 276.)

Dower. (See Nos. 15, 66, 67.)

No. 70.

Here packing with a witness to deceive us all.

The Taming of the Shrew, Act 5, Scene 1.

No. 71.

Thy husband is thy lord, thy life, thy keeper,
Thy head, thy sovereign; one that cares for thee.
And for thy maintenance: commits his body
To painful labour, both by sea and land,
To watch the night in storms, the day in cold,
While thou liest warm at home, secure and safe;
And craves no other tribute at thy hands,
But love, fair looks, and true obedience;
Too little payment for so great a debt.
Such duty as the subject owes the prince,
Even such, a woman oweth to her husband:
And, when she's froward, peevish, sullen, sour,
And, not obedient to his honest will,
What is she, but a foul contending rebel,
And graceless traitor to her loving lord?
I am asham'd, that women are so simple
To offer war, where they should kneel for peace,
Or seek for rule, supremacy, and sway,
When they are bound to serve, love, and obey.
Why are our bodies soft, and weak and smooth,
Unapt to toil and trouble in the world;
But that our soft conditions, and our hearts,
Should well agree with our external parts?
Come, come, you froward and unable worms!
My mind hath been as big as one of yours,
My heart as great, my reason, haply, more,
To bandy word for word, and frown for frown;
But now, I see our lances are but straws;
Our strength as weak, our weakness past compare,
That seeming to be most, which we least are.
Then vail your stomachs, for it is no boot;
And place your hands below your husband's foot:
In token of which duty, if he please,
My hand is ready, may it do him ease.

The Taming of the Shrew, Act 5, Scene 2.

The common-law *status* of a married woman, and some of the reasons by which it vindicated the merger, in legal contemplation, of her existence into that of her husband, are here fully exhibited.

No. 72.

Had we pursued that life,
And our weak spirits ne'er been higher rear'd
With stronger blood, we should have answered heaven
Boldly, *Not Guilty:* the imposition clear'd,
Hereditary ours.

The Winter's Tale, Act 1, Scene 2.

No. 73.

She's an adulteress; I have said with whom:
More, she's a traitor, and Camillo is
A federary with her.

The Winter's Tale, Act 2, Scene 1.

Traitor. (See No. 79.)

No. 74.

They are co-heirs;
And I had rather glib myself, than they
Should not produce a fair issue.

The Winter's Tale, Act 2, Scene 1.

No. 75.

Our prerogative
Calls not your counsels, but our natural goodness
Imparts this.

The Winter's Tale, Act 2, Scene 1.

The Tudor and Stuart conception of the extent of the prerogative is asserted here. It took more than a century and a half to quell the exorbitant pretensions of the English sovereigns in this re-

spect. The spirit of the people was unbroken by the lordly brutality of Henry VIII., the sullen perversity of Mary, the dexterity of Elizabeth, the fatuity of James I., the blinded obstinacy of Charles I., the voluptuous shamelessness of Charles II., and the ferocious bigotry of James II.

No. 76.

This child was prisoner to the womb, and is
By law and process of great nature thence
Freed and enfranchised, not a party to
The anger of the king, nor guilty of,
If any be, the trespass of the queen.

The Winter's Tale, Act 2, Scene 2.

No. 77.

Unless he take the course that you have done,
Commit me for committing honor.

The Winter's Tale, Act 2, Scene 3.

Commit. (See Nos. 136, 141, 146, 166.)

No. 78.

Summon a session, that we may arraign
Our most disloyal lady; for as she hath
Been publicly accused, so shall she have
A just and open trial.

The Winter's Tale. Act 2, Scene 3.

Session. (See Nos. 79, 280, 283.)

Arraign. (See Nos. 27, 79, 239, 286.)

No. 79.

Leon. This sessions, to our great grief, we pronounce,
Even pushes 'gainst our heart: the party tried,
The daughter of a king; our wife, and one
Of us too much belov'd. Let us be clear'd
Of being tyrannous, since we so openly
Proceed in justice, which shall have due course,
Even to the guilt, or the purgation
Produce the prisoner.

Offi. It is his highness' pleasure that the queen
Appear in person here in court. Silence!

Enter Hermione, guarded; Paulina and Ladies, attending.

Leon. Read the indictment.

Offi. Hermione, queen to the worthy Leontes, king of Sicilia, thou art here accused and arraigned of high treason, in committing adultery with Polixenes, king of Bohemia; and conspiring with Camillo, to take away the life of our sovereign lord the king, thy royal husband; the pretence whereof being by circumstances partly laid upon, thou Hermione, contrary to the faith and allegiance of a true subject, didst counsel and aid them, for their better safety, to fly away by night.

Her. Since what I am to say, must be but that
Which contradicts my accusation, and
The testimony on my part, no other
But what comes from myself, it shall scarce boot me
To say, *Not guilty:* mine integrity,
Being counted falsehood, shall, as I express it,
Be so receiv'd.

The Winter's Tale, Act 3, Scene 2.

Sessions. (See Nos. 78, 280, 283.)

Appear in person. (See No. 127.)

Arraigned. (See Nos. 27, 78, 79, 239, 286.)

The second species of treason is, if a man do violate the king's companion. * * * By the king's companion is meant his wife. * * * And this is high treason in both parties, if both be consenting. (*4 Bl. Comm. marg. p. 81.*)

No. 80.

Now my liege
Tell me what blessings I have here alive,
That I should fear to die? Therefore proceed.
But yet hear this; mistake me not; no life,
I prize it not a straw, but for mine honour
Which I would free, if I shall be condemn'd
Upon surmises, all proofs sleeping else,
But what your jealousies awake, I tell you,
'Tis rigour and not law.

The Winter's Tale Act 3, Scene 3.

No. 81.

He hath ribbons of all the colors i' the rainbow; points more than all the lawyers in Bohemia can learnedly handle.

The Winter's Tale, Act 4, Scene 4.

Points in dress were tagged lace, used to fasten hose to the doublet.

Fal. Their points being broken—
Poins. Down fell their hose.

The legal meaning of this word is, of course, known to every one. The play upon the word here illustrates a habit in Shakespeare of yielding to the suggestiveness of a common word, and turning a

phrase in order to present it again in its legal signification.

No. 82.

Flo. O, hear me breathe my life
Before this ancient sir, who, it should seem,
Hath sometime lov'd! I take thy hand, this hand,
As soft as dove's down, and as white as it,
Or Ethiopian's tooth, or the fann'd snow,
That's bolted by the northern blasts twice o'er.
Pol. What follows this?
How prettily the young swain seems to wash
The hand, was fair before! I have put you out:
But to your protestation; let me hear
What you profess.
Flo. Do, and be witness to't.
Pol. And this my neighbor too?
Flo. And he, and more
Than he, and men, the earth, the heavens, and all:
That, were I crown'd the most imperial monarch,
Thereof most worthy, were I the fairest youth
That ever made eye swerve, had force, and knowledge,
More than was ever man's, I would not prize them
Without her love: for her employ them all:
Commend them, and condemn them, to her service,
Or to their own perdition.
Pol. Fairly offer'd.
Cam. This shows a sound affection.
Shep. But, my daughter,
Say you the like to him?
Per. I cannot speak
So well, nothing so well; no, nor mean better:
By the pattern of mine own thoughts I cut out
The purity of his.
Shep. Take hands, a bargain;

And, friends unknown, you shall bear witness to't:
I give my daughter to him, and will make
Her portion equal his.
Flo. O, that must be
I' the virtue of your daughter: one being dead,
I shall have more than you can dream of yet;
Enough then for your wonder: But, come on,
Contract us 'fore these witnesses.
Shep. Come, your hand:
And, daughter, yours.

The Winter's Tale, Act 4, Scene 4.

I have heard lawyers say a contract in a chamber,
Per verba presenti, is absolute marriage.

Duchess of Malfi.

(See Nos. 14, 15.)

No. 83.

—— we'll bar thee from succession.

The Winter's Tale. Act 4, Scene 3.

No. 84.

With her I liv'd in joy; our wealth increas'd,
By prosperous voyages I often made
To Epidamnum, till my factor's death.
And the great care of goods at random left,
Drew me from kind embracement of my spouse.

The Comedy of Errors, Act 1, Scene 1.

Factor. An agent employed to sell goods consigned or delivered to him. (*Bouv. Law Dict.*)

There is no inaccuracy here, nor use of any but the exact word. "Agent" would be too general, and the "broker" has no possession of goods. See the use of the word "brokers," in No. 265, as "implorators of unholy suits," etc.

(See No. 171.)

No. 85.

Dro. S. There's no time for a man to recover his hair, that grows bald by nature.

Ant. S. May he not do it by fine and recovery?

Dro. S. Yes, to pay a fine for a peruke, and recover the lost hair of another man.

The Comedy of Errors, Act 2, Scene 2.

Fine and recovery. (See Nos. 6, 63, 276.)

This is a lawyer's pun, and would never have occurred to any one but a lawyer. There is also here a very abstruse quibble in the use of the words "recover the lost hair of another man," for the effect of a fine and recovery was to bar not only the heirs upon whom the lands were entailed, but all the world.

No. 86.

Sec. Mer. Therefore make present satisfaction, or I'll
Attach you by this officer.

* * * * *

Well, officer, arrest him at my suit.

* * * * *

Ang. Either consent to pay the sum for me,
Or I attach you by this officer.
Here is thy fee; arrest him, officer.

The Comedy of Errors, Act 4, Scene 1.

"Present satisfaction" is demanded, or "attachment by an officer" will follow; the officer is ordered to "arrest him" at "my suit," and the officer's "fee" is tendered.

Arrest. (See Nos. 11, 17, 87, 137, 138, 277*a*, 295, 300.

Attach. (See Nos. 254, 257, 280.)

No. 87.

Adr. Why, man, what is the matter?
Dro. S. I do not know the matter: he is 'rested on the case.
Adr. What, is he arrested? tell me at whose suit.
Dro. S. I know not at whose suit he is arrested well;
But he's in a suit of buff, which 'rested him, that can I tell:
Will you send him, mistress, redemption? the money in his [desk?

The Comedy of Errors, Act 4, Scene 2.

The word "matter" has always meant in legal proceedings the question in controversy.

"Arrested on the case" signifies that Antipholus has been arrested in a peculiar form of action called "case," which was a universal remedy for all wrongs or injuries unaccompanied by force. Where any special or consequential damage arose which could not be foreseen, the party injured was allowed, both by common law and the statute of *Westm. 2, c. 24*, to bring a special action on his own case by a writ framed according to the peculiar circumstances of his own particular grievance. (*3 Bl. Comm. marg. pp. 122–3.*)

The declaration stated that Henry, Earl of De Loraine, was *summoned* to answer William Hunter in a plea of trespass on the case.

Demurrer, that it is alleged by the declaration that the said earl hath been *summoned*, whereas he ought to have been attached to answer, etc.

Lord Mansfield. The declaration is bad. In an action on the case the first process is an attachment. (*Hunter* v. *Earl of De Loraine*, 2 *Chitty*, (18 *Eng. Com. Law*,) 825.)

Matter. (See Nos. 56, 158.)

Arrested. (See Nos. 11, 17, 86, 137, 138, 277*a*, 295, 300.)

No. 88.

Thou hast suborned the goldsmith to arrest me.

The Comedy of Errors, Act 4, Scene 4.

Suborned. (See Nos. 95, 286, 304.)

No. 89.

He is my prisoner; if I let him go,
The debt he owes will be requir'd of me.

The Comedy of Errors, Act 4, Scene 4.

This is the law of the sheriff's liability in case the prisoner whom he has arrested for debt escapes. (*3 Bl. Comm. marg. p. 290.*)

No. 90.

Ross. And, for an earnest of a greater honour,
He bade me, from him, call thee thane of Cawdor:
In which addition, hail, most worthy thane!
For it is thine.

* * * * * * *

Macb. Why hath it given me earnest of success,
Commencing in a truth? I am thane of Cawdor.

Macbeth, Act 1, *Scene* 3.

Earnest. Money paid in part of a large sum. A part of the goods delivered on any contract. (*Tomlin's Law Dict.*)

(See No. 148.)

Addition. The title or estate and place of abode given to a man besides his name. (*Tomlin's Law Dict.*)

(See No. 238.)

No. 91.

Is execution done on Cawdor? Are not
Those in commission yet return'd?

Macbeth, Act 1, *Scene* 4.

Execution done. The court of king's bench may command execution to be done, etc. (*2 Hale's Hist. 409.*)

(See Nos. 22, 231.)

Commission. The warrant of letters patent which all persons exercising jurisdiction, either ordinary or extraordinary, have to authorize them to hear or determine any cause or action. (*Tomlin's Law Dict.*)

Duncan, in scene 2, had said to Ross concerning the thane of Cawdor:

Go pronounce his death

No. 92.

But, in these cases,
We still have judgment here; that we but teach
Bloody instructions, which, being taught, return
To plague the inventor: this even-handed justice
Commends the ingredients of our poison'd chalice
To our own lips; he's here in double trust.

Macbeth, Act 1, *Scene* 7.

Cases. (See No. 276.)

No. 93.

Mach. If you shall cleave to my consent, when 'tis,
It shall make honour for you.
Ban. So I lose none,
In seeking to augment it, but still keep
My bosom franchis'd and allegiance clear,
I shall be counseled.

Macbeth, Act 2. *Scene* 1.

No. 94.

Lady M. Who was it that thus cried? Why, worthy thane,
You do unbend your noble strength, to think
So brainsickly of things. Go, get some water,
And wash this filthy witness from your hand.
Why did you bring these daggers from the place?
They must lie there: go, carry them; and smear
The sleepy grooms with blood.
Mach. I'll go no more:
I am afraid to think what I have done;
Look on't again, I dare not.
Lady M. Infirm of purpose!
Give me the daggers: The sleeping and the dead,
Are but as pictures: 'tis the eye of childhood,
That fears a painted devil. If he do bleed,
I'll gild the faces of the grooms withal,
For it must seem their guilt.

Macbeth, Act 2, *Scene* 2.

No. 95.

They were suborned.

Macbeth, Act 2, Scene 4.

Suborn. To procure privately; to procure by secret collusion. (*Johnson.*)

Its general legal meaning is to procure another to commit a crime. In practical use, however, it means to procure another to take such a false oath as constitutes perjury. (*4 Bl. Comm. Marg. p. 137.*)

(See Nos. 88, 286, 304.)

No. 96.

He is already named, and gone to Scone
To be invested.

Macbeth, Act 2, Scene 4.

Invested. Investiture—the giving possession; *investitura est alicujus in suum jus introductio.*

Investitures in their original rise were probably intended to demonstrate in conquered countries the actual possession of the lord. (*Tomlin's Law Dict.*)

To place in possession of a rank or office. (*Johnson.*)

No. 97.

For Banquo's issue have I filed my mind.

Macbeth, Act 3, Scene 1.

Issue. All persons who have descended from a common ancestor. (*Bouv. Law Dict.*)

(See Nos. 74, 99, 100, 102, 237.)

No. 98.

And with thy bloody and invisible hand
Cancel and tear to pieces that great bond.

Macbeth, Act 3, Scene 2.

No. 99.

Then live, Macduff; What need I fear of thee?
But yet I'll make assurance double sure,
And take a bond of fate: thou shalt not live;
That I may tell pale-hearted fear, it lies,
And sleep in spite of thunder. What is this,
That rises like the issue of a king;
And wears upon his baby brow the round
And top of sovereignty?

Macbeth, Act 4, Scene 1.

Issue. (See Nos. 74, 97, 100, 102, 237.)

Assurance. (See Nos. 69, 276.)

Bond. (See Nos. 40, 51, 52, 56, 98, 131, 306.)

No. 100.

Mach. That will never be;
Who can impress the forest, bid the tree
Unfix his earth-bound root? sweet bodements! good!
Rebellion's head, rise never, till the wood
Of Birnam rise, and our high-placed Macbeth
Shall live the lease of nature, pay his breath

To time, and mortal custom. Yet my heart
Throbs to know one thing; tell me, if your art
Can tell so much, shall Banquo's issue ever
Reign in this kingdom?

Macbeth, Act 4, Scene 1.

Impress. To force into service. (*Johnson.*)

Macbeth hopes to "live the lease of nature" and "pay his breath to time and mortal custom."

Issue. (See Nos. 74, 97, 99, 102, 237.)

Lease. (See Nos. 296, 303, 308.)

No. 101.

Thy title is affeer'd.

Macbeth, Act 4, Scene 3.

To Affeere. A law term signifying to confirm. (*Johnson.*)

No. 102.

Since that the truest issue of thy throne,
By his own interdiction, stands accursed.

Macbeth, Act 4, Scene 3.

Issue. (See Nos. 74, 97, 99, 100, 237.)

No. 103.

—— here abjure
The taints and blames I laid upon myself.

Macbeth, Act 4, Scene 3.

Abjure. A forswearing or renouncing by oath. (*Tomlin's Law Dict.*)

(See No. 40.)

No. 104.

What concern they
The general cause? or is it a fee-grief,
Due to some single breast?

Macbeth, Act 4, Scene 3.

Fee. Here used in the sense of individual property in the grief.

No. 105.

Neither to you, nor any one, having no witness to confirm my speech.

Macbeth, Act 5, Scene 1.

No. 106.

If this, which he avouches, does appear,
There is no flying hence, nor tarrying here.

Macbeth, Act 5, Scene 5.

Avouch. Evidence; testimony. (*Johnson.*)
(See Nos. 40, 258.)

No. 107.

Essex. My liege, here is the strangest controversy,
Come from the country to be judged by you,
That e'er I heard: shall I produce the men?
K. John. Let them approach. [*Exit* Sheriff.
Our abbies, and our priories, shall pay
This expedition's charge.

Re-enter Sheriff, *with* Robert Faulconbridge, *and* Philip, *his bastard brother.*

—What men are you?
Bast. Your faithful subject I, a gentleman,
Born in Northamptonshire, and eldest son,
As I suppose, to Robert Faulconbridge;
A soldier, by the honour-giving hand

Of Cœur-de-lion knighted in the field.
K. John. What art thou?
Rob. The son and heir to that same Faulconbridge.
K. John. Is that the elder, and art thou the heir?
You came not of one mother then, it seems.
Bast. Most certain of one mother, mighty king;
That is well known; and, as I think, one father:
But, for the certain knowledge of that truth,
I put you o'er to heaven, and to my mother;
Of that I doubt, as all men's children may.
Eli. Out on thee, rude man! thou dost shame thy mother,
And wound her honour with this diffidence.
Bast. I, madam? no, I have no reason for it;
That is my brother's plea, and none of mine;
The which if he can prove, 'a pops me out
At least from fair five hundred pound a year:
Heaven guard my mother's honour, and my land!
K. John. A good blunt fellow. Why, being younger born,
Doth he lay claim to thine inheritance?
Bast. I know not why, except to get the land.
But once he slander'd me with bastardy:
But whether I be as true begot, or no,
That still I lay upon my mother's head;
But, that I am as well begot, my liege,
(Fair fall the bones that took the pains for me!)
Compare our faces, and be judge yourself.
If old sir Robert did beget us both,
And were our father, and this son like him,
O old sir Robert, father, on my knee
I give heaven thanks, I was not like to thee.
K. John. Why, what a madcap hath heaven lent us here!
Eli. He hath a trick of Cœur-de-lion's face,
The accent of his tongue affecteth him:
Do you not read some tokens of my son
In the large composition of this man?

K. John. Mine eye hath well examined his parts,
And finds them perfect Richard. Sirrah, speak,
What doth move you to claim your brother's land?
Bast. Because he hath a half-face, like my father;
With that half-face would he have all my land:
A half-fac'd groat five hundred pound a year!
Rob. My gracious liege, when that my father liv'd,
Your brother did employ my father much—
Bast. Well, sir, by this you cannot get my land;
Your tale must be, how he employ'd my mother.
Rob. And once dispatch'd him in an embassy
To Germany, there, with the emperor,
To treat of high affairs touching that time:
The advantage of his absence took the king,
And in the mean time sojourn'd at my father's;
Where how he did prevail, I shame to speak:
But truth is truth; large lengths of seas and shores
Between my father and my mother lay,
As I have heard my father speak himself,
When this same lusty gentleman was got.
Upon his death-bed he by will bequeath'd
His lands to me, and took it, on his death,
That this, my mother's son, was none of his;
And, if he were, he came into the world
Full fourteen weeks before the course of time.
Then, good my liege, let me have what is mine,
My father's land, as was my father's will.
K. John. Sirrah, your brother is legitimate;
Your father's wife did, after wedlock, bear him:
And, if she did play false, the fault was hers;
Which fault lies on the hazards of all husbands
That marry wives. Tell me, how if my brother,
Who, as you say, took pains to get this son,
Had of your father claim'd this son for his?
In sooth, good friend, your father might have kept

This calf, bred from his cow, from all the world;
In sooth, he might: then, if he were my brother's,
My brother might not claim him; nor your father,
Being none of his, refuse him: This concludes,—
My mother's son did get your father's heir;
Your father's heir must have your father's land.
Rob. Shall then my father's will be of no force,
To dispossess that child which is not his?
Bast. Of no more force to dispossess me, sir,
Than was his will to get me, as I think,

King John, Act 1, *Scene* 1.

The trial before King John between the brothers Robert and Philip Faulconbridge, resulted in a decision based upon the ancient common-law presumption in cases of legitimacy. A child born after the marriage, and during the husband's life, was presumed to be legitimate. It was formerly the established doctrine that this presumption in favor of legitimacy could not be rebutted, unless the husband was absent beyond the four seas during the whole period of the wife's pregnancy. So, if a man be within the four seas and his wife hath a child, the law presumeth that it is the child of the husband; and against this presumption the law will admit no proof. (*Co. Litt. 373a; 1 Phill. Ev. marg. p. 630; 1 Lord Raym. 395; 1 Salk. 121. See, also,*

Erskine's Speech in the Banbury Peerage Case, 4 Erskine's Works, 374.)

The case as reported by Shakespeare is this: Philip states to the king that he supposes himself to be the eldest son, and the heir of Sir Robert, to which his younger brother, Robert, answers that he is the son and heir, upon the claim that the elder brother, though born in wedlock, was begotten by Richard Cœur de Lion, is consequently a bastard, and cannot, therefore, inherit.

The mother of King Richard, who is present at trial, sees in Philip the "trick of Cœur de Lion's face," recognizes his paternity in the accent of his tongue, and reads some tokens of her son in the "large composition of the man." The king examines the bastard, and finds him "perfect Richard." The brother Robert urges, as evidence, that King Richard had at one time sent Sir Robert, the father, on an embassy to Germany, and that the king sojourned at his father's house in his absence, and overcame the chastity of his mother. He urges that large lengths of seas and shores between his father and his mother lay, and that his father himself had declared Philip illegitimate. He also states that Philip

came into the world full fourteen weeks before the course of time,—viz., that Sir Robert's return from Germany would show from its date that Philip was begotten fourteen weeks prior thereto,—upon which facts he claimed the inheritance. The king decides in favor of the legitimacy of Philip, upon the ground that his mother bore him after wedlock. Sir Robert was not absent in Germany during the whole period of the wife's pregnancy, and for that reason the presumption of the legitimacy as it was at that time became conclusive. It is also to be remarked that the king pays no attention to the declarations said to have been made by Sir Robert denying his paternity of Philip. In this he rules correctly, for nothing is better settled than that the declarations of father or mother are inadmissible to bastardize their children.

This grotesque affront to common sense has long since ceased to be law. Evidence is admissible in our day to attack the legitimacy of a child even where the father was *infra quatuor maribus* during the whole period from conception to birth. The testimony, however, must be of the most cogent character, and leave no room for doubt.

Some of the ancient decisions on this subject read like the wisdom of "crowner's 'quest law." In *Done and Egerton's Case, 1 Rol. Abr. 358,* Hobart, J., said that "if the husband be castrated, so that it is apparent that he could not by any possibility beget issue, and divers years afterwards his wife has issue, it should be lawful." And all the judges concurred in the opinion that "if a married woman has issue in adultery, still if the husband be able to beget issue, and is within the four seas, it is not a bastard."

The most striking decision on this topic of serious nonsense is found in *Jenkins' Centuries, c. 10, pl. 18:* "If the husband be in Ireland for a year, and the wife in England during that time has issue, it is a bastard; but it seems otherwise now for Scotland, both being under one king." This is not a reflection on the virility of residents in Ireland; it is a sapient distinction based upon the fact that at that time England and Scotland were one kingdom, and therefore the husband was within the realm, whereas Ireland was not then incorporated into the kingdom.

No. 108.

Upon thy cheek lay I this zealous kiss,
As seal to this indenture of my love.

King John, Act 2, Scene 1.

Seal. Wax impressed with a device and attached to deeds. (*Tomlin's Law Dict.*)

(See Nos. 37, 52, 56, 108, 126, 158, 204, 207, 256, 274, 288.)

Indenture. An instrument in writing containing a conveyance or contract between two or more persons. (*Tomlin's Law Dict.*)

(See Nos. 132, 233, 236, 276.)

No. 109.

In brief, a braver choice of dauntless spirits,
Than now the English bottoms have waft o'er,
Did never float upon the swelling tide.

King John, Act 2, Scene 1.

Bottoms. (See No. 49.)

No. 110.

K. John. From whom hast thou this great commission,
To draw my answer from thy articles? [France,

K. Phi. From that supernal judge, that stirs good thoughts
In any breast of strong authority,
To look into the blots and stains of right.
That judge hath made me guardian to this boy:
Under whose warrant, I impeach thy wrong,
And by whose help I mean to chastise it.

K. John. Alack, thou dost usurp authority.

K. Phi. Excuse; it is to beat usurping down.

King John, Act 2, Scene 1.

Impeach. To accuse and prosecute for felony or treason. (*Tomlin's Law Dict.*)

Warrant. (See Nos. 4, 114.)

No. 111.

Const. Now shame upon you, whether she does or no!
His grandam's wrongs, and not his mother's shames,
Draw those heaven-moving pearls from his poor eyes,
Which heaven shall take in nature of a fee;
Ay, with these crystal beads heaven shall be brib'd
To do him justice, and revenge on you.
Eli. Thou monstrous slanderer of heaven and earth!
Const. Thou monstrous injurer of heaven and earth!
Call not me slanderer; thou, and thine, usurp
The dominations, royalties, and rights,
Of this oppressed boy: This is thy eldest son's son,
Infortunate in nothing but in thee;
Thy sins are visited in this poor child;
The canon of the law is laid on him,
Being but the second generation
Removed from thy sin-conceiving womb.

King John, Act 2. Scene 1.

Fee. Certain perquisities allowed to officers in the administration of justice as a recompense for their labor and trouble. (*Tomlin's Law Dict.*)

Canon. A law or ordinance of the church.

This passage evidently refers to the Scripture denunciation of penalties for the sins of fathers upon the children unto the third and fourth generation.

This being a spiritual censure, Shakespeare uses the word "canon."

(See No. 263.)

No. 112.

1 *Cit.* In brief, we are the king of England's subjects;
For him, and in his right, we hold this town.
K. John. Acknowledge then the king, and let me in.
1 *Cit.* That can we not; but he that proves the king,
To him will we prove loyal; till that time,
Have we ramm'd up our gates against the world.
K. John. Doth not the crown of England prove the king?
And, if not that, I bring you witnesses,
Twice fifteen thousand hearts of England's breed,—
Bast. Bastards, and else.
K. John. To verify our title with their lives.
K. Phi. As many, and as well-born bloods as those,—
Bast. Some bastards too.
K. Phi. Stand in his face, to contradict his claim.
1 *Cit.* Till you compound whose right is worthiest,
We, for the worthiest, hold the right from both.

King John, Act 2, Scene 1.

In this instance King John asserts the law of a sovereign *de facto*, as afterwards declared by the statute of Henry VII. The king says:

> Doth not the crown of England prove the king?

"If there be a king regnant in possession of the crown, though he be but *rex de facto* and not *de jure*, yet he is *seignior le roy;* and if another hath right, if he be out of possession, he is not within

the meaning of the statute *11 Henry VII. c. 1.*" *3 Inst. 7.* See, also, *1 Hallam's Const. Hist. p. 25.*

It was enacted by the statute of 4 Henry VII., *c.* 24, that "no person that did assist in arms or otherwise the king, for the time being, should afterwards be impeached therefor, or attainted either by the course of law or by parliament; but if any such attainder did happen to be made, it should be void and of none effect."

No. 113.

Drawn in the flattering table of her eye!
Hang'd in the frowning wrinkle of her brow!
And quarter'd in her heart! he doth espy
Himself love's traitor: this is pity now,
That hang'd, and drawn, and quarter'd, there should be,
In such a love, so vile a lout as he.

King John, Act 2, Scene 1.

Drawn, hanged, and quartered. Punishment for treason.

No. 114.

Pand. There's law and warrant, lady, for my curse.
Const. And for mine too; when law can do no right,
Let it be lawful, that law bar no wrong:
Law cannot give my child his kingdom here,
For he, that holds his kingdom, holds the law:
Therefore, since law itself is perfect wrong,
How can the law forbid my tongue to curse?

King John, Act 3, Scene 1.

Bar. (See Nos. 143, 144.)

Warrant. (See Nos. 4, 110.)

No. 115.

K. Rich. Old John of Gaunt, time-honour'd Lancaster,
Hast thou, according to thy oath and band,
Brought hither Henry Hereford thy bold son,
Here to make good the boisterous late appeal,
Which then our leisure would not let us hear,
Against the duke of Norfolk, Thomas Mowbray?

Gaunt. I have, my liege.

K. Rich. Tell me moreover, hast thou sounded him,
If he appeal the duke on ancient malice;
Or worthily as a good subject should,
On some known ground of treachery in him?

Gaunt. As near as I could sift him on that argument,
On some apparent danger seen in him,
Aim'd at your highness, no inveterate malice.

K. Rich. Then call them to our presence; face to face,
And frowning brow to brow, ourselves will hear
The accuser, and the accused, freely speak.

Richard II., Act 1, *Scene* 1.

Make good. Make: to perform or execute,—as, *to make his law*, is to perform that law which he has formerly bound himself to. (*Tomlin's Law Dict.*)

No. 116.

K. Rich. We thank you both: yet one but flatters us,
As well appeareth by the cause you come;
Namely, to appeal each other of high treason.
Cousin of Hereford, what dost thou object
Against the duke of Norfolk, Thomas Mowbray?

* * * * * * *

Boling. Come I appellant to this princely presence,

* * * * * * *

Disclaiming here the kindred of a king.

Richard II., Act 1, Scene 1.

Appeal has two senses: (1) The removal of a cause from an inferior court or judge to a superior. (2) When spoken of as a criminal prosecution, it denotes an accusation by a private subject against another for some heinous crime. It was anciently permitted to appeal another of high treason. (*Tomlin's Law Dict.*)

Object. To propose as a charge criminal. (*Johnson.*)

Appellant. The party by whom an appeal is made. (*Tomlin's Law Dict.*)

(See Nos. 120, 130.)

No. 117.

K. Rich. What doth our cousin lay to Mowbray's charge?
It must be great, that can inherit us
So much as of a thought of ill in him.

Richard II., Act 1, Scene 1.

No. 118.

Boling. Further I say, and further will maintain
Upon his bad life, to make all this good.

Richard II., Act 1, Scene 1.

Maintain. (See No. 130.)

No. 119.

K. Rich. There shall your swords and lances arbitrate
The swelling difference of your settled hate;

Since we cannot atone you, we shall see
Justice design the victor's chivalry.
Lord marshal, command our officers at arms
Be ready to direct these home alarms.

Richard II., Act 1, *Scene* 1.

No. 120.

K. Rich. Ask him his name: and orderly proceed
To swear him in the justice of his cause.

* * * * * *

And formally, according to our law,
Depose him in the justice of his cause.

* * * * * *

Mar. The appellant in all duty greets your highness.

Richard II., Act 1, *Scene* 3.

Appellant. (See Nos. 116, 130.)

Depose. (See No. 163.)

No. 121.

1 *Her.* Harry of Hereford, Lancaster, and Derby,
Stands here for God, his sovereign, and himself,
On pain to be found false and recreant,
To prove the duke of Norfolk, Thomas Mowbray,
A traitor to his God, his king, and him,
And dares him to set forward to the fight.

2 *Her.* Here standeth Thomas Mowbray, duke of Norfolk,
On pain to be found false and recreant,
Both to defend himself, and to approve
Henry of Hereford, Lancaster, and Derby,
To God, his sovereign, and to him, disloyal;
Courageously, and with a free desire,
Attending but the signal to begin.

* * * * * *

K. Rich. Thy son is banish'd upon good advice,
Whereto thy tongue a party-verdict gave;

Why at our justice seem'st thou then to lower?

* * * * * *

Gaunt. You urg'd me as a judge; but I had rather,
You would have bid me argue like a father:—

Richard II., Act 1, Scene 3.

Party-verdict. "The verdict in a criminal case is either *general* * * * or *partial* as to a part of the charge, as where the jury convict the defendant on one or more counts of the indictment and acquit him of the residue, or convict him on one part of a divisible count and acquit him as to the residue." (*Archb. Cr. Pl. & Ev. 146, 147.*)

It is implied that John of Gaunt, though he had endeavored to extenuate the offences of his son, had admitted his guilt in some respects. He says:

A partial slander sought I to avoid,
And in the sentence my own life destroyed.

The trial by battle was at common law a judicial mode of determining both civil and criminal cases. A woman could take this appeal by a champion. It could be demanded in criminal cases, at the election of the appellee, who did so by pleading *not guilty*, throwing down his glove, and declaring himself ready to make good the appeal by his body. The appellant took up the glove and replied that he was ready to make good the appeal, body for body. Each party, holding the other by the hand,

took an oath,—the accused, that he was not guilty of the crime charged; the accuser, that the accused was perjured. Oaths were also taken against the employment of sorcery, and the battle was waged in a piece of ground sixty feet square, inclosed with lists, on one side of which a court was erected for the judges. When the court was in session proclamation was made, and the battle began. It was waged from sunrise until the stars appeared in the evening. If the appellant cried craven, or the appellee killed him or maintained the fight for that time, the appellee was thereby acquitted. If the appellee was so far vanquished that he could not or would not fight any longer, he was adjudged to be hanged immediately, and in that case, or if he was killed, his blood was attainted. (*3 Bl. Comm. marg. p. 337: 4 Bl. Comm. marg. p. 346.*)

There was a trial by battle in 1571. (*Dyer, p. 801.*)

In 1631 Lord Rea impeached David Ramsay of treason, and offered battle in proof. A commission was appointed, but the king interposed.

In 1818 one Abraham Thornton was tried and

acquitted upon a capital charge. The brother of the person upon whom the offense was alleged to have been committed appealed, and the following proceedings were had in the court of King's Bench: The appellee being brought into court and placed at the bar, (the appellant being also in court,) the count was read over to him, and he was called upon to plead. He pleaded as follows: "Not guilty; and I am ready to defend the same by my body." And thereupon, taking his glove off, he threw it upon the floor of the court. The right of battle was most elaborately argued and was allowed by the court. The appellant declined to accept the challenge, and Thornton was discharged. (*Ashford* v. *Thornton, 1 Barn. & Ald. 405.*) The reappearance of this buried specter of the law, clad in complete steel, after a sepulture of nearly two hundred years, caused the abrogation of this right by statute *59 Geo. III. c. 46.*

In the case in Shakespeare each party "appeals" the other of treason. Bolingbroke throws "down his gage" and Norfolk takes it up and hurls down his gage. The lists and throne are set out on Gosford green. The parties are sworn, but the

king by throwing down his warder interposes and forbids the fight.

Walter Scott, lawyer as he was, and learned, has not described with more technical accuracy the trial of Rebecca by the wager of battle.

No. 122.

As were our England in reversion his,
And he our subjects' next degree in hope.
Richard II., Act 1, Scene 4.

Reversion. The residue of an estate left in the grantor to commence in possession after the determination of some particular estate granted out by him. (*2 Bl. Comm. marg. p. 175.*)
(See No. 192.)

Degree. The distance between those who are allied by blood; the relations descending from a common ancestor. (*Bouv. Law Dict.*)

No. 123.

—— this dear, dear land
* * * * *
Is now leased out * * *
Like to a tenement or pelting farm.
Richard II., Act 2, Scene 1.

Tenement. More largely it comprehends not only houses but all corporeal inheritances which are holden of another. (*Tomlin's Law Dict.*)

No. 124.

York. Now, afore God (God forbid, I say true!)
If you do wrongfully seize Hereford's rights,
Call in the letters-patent that he hath
By his attorneys-general to sue
His livery, and deny his offer'd homage,

* * * * * * *

K. Rich. Think what you will; we seize into our hands
His plate, his goods, his money, and his lands.

* * * * * * *

Willo. And daily new exactions are devised
As blanks, benevolences.

* * * * * * *

Ross. The earl of Wiltshire hath the realm in farm.

* * * * * * *

North. Redeem from broking pawn the blemish'd crown.

Richard II., Act 2, Scene 1.

Sue his livery. When the male heir arrived at the age of twenty-one or the heir female to the age of sixteen, they might sue out their livery or *ousterlemain;* that is, the delivery of their lands out of their guardian's hands. (*2 Bl. Comm. marg. p. 68.*)

(See Nos. 127, 135.)

Homage. All lands were held mediately or immediately of the king; the great nobles usually held theirs' immediately. The lord paramount, whether the king, or others who held under him, and under whom others held by subinfeudation, not only bound the tenants, upon their taking possession or on their investiture, to certain services, but

also took a submission from them by an oath to be true to the lord, and this oath was called homage.

(See Nos. 1, 273.)

Letters-patent. Are writings of the king, sealed, whereby a person was enabled to do or enjoy that which otherwise he could not. (*Tomlin's Law Dict.*)

(See Nos. 127, 185.)

Livery and homage were in general necessarily personal acts, but in this case it seems that Hereford held letters-patent from the king empowering him to perform them by attorneys. "Formerly every suitor was obliged to appear in person to prosecute or defend his suit, (according to the old Gothic constitutions,) unless by special license under the king's letters-patent." (*3 Bl. Comm. marg. p. 25.*)

Exaction. A wrong done by an officer or one in pretended authority by taking a reward or fee for that which the law allows not. (*Tomlin's Law Dict.*)

Blank. A mode of extortion by which blank papers were given to the agents of the crown to be filled up as they pleased, to authorize such demands as they chose to make.

Benevolences. Contributions apparently voluntary, but in fact extorted from rich subjects.

They became an intolerable grievance under Edward IV., were abolished under Richard III., but were renewed with great rapacity by Henry VII. (*1 Hallam's Const. Hist. p. 29.*)

In farm. The usual words of operation in a lease are "demise, grant, and to farm let," so that a farmer was one who held his lands upon payment of a rent. (*2 Bl. Comm. marg. p. 317.*)

Pawn. A bailment of personal property on security for some debt or engagement. (*Story, Bailments, § 286.*)

No. 125.

The banished Bolingbroke repeals himself.
Richard II., Act 2, Scene 2.

Repeals. (See Nos. 3, 130, 205.)

No. 126.

My heart this covenant makes, my hand thus seals it.
Richard II., Act 2, Scene 3

Covenant. The agreement of two or more by deed in writing, sealed and delivered. (*Tomlin's Law Dict.*)

(See Nos. 66, 217.)

Seals. (See Nos. 37, 52, 56, 108, 158, 204, 207, 256, 274, 288.)

No. 127.

Boling. My gracious uncle, let me know my fault;
On what condition stands it, and wherein?

York. Even in condition of the worst degree,
In gross rebellion, and detested treason:
Thou art a banished man, and here art come,
Before the expiration of thy time,
In braving arms against thy sovereign.

Boling. As I was banish'd, I was banish'd Hereford;
But as I come, I come for Lancaster.
And, noble uncle, I beseech your grace,
Look on my wrongs with an indifferent eye:
You are my father, for, methinks, in you
I see old Gaunt alive; O, then, my father!
Will you permit that I shall stand condemn'd
A wandering vagabond; my rights and royalties
Pluck'd from my arms perforce, and given away
To upstart unthrifts? Wherefore was I born?
If that my cousin king be king of England,
It must be granted, I am duke of Lancaster.
You have a son, Aumerle, my noble kinsman;
Had you first died, and he been thus trod down,
He should have found his uncle Gaunt a father,
To rouse his wrongs, and chase them to the bay.
I am denied to sue my livery here,
And yet my letters-patent give me leave:
My father's goods are all distrain'd, and sold;
And these, and all, are all amiss employ'd.
What would you have me do? I am a subject,
And challenge law: attorneys are denied me;
And therefore personally I lay my claim
To my inheritance of free descent.

Richard II, Act 2, Scene 3.

Distrain. To take and keep any personal chattel in custody. (*Bouv. Law Dict.*)

Challenge. To claim as due. (*Johnson.*)

Sue my livery. (See Nos. 124, 135.)

Letters-patent. (See Nos. 124, 185.)

Attorneys. (See Nos. 172, 178, 287.)

Inheritance. (See No. 63.)

No. 128.

Let's choose executors, and talk of wills:
And yet not so, for what can we bequeath,
Save our deposed bodies to the ground?

Richard II., Act 3, Scene 2.

Wills. (See Nos. 195, 207, 208, 293.)

No. 129.

—— he is come to open
The purple testament of bleeding war.

Richard II, Act 3, Scene 3.

Testament. (See Nos. 150, 195, 207, 293.)

No. 129*a*.

O, I am pressed to death, through want of speaking.

Richard II., Act 3, Scene 4.

This obscure line is elucidated by the proceedings which took place when an accused person refused to plead to an indictment. He was said to stand mute, when, being arraigned for treason or felony, he either (1) made no answer at all; or (2) answered foreign to the purpose, or with such matters as were not allowable, and would not answer otherwise; or (3) having pleaded not guilty, refused

to put himself upon the country. (*2 Hale, P. C. 316.*)

In cases of high treason, petit larceny, and all misdemeanors, standing mute was equivalent to conviction.

In indictments for other felonies, or for petit treason, the prisoner was not looked upon as convicted for standing mute, but for his obstinacy received the sentence of *peine forte et dure*, which was that he be remanded to the prison whence he came, and put into a low, dark chamber, and there be laid on his back on the floor naked; that there be placed upon his body as great a weight of iron as he could bear, and more; that he have no sustenance save, on the first day, three morsels of the worst bread, and on the second day three draughts of such stagnant water that should be nearest the prison door; and, in this situation, such should be his daily diet *till he died*, or (as anciently the judgment ran) till he answered. (*Brit. C. C. 4, 22; Fleta, lib. 1, c. 34, § 33.*)

This proceeding was abolished by statute. (*2 Geo. III., c. 20.*)

No. 130.

Aum. Either I must, or have mine honour soil'd
With the attainder of his slanderous lips.
There is my gage, the manual seal of death,
That marks thee out for hell: I say, thou liest,
And will maintain, what thou hast said, is false.

* * * * * * *

Boling. These differences shall all rest under gage,
Till Norfolk be repeal'd: repeal'd he shall be,
And, though mine enemy, restored again
To all his land and signories; when he's return'd
Against Aumerle we will enforce his trial.

* * * * * * *

Lords appellants,
Your differences shall all rest under gage,
Till we assign you to your days of trial.

Richard II., Act 4, Scene 1.

Attainder. (See No. 44.)

Maintain. (See No. 118.)

Repealed. (See Nos. 3, 205.)

Assign. The technical term for designating a day of trial.

Appellants. (See Nos. 116, 120.)

No. 131.

Bound to himself? what doth he with a bond
That he is bound to? Wife, thou art a fool.

Richard II., Act 5, Scene 2.

Bond. (See Nos. 40, 51, 52, 56, 98, 99, 306.)

No. 131*a*.

O, villain, thou stolest a cup of sack eighteen years ago, and wert taken with the manner.

1 *Henry IV.*, *Act* 2, *Scene* 4.

Manner. From the French *manier*, or *mainer*, *i. e.*, *manu tractare*.

To be taken with the manner is where a thief, having stolen anything, is taken with the same about him, as it were in his hands. (*Tomlin's Law Dict.*)

A woman had committed burglary and was taken with the "mainour" and brought before the justices with the "mainour." John de C. came and sued against the woman.

SPIGURNEL took the Inquest whether he sued from the beginning, so that the woman was attached at his suit: and it was found that he had continually sued. It was adjudged that he should recover the chattels; but if he had not sued from the commencement, notwithstanding his now suing, the king would have had the chattels. (*Year Book, 30 and 31 Edw. I. Horwood's Ed. 1863, p. 512.*)

(See No. 44*a*.)

No. 132.

Mort. And our indentures tripartite are drawn:
Which being sealed interchangably
(A business that this night may execute,)

* * * * * * *

Hots. Methinks my moiety, north from Burton here,
In quantity equals not one of yours.

1 *Henry IV.*, *Act* 3, *Scene* 1.

Indenture. A writing containing some contract, agreement, or conveyance between two or more persons, being indented at the top, answerable to another part which hath the same contents. (*Co. Litt. 229.*)

(See Nos. 108, 233, 236, 276.)

Tripartite. Consisting of three parts; as a deed between A of the first part, B of the second part, and C of the third part. (*Bouv. Law Dict.*)

Moiety. (See Nos. 56, 259, 298.)

No. 133.

Enfeoff'd himself to popularity.

1 Henry IV., Act 3, Scene 2

Feoffment. A gift or grant of lands to another in fee, to him and his heirs, forever, by the delivery of seisin and possession of the thing given or granted.

No. 134.

And what say you to this? Percy, Northumberland,
The archbishop's grace of York, Douglas, Mortimer,
Capitulate against us, and are up.

Henry IV., Act 3, Scene 2.

Capitulate. To draw up anything in heads or articles. (*Johnson.*)

No. 135.

And, when he heard him swear, and vow to God,
He came but to be duke of Lancaster,
To sue his livery, and beg his peace;
With tears of innocency, and terms of zeal,

My father, in kind heart and pity mov'd,
Swore him assistance, and perform'd it too.
Now, when the lords and barons of the realm
Perceiv'd Northumberland did lean to him,
The more and less came in with cap and knee,
Met him in boroughs, cities, villages,
Attended him on bridges, stood in lanes,
Laid gifts before him, proffer'd him their oaths,
Gave him their heirs, as pages follow'd him,
Even at the heels, in golden multitudes.
He presently, as greatness knows itself,
Steps me a little higher than his vow
Made to my father, while his blood was poor,
Upon the naked shore at Ravenspurg;
And now, forsooth, takes on him to reform
Some certain edicts, and some strait decrees,
That lie too heavy on the commonwealth:
Cries out upon abuses, seems to weep
Over his country's wrongs; and, by this face,
This seeming brow of justice, did he win
The hearts of all that he did angle for.
Proceeded further; cut me off the heads
Of all the favourites, that the absent king
In deputation left behind him here,
When he was personal in the Irish war.

1 *Henry IV.*, *Act* 4. *Scene* 3.

Sue his livery. (See Nos. 124, 127.)

Edicts. (See Nos. 25, 170, 232.)

No. 136.

Page. Sir, here comes the nobleman that committed the prince for striking him about Bardolph.

* * * * * * *

Ch. Just. I sent for you, when there were matters against you for your life, to come speak with me.

Fal. As I was then advised by my learned counsel in the laws of this land-service, I did not come.

2 *Henry IV.*, *Act* 1, *Scene* 2.

Committed. (See Nos. 77, 141, 146, 166.)

Matters. (See Nos. 56, 87, 158.)

Land-service. Service was the duty which the tenant owed to the lord by reason of his estate. There were many divisions of it in the ancient law, as into personal and real, free and base, continual or annual, casual and accidental, intrinsic and extrinsic, etc. (*Bracton, lib. 2.*)

Magna Charta prescribed that no freeman should sell so much of his lands but that of the residue the lord may have his services.

No. 137.

Host. Master Fang, have you entered the action?

Fang. It is entered.

* * * * * * *

Fang. Sir John, I arrest you at the suit of Mistress Quickly.

* * * * * * *

Fang. A rescue! A rescue!

2 *Henry IV.*, *Act* 2, *Scene* 1.

Entered an Action. A technical phrase for commenced a suit.

Arrest. (See Nos. 11, 17, 86, 87, 137, 138, 277*a*, 295, 300.)

Rescue. The term *rescous* is likewise applied to the forcible delivery of a defendant when arrested from the officer who is carrying him to prison. (*3 Bl. Comm. marg. p. 146.*)

No. 138.

Host. O my most worshipful lord, an't please your grace, I am a poor widow of Eastcheap, and he is arrested at my suit.

2 *Henry IV.*, *Act* 2, *Scene* 1.

Arrested. (See Nos. 11, 17, 86, 87, 137, 277*a*, 295, 300.)

No. 139.

I will devise matter enough out of this Shallow to keep Prince Harry in continual laughter the wearing out of six fashions, which is four terms, or two actions, and a' shall laugh without intervallums.

2 *Henry IV.*, *Act* 5, *Scene* 1.

Terms. Those spaces of time wherein the courts of justice are open for all that complain of wrongs or injuries, and seek their rights by course of law or action. (*Tomlin's Law Dict.*)

(See No. 59.)

There were formerly four terms in every year,—Hilary, Easter, Trinity and Michaelmas. The issuable terms were Hilary and Trinity terms only, and were so called because in them the issues were joined and records made up of causes to be tried at the Lent and summer assizes which immediately follow. (*2 Lil. Abr. 568.*)

Falstaff wishes to assert that six fashions wear out in a year. His meaning is absolutely unintelligible, except by interpretation of his legal expressions. He states correctly the number of terms in a year; it appears that two terms are required for the trial of one action, and that there shall be no vacation in the prince's laughter.

Intervallums. The vacations between terms.

No. 140.

Those precepts cannot be served.

2 Henry IV., Act 5, Scene 1.

Precepts. A command in writing by a justice of the peace, or other officer, for bringing a person or records before him. (*Tomlin's Law Dict.*)

Served. The action of an officer in executing legal process.

No. 141.

King. You all look strangely on me: and you most;
[*To the* Chief Justice.
You are, I think, assur'd I love you not.
Ch. Just. I am assur'd, if I be measur'd rightly,
Your majesty hath no just cause to hate me.
King. No!
How might a prince of my great hopes forget
So great indignities you laid upon me?
What! rate, rebuke, and roughly send to prison,

The immediate heir of England! Was this easy?
May this be wash'd in Lethe, and forgotten?
Ch. Just. I then did use the person of your father;
The image of his power lay then in me;
And in the adm n.stration of his law,
Whiles I was busy for the commonwealth,
Your highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me in my very seat of judgment;
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you. If the deed were ill,
Be you contented, wearing now the garland,
To have a son set your decrees at nought;
To pluck down justice from your awful bench,
To trip the course of law, and blunt the sword
That guards the peace and safety of your person:
Nay, more, to spurn at your most royal image,
And mock your workings in a second body.
Question your royal thoughts, make the case yours;
Be now the father and propose a son:
Hear your own dignity so much profan'd,
See your most dreadful laws so loosely slighted,
Behold yourself so by a son disdain'd,
And then imagine me taking your part,
And, in your power, soft silencing your son:
After this cold considerance, sentence me;
And, as you are a king, speak in your state,
What I have done that misbecame my place,
My person, or my liege's sovereignty.
King. You are right, justice, and you weigh this well;
Therefore still bear the balance and the sword:
And I do wish your honours may increase,
Till you do live to see a son of mine

Offend you, and obey you, as I did.
So shall I live to speak my father's words,
"Happy am I, that have a man so bold,
That dares do justice on my proper son;
And not less happy, having such a son,
That would deliver up his greatness so,
Into the hands of justice." You did commit me:
For which, I do commit into your hand
The unstained sword that you have us'd to bear;
With this remembrance,—that you use the same
With the like bold, just, and impartial spirit,
As you have done 'gainst me.

2 *Henry IV.*, *Act* 5, *Scene* 2.

In this scene the law of contempt of court is stated by the chief justice, and recognized by the king, who when prince had struck the chief justice in open court, and was committed therefor *instanter* to prison. This mode of proceeding has been exercised from the earliest times. If the contempt be committed in the presence of the court the offender may be instantly apprehended, and imprisoned at the discretion of the judges without any further proof or examination. (*4 Bl. Comm. marg. p. 286.*) The writer had occasion to use this scene in his argument before the senate of Minnesota in defense of Judge Page, against whom articles of impeachment had been presented. The action of the judge, in which he punished in a very summary

manner an officer of the court for contempt, was made the basis of one of the articles. The proceeding was so summary that it was felt necessary by his counsel to labor greatly in defending him on that particular article. Accordingly, Shakespeare was pressed into service, as follows:

"Nearly all of these articles of impeachment are so trivial as to seem, at first view, scarcely to warrant the serious discussion they have received. But as we have proceeded in our duties we have become pursuaded that the danger in the charges is not what they allege, but lies in the principle upon which they are based; that the danger is not to this respondent but to the public itself—for the spirit which inspires them all is the spirit of revolt against constituted authority. It has appeared in that most dangerous form of an attack upon the judicial department of the state, upon its integrity, upon its independence. There is, after all, a wise conservatism in the people, and while they make and unmake with a breath the executive and the legislature, they instinctively refrain from subjecting the judiciary to the attacks of prejudice or disaffection. They do not require a judge to be pop-

ular. They require him to be honest and as firm as the system of law which he administers. They recognize the fact that there must exist in all forms of government an ultimate principle of absolutism and permanency, an impregnable barrier against the fitful mutations of the hour, an inexorable expounder of those laws of self-preservation which precede the formation of states, which preserve property, which secure liberty, which bear with unintermittent force upon the concerns of society with all the power of gravitation. In our system the judiciary is this principle. It is this cohesive principle of our system which is this day attacked, in the person of a judge whose integrity has not been questioned even by his enemies. Our entire policy is thus assailed at its strongest point. If you destroy that which is most permanent, the efficacy and independence of the rest of the structure will fall in ruin without further attack, merely as the logical consequence of such a process. Is it not well for us to pause? Rude usurpers, aggressive kings have paused at this decisive point. Shall we be less wise than they?

It is the prerogative of Shakespeare that what-

ever he stoops to touch becomes authoritative in quotation. He is the magistrate of both imagination and reason. There is scarcely a topic in the universe of human thought which that marvelous mind has not compassed in its cometary sweep. He has walked in the abyss of human nature and seen the thousand fearful wrecks, the unvalued jewels, and all the lovely and the dreadful secrets which lie scattered in the bottom of that illimitable sea. The maxims of policy, the rules of war, the subtleties of love, the patient forecast of hate, the pangs of remorse, the ready wages which jealousy always pays to the miserable being it employs—all things over which the mind or the nature of man has jurisdiction, receive from him their definition and expression, excepting those awful topics of the hereafter, which, of all the children of men, he, the greatest, has been too reverent to touch. He knew of the circulation of the blood. In instance after instance he has not only used the terms of the law with the strictest precision, but has stated its abstrusest principles with entire correctness. So wonderfully true is this assertion of his despotic empire, that conjecture, in its baffled extremity, has

declared that the hidden hemisphere of this world of thought, must be Francis Bacon, who, in his youth 'took all knowledge for his province,' as if it were his heritage. Shakespeare has created an immaterial universe which will, like him, survive the bands of Orion, and Arcturus and his sons. He peculiarly knew the limitations of power and authority, and enforced them by many constitutional illustrations. And in that respect he has presented no finer exposition than that one where he magnifies the sacredness of judicial authority in the scene between Henry V., lately become king, and the chief justice, who had formerly committed him for contempt. The old magistrate stood trembling before the young king, whose life had given no warrant of wisdom or integrity; for he had in his reckless days been the boon companion of Falstaff and his disreputable associates.

Referring to his humiliation by the judge, the king asked,

> May this be washed in Lethe and forgotten?

The judge interposed this memorable defense:

> I then did use the person of your father;
> The image of his power lay then in me!
> And, in the administration of his law,

Whiles I was busy for the commonwealth,
Your highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me in my very seat of judgment,
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you.

It prevailed, for the king replied:

You are right, justice, and you weigh this well;
Therefore still bear the balance and the sword;
And I do wish your honors may increase,
Till I do live to see a son of mine
Offend you, and obey you, as I did.
So shall I live to speak my father's words—
'Happy am I, that have a man so bold,
That dares do justice on my proper son:
And not less happy, having such a son,
That would deliver up his greatness so
Into the hands of justice.' You did commit me,
For which I do commit into your hands
The unstained sword that you have used to bear,
With this remembrance: That you use the same
With the like bold, just and impartial spirit
As you have done 'gainst me.

Of all the illustrations which Shakespeare has given to authority, in its highest or lowest estate, I know of none finer than this. Not Richard, sitting upon the ground and telling sad stories of the death of kings when all his fleeting glory seemed but a pompous shadow; not Prospero, the ruler of

two realms, who by virtue of his sway over his immaterial kingdom looked upon the great globe itself as a phantasma merely, which would vanish with all its cloud-capped towers, and gorgeous palaces, and solemn temples; not Lear, invoking from the elements themselves the abdicated regalities of his sovereignty, seem to me so imposing as this youth, once so wayward, respecting the majesty of the law in the person of its faithful servant. You can bow before this mob. You can lead an attack which will be repeated upon every department of our government by all the blatant and riotous law-breakers of time to come, who may rise up in rebellion against statutes enacted for their condemnation, against magistrates who condemn them. Or you can make enduring the endangered functions of the state. You can quell forever that arrogant spirit of insubordination, before which no judge is sacred, no constitutional provisions are obstacles. Say to this respondent—

> Therefore still bear the balance and the sword;
> * * * * * *
> The unstained sword which you have used to bear
> With this remembrance: That you use the same
> With the like bold, just and impartial spirit
> As you have done.

—and this proceeding will live memorable in our history as one of its preservative events."

(*Trial of Judge Page, vol. 8, p. 248.*)

Committed. (See Nos. 77, 136, 146, 166.)

No. 142.

Cant. My lord, I'll tell you, that self bill is urg'd,
Which, in the eleventh year o' the last king's reign
Was like, and had indeed against us pass'd,
But that the scambling and unquiet time
Did push it out of further question.
Ely. But how, my lord, shall we resist it now?
Cant. It must be thought on. If it pass against us,
We lose the better half of our possession:
For all the temporal lands, which men devout
By testament have given to the church,
Would they strip from us.

Henry V., Act 1, Scene 1.

Bill. An instrument presented by a member or committee of a legislative body for its approbation, so that it may become a law or be rejected. After it has gone through both houses and received the constitutional sanction of the chief magistrate, it becomes a law. (*Bouv. Law Dict.*)

The words "bill," "urged," "passed," are used here with the easy familiarity of one who knows the terms applicable to the progress and consequences of a bill.

(See No. 5.)

Temporal Lands. All things which an archbishop or a bishop have by livery from the king, as manors, lands, tithes, etc. (*1 Rol. p. 881; 1 Bl. Comm. marg. p. 282.*)

The bill in question was proposed by the commons in the reign of Henry IV., who had required them to grant supplies. They proposed that he should seize all the temporalties of the church and employ them as a perpetual fund to serve the exigencies of the state. The archbishop of Canterbury urged that the clergy, although they went not in person to the war, sent their vassals and tenants, while they themselves were employed night and day in offering up prayers for the happiness and prosperity of the state. The Speaker replied that these prayers were a very slender supply. (*See 3 Hume, p. 63.*)

No. 143.

My learned lord, we pray you to proceed,
And justly and religiously unfold
Why the law Salique, that they have in France,
Or should, or should not, bar us in our claim:
And, God forbid, my dear and faithful lord,
That you should fashion, wrest, or bow your reading.

Henry V., Act 1, Scene 2.

Bar. (See Nos. 114, 144.)

Reading. This is the one law word to express the exposition of a statute. Francis Bacon performed such a task upon the statute of uses, and it is entitled "the learned reading of Mr. Francis Bacon, one of her majesty's counsel at law, upon the statute of uses, being his double reading to the honorable society of Gray's Inn, 42 Eliz."

Wrest. To put a forced construction upon an authority, statute, or precedent.

(See No. 56.)

No. 144.

Then hear me, gracious sovereign, and you peers,
That owe your lives, your faith, and services,
To this imperial throne; there is no bar
To make against your highness' claim to France,
But this, which they produce from Pharamond,
"*In terram Salicam mulieres ne succedant*,
No woman shall succeed in Salique land:"
Which Salique land the French unjustly gloze,
To be the realm of France, and Pharamond
The founder of this law and female bar.
Yet their own authors faithfully affirm,
That the land Salique lies in Germany,
Between the floods of Sala and of Elbe:
Where Charles the Great, having subdued the Saxons,
There left behind and settled certain French;
Who, holding in disdain the German women,
For some dishonest manners of their life,
Establish'd there this law; to wit, no female
Should be inheritrix in Salique land;
Which Salique, as I said, 'twixt Elbe and Sala,
Is at this day in Germany call'd Meisen.
Thus doth it well appear, the Salique law

Was not devised for the realm of France:
Nor did the French possess the Salique land
Until four hundred one and twenty years
After defunction of king Pharamond,
Idly suppos'd the founder of this law;
Who died within the year of our redemption
Four hundred twenty-six: and Charles the Great
Subdued the Saxons, and did seat the French
Beyond the river Sala, in the year
Eight hundred five. Besides, their writers say,
King Pepin, which deposed Childeric,
Did, as heir general, being descended
Of Blithild, which was daughter to King Clothair,
Make claim and title to the crown of France.
Hugh Capet also, that usurp'd the crown
Of Charles the duke of Lorain, sole heir male
Of the true line and stock of Charles the Great,
To fine his title with some show of truth
(Though, in pure truth, it was corrupt and naugh',)
Convey'd himself as heir to the lady Lingare,
Daughter to Charlemain, who was the son
To Lewis the emperor, and Lewis the son
Of Charles the Great. Also king Lewis the tenth,
Who was sole heir to the usurper Capet,
Could not keep quiet in his conscience,
Wearing the crown of France, till satisfied
That fair queen Isabel, his grandmother,
Was lineal of the lady Ermengare,
Daughter to Charles the foresaid duke of Lorain:
By the which marriage, the line of Charles the Great
Was re-united to the crown of France.
So that, as clear as is the summer's sun,
King Pepin's title, and Hugh Capet's claim,
King Lewis his satisfaction, all appear
To hold in right and title of the female:

So do the kings of France unto this day;
Howbeit they would hold up this Salique law,
To bar your highness claiming from the female,
And rather choose to hide them in a net,
Than amply to imbar their crooked titles
Usurp'd from you and your progenitors.

Henry V., Act 1. Scene 2.

Law Salique. A law by which males only were allowed to inherit. This rule has ever excluded females from the throne of France. It was decreed by Pharamond, and was part of a code of laws of the Salians, a people of Germany.

"There was a French gentleman speaking with an English of the law Salique, that women were excluded from inheriting the crown of France. The English said, 'Yes; but that were meant of the women themselves, not of such males as claimed by women.' The French gentleman said, 'Where do you find that gloss?' The English answered, 'I'll tell you, sir; look on the back side of the record of the law Salique, and there you shall find it indorsed;' implying there was no such thing as the law Salique, but that it is a mere fiction." (*Bacon's Apophthegms, No. 184.*)

The argument of the archbishop that this law was not designed for France, is, in its order, reason and arrangement, thoroughly forensic and compact.

Bar. (See Nos. 114, 143.)

No. 144*a*.

She hath herself not only well defended,
But taken and impounded, as a stray,
The king of Scots.

Henry V., Act 1. *Scene* 2.

Beasts of a stranger could be taken by way of distraint by the owner of grounds into which they were found straying. The duty of the taker was to drive them to some pound and there impound them. (*3 Bl. Comm. marg. pp. 7, 12.*)

Stray. (See No. 158.)

No. 145.

The sad-ey'd justice, with his surly hum,
Delivering o'er to executors pale
The lazy yawning drone.

Henry V., Act 1, *Scene* 2.

No. 146.

Enlarge the man committed yesterday.

Henry V., Act 3, *Scene* 2.

Enlarge. To release from confinement. (*Johnson.*)

Committed. (See Nos. 77, 136, 141, 166.)

No. 147.

You know, how apt our love was, to accord
To furnish him with all appertinents
Belonging to his honour; and this man
Hath, for a few light crowns, lightly conspir'd
And sworn unto the practices of France,
To kill us here in Hampton.

Henry V., Act 2, *Scene* 2.

No. 148.

K. Hen. Their faults are open,
Arrest them to the answer of the law;
And God acquit them of their practices!

Exe. I arrest thee of high treason, by the name of Richard, earl of Cambridge.

I arrest thee of high treason, by the name of Henry lord Scroop of Masham.

I arrest thee of high treason, by the name of Thomas Grey, knight of Northumberland.

* * * * * * *

K. Hen. God quit you in his mercy! Hear your sentence.
You have conspired against our royal person,
Join'd with an enemy proclaim'd, and from his coffers
Receiv'd the golden earnest of our death.

Henry V., Act 2, Scene 2.

The use of the words "arrest," "acquit," and "earnest," is most accurate. The king states the offense of high treason with perfect precision.

Earnest. (See No. 90.)

No. 149.

K. Hen. So, if a son, that is by his father sent about merchandise, do sinfully miscarry upon the sea, the imputation of his wickedness, by your rule, should be imposed upon his father that sent him: or if a servant, under his master's command, transporting a sum of money, be assailed by robbers, and die in many irreconciled iniquities, you may call the business of the master the author of the servant's damnation: But this is not so: the king is not bound to answer the particular endings of his soldiers, the father of his son, nor the master of his servant; for they purpose not their death, when they purpose their services. Besides, there is no king, be

his cause never so spotless, if it come to the arbitrement of swords, can try it out with all unspotted soldiers. Some, peradventure, have on them the guilt of premeditated and contrived murder; some, of beguiling virgins with the broken seals of perjury; some, making the wars their bulwark, that have before gored the gentle bosom of peace with pillage and robbery. Now, if these men have defeated the law, and outrun native punishment, though they can outstrip men, they have no wings to fly from God: war is his beadle; war is his vengeance; so that here men are punished, for before-breach of the king's laws, in now the king's quarrel; where they feared the death, they have borne life away; and where they would be safe, they perish: then if they die unprovided, no more is the king guilty of their damnation, than he was before guilty of those impieties for which they are now visited. Every subject's duty is the king's; but every subject's soul is his own. Therefore, should every soldier in the wars do as every sick man in his bed, wash every mote out of his conscience: and dying so, death is to him advantage; or not dying, the time was blessedly lost, wherein such preparation was gained: and, in him that escapes, it were not sin to think, that making God so free an offer, He let him outlive that day to see His greatness, and to teach others how they should prepare.

Henry V., Act 4, Scene 1.

The tone of this exposition is thoroughly legal. Here again occurs the unaffected use of such forensic phrases as "miscarry upon the sea;" "transporting a sum of money;" "a cause come to the arbitrement of swords;" and to "try it out;" "the broken seals of perjury;" "before-breach of the king's laws."

Cause. (See Nos. 13, 60, 184, 200, 277*a*.)

Guilty. (See Nos. 174, 275, 271.)

Perjury. (See No. 38.)

No. 150.

And so, espoused to death, with blood he sealed
A testament of noble-ending love.

Henry V., Act 4, Scene 6.

Sealed. (See Nos. 259, 262.)

Testament. (See Nos. 127, 195, 207, 293.)

No. 151.

I do, thou most usurping proditor,
And not protector of the king, or realm.

1 Henry VI., Act 1, Scene 3.

Proditor. The technical word for traitor, used in indictments when they were written in Latin,—*proditorie*, traitorously.

No. 152.

May. Nought rests for me in this tumultuous strife,
But to make open proclamation:
Come, officer; as loud as e'er thou canst,
Cry.

Off. All manner of men, assembled here in arms this day, against God's peace and the king's, we charge and command you, in his highness' name, to repair to your several dwelling-places; and not to wear, handle, or use, any sword, weapon, or dagger, henceforward, upon pain of death.

Henry VI., Act 1, Scene 3.

The following is the old form of proclamation:

"Our sovereign lord, the king, chargeth and commandeth all persons here assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, on pain of death.

God save the king."

No. 153.

Som. Was not thy father, Richard, earl of Cambridge,
For treason executed in our late king's days?
And, by his treason, stand'st not thou attainted,
Corrupted and exempt from ancient gentry?
His trespass yet lives guilty in thy blood,
And, till thou be restor'd, thou art a yeoman.
Plan. My father was attached, not attainted,
Condemn'd to die for treason, but no traitor.

1 *Henry VI., Act* 2, *Scene* 4.

Attainted. (See Nos. 44, 130.)

Attach. (See Nos. 254, 257, 280.)

Exempt. Cut off. (*Johnson.*)

The corruption of blood in descendants of an attainted ancestor is here charged upon Plantagenet, whose answer is a refutation of the imputation upon clear legal grounds. Attainder was a consequence of sentence of death by judgment of a court, and not before. "After conviction only a man is liable to none of these disabilities, for there is still in contemplation of law a possibility of his inno-

cence. Something may be offered in arrest of judgment; the indictment may be erroneous, which will render his guilt uncertain, and thereupon the present conviction may be quashed. He may obtain a pardon or be allowed the benefit of clergy. But, when judgment is once pronounced, both law and fact conspire to prove him completely guilty. Upon judgment of death, therefore, and not before, the attainder of a criminal commences." (*4 Bl. Comm. marg. pp. 380, 381.*) Plantagenet asserts that his father had merely been attached, but not attainted; that is, that the prosecution had not resulted in any judgment. Here is also displayed knowledge of another minute legal particular. If the attainted person were noble or gentle before, he and all his children and posterity were by the attainder made base and ignoble. (*Co. Litt. 391b.*) Consequently, Plantagenet, if his father had been attainted, was thereby cut off from the "gentry" and became a "yeoman," who is a person next in order to a gentleman. (*Tomlin's Law Dict.*) For an account of the trial of the earl of Cambridge by a court of eighteen barons commissioned to try him, and of its irregularities, see *3 Hume, p. 76.*

No. 154.

I had in charge, at my depart for France,
As procurator to your excellence.

2 *Henry VI., Act* 1, *Scene* 1.

Procurator. One who hath a charge committed to him by any person, in which general signification it hath been applied to a vicar or lieutenant who acts instead of another, and we read of *procurator regni*. (*Tomlin's Law Dict.*)

No. 155.

Suff. Here are the articles of contracted peace,
Between our sovereign and the French king, Charles,
For eighteen months concluded by consent.

Glo. [*Reads*] Imprimis, *It is agreed between the French king, Charles, and William de la Pole, marquess of Suffolk, ambassador for Henry king of England, that the said Henry shall espouse the lady Margaret, daughter unto Reignier king of Naples, Sicilia, and Jerusalem, and crown her queen of England, ere the thirtieth of May next ensuing.* Item, *That the duchy of Anjou and the county of Maine, shall be released and delivered to the king her father*——

K. Hen. Uncle, how now?

Glo. Pardon me, gracious lord;
Some sudden qualm hath struck me at the heart,
And dimm'd mine eyes, that I can read no further.

K. Hen. Uncle of Winchester, I pray, read on.

Win. Item, *It is further agreed between them, that the duchies of Anjou and Maine shall be released and delivered over to the king her father, and she sent over of the king of England's own proper cost and charges, without having dowry.*

2 *Henry VI., Act* 1, *Scene* 2.

Gloster speaks of a "contracted peace," "concluded" by "articles." The instrument is not in the

form of treaties, but it is in the law form of a private agreement. It seems to be rather marriage articles, by which the cessions made to the king of Naples are to be in lieu of his daughter's dowry. The duchies are to be "released and delivered" over, and the lady is to be sent over "at the proper costs and charges" of her father.

No. 156.

Ah, gracious lord, these days are dangerous;
Virtue is chok'd with foul ambition,
And charity chas'd hence by rancour's hand;
Foul subornation is predominant,
And equity exil'd your highness' land.

2 Henry VI., Act 3, Scene 1.

Subornation. (See Nos. 88, 95, 286, 291, 304.)

Equity. (See No. 239.)

No. 157.

Proceed no straiter 'gainst our uncle Gloster,
Than from true evidence, of good esteem,
He be approv'd in practice culpable.

2 Henry VI., Act 3, Scene 2.

Practice. This term is sometimes employed in an unfavorable sense to signify fraud or bad practice. (*Tomlin's Law Dict.*)

Evidence. (See Nos. 170, 285.)

No. 158.

Cade. — the three-hooped pot shall have ten hoops; and I will make it felony, to drink small beer: all the realm shall be in common, and in Cheapside shall my palfry go to grass.

Dick. The first thing we do, let's kill all the lawyers.

Cade. Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment, being scribbled o'er, should undo a man? Some say the bee stings: but I say, 'tis the bee's wax, for I did but seal once to a thing, and I was never mine own man since. How now? who's there?

Enter some bringing in the Clerk of Chatham.

Smith. The clerk of Chatham: he can write and read, and cast accompt.

Cade. O monstrous!

Smith. We took him setting of boys' copies.

Cade. Here's a villain!

Smith. H' as a book in his pocket, with red letters in't.

Cade. Nay then he is a conjuror.

Dick. Nay, he can make obligations, and write court-hand.

2 *Henry VI.*, *Act* 4, *Scene* 2.

* * * * * * * *

Cade. So, sirs: Now go some and pull down the Savoy; others to the inns of court; down with them all.

Dick. I have a suit unto your lordship.

Cade. Be it a lordship, thou shalt have it for that word.

Dick. Only, that the laws of England may come out of your mouth.

John. Mass, 'twill be sore law then; for he was thrust in the mouth with a spear, and 'tis not whole yet. [*Aside.*

Smith. Nay, John, it will be stinking law; for his breath stinks with eating toasted cheese. [*Aside.*

Cade. I have thought upon it, it shall be so. Away, burn all the records of the realm; my mouth shall be the parliament of England.

John. Then we are like to have biting statutes, unless his teeth be pulled out. [*Aside.*

Cade. And henceforward all things shall be in common.

Enter a Messenger.

Mess. My lord, a prize, a prize! here's the lord Say, which sold the towns in France; he that made us pay one and twenty fifteens, and one shilling to the pound, the last subsidy.

Enter George Bevis, *with the Lord* Say.

Cade. Well, he shall be beheaded for it ten times.—Ah, thou say, thou serge, nay, thou buckram lord; now art thou within point-blank of our jurisdiction regal. What canst thou answer to my majesty, for giving up of Normandy unto monsieur Basimecu, the dauphin of France? Be it known unto thee by these presence, even the presence of lord Mortimer, that I am the besom that must sweep the court clean of such filth as thou art. Thou hast most traitorously corrupted the youth of the realm, in erecting a grammar-school; and whereas, before, our fore-fathers had no other books but the score and the tally, thou hast caused printing to be used; and, contrary to the king, his crown, and dignity, thou hast built a paper-mill. It will be proved to thy face, that thou hast men about thee, that usually talk of a noun, and a verb, and such abominable words, as no Christian ear can endure to hear. Thou hast appointed justices of peace, to call poor men before them about matters that they were not able to answer. Moreover, thou hast put them in prison; and because they could not read, thou hast hanged them; when, indeed, only for that cause they have been most worthy to live. Thou dost ride on a foot-cloth, dost thou not?

* * * * * * *

— there shall not a maid be married, but she shall pay to me her maidenhead ere they have it: Men shall hold of me *in capite;* and we charge and command, that their wives be as free as heart can wish, or tongue can tell.

2 *Henry VI., Act* 4, *Scene* 7.

Common. (See Nos. 158, 208.)

Cade's announcement of his intention to reform the laws by killing the lawyers, and to make it felony to drink small beer; his discourse on the destructive effect of parchment, wax, and seals; the charge against the clerk of Chatham that he can make obligations and write court-hand; the order to pull down the inns of court; the petition of Dick, who has a suit to Cade, that the laws of England may come out of Cade's mouth; the command to burn all the records of the realm, and the declaration that his mouth shall be the parliament of England; the fear of biting statutes; and the decree that all things shall thenceforth be in common,—are expressions such as a lawyer would naturally put into the mouth of a brutal and ignorant insurgent. So, when Lord Say is brought before him, Cade's language is judicial. He asserts his "jurisdiction regal." Say has "traitorously" erected a grammar school, and the use of this word is not only correct, but indispensable; because "the treason must be laid to have been committed traitorously, this word being indispensably necessary." (*Tomlin's Law*

Dict. "*Treason.*") What Say did, is charged to have been "contrary to the king, his crown, and dignity." His acts will be proved to his face. Cade has a fling at the benefit of clergy. This was a device by which exemption from punishment of all felonies beneath treason was secured in the temporal courts. The clergy originally had exemption from all secular jurisdiction. In the course of time it was established by law that any one who could read should therefore be accounted a clerk, (*clericus*,) and allowed the benefit of clergy, though he never was in holy orders. All laymen who were allowed this privilege, were, on claiming it by a plea before conviction or after conviction, on motion in arrest of judgment, simply burned with a hot iron on the left thumb and were discharged from the secular court and turned over to the ecclesiastical courts, which, by a fictitious purgation, which consisted in the accused reading the opening lines of the Vulgate version of the fiftieth Psalm, restored the accused to credit, to his liberty, his lands, and capacity to purchase. (*4 Bl. Comm. c. 28.*)

Chapter 50 of the Vulgate is the same with chap-

ter 51, King James' translation: *Miserere mei Deus, secundum magnam misericordiam tuam.*

Et secundum multitudinem miserationum tuarum, dele iniquitatem meam.

In 1859, Bilanski, who had been found guilty of murdering her husband, claimed the benefit of clergy; but her right was denied by the supreme court of Minnesota. Justice Flandrau, in delivering the opinion, gave a learned exposition of the law on this subject and its history. (*State* v. *Bilanski*, 3 Minn. 246.)

Cade's atrocious announcement as to the maidens is an assertion of a barbarous right once claimed by lords over the brides of tenants. It is said by some authors to have been the origin of the English custom of descent which obtained in certain localities, called borough English, by which the youngest son, and not the eldest, succeeded to the burgage tenement on the death of his father, as being more probably legitimate than his elder brother. Blackstone says that he cannot learn that this custom prevailed in England, although it certainly did in Scotland, under the name of *mercheta*. Cade undoubtedly had this atrocious custom in his mind,

and in regard to this *jus stupri* he puns infamously by the use of the words *in capite*,—tenants *in capite* being those who hold directly under the king.—*Caput*, head, (maidenhead.)

Court-hand. The old Gothic or Saxon hand or manner of writing used in records and judicial proceedings. (*Imperial Dict.*)

Common. (See No. 47, 307.)

Matters. (See No. 87, 136.)

Obligations. (See No. 4.)

Parchment. (See No. 276.)

Seal. (See Nos. 37, 52, 56, 108, 126, 204, 207, 256, 274, 288.)

No. 159.

Here's the lord of the soil come to seize me for a stray, for entering his fee-simple without leave.

2 *Henry VI., Act* 4, *Scene* 10.

Cade, when he sees Iden approaching, in whose garden he has taken refuge, uses technical language, calling himself a stray, liable to seizure for entering the premises.

Stray. (See No. 144*a*.)

Fee-simple. (See Nos. 6, 68, 247, 312.)

No. 160.

York. He rose against him, being his sovereign,
And made him to resign his crown perforce.
War. Suppose, my lords, he did it unconstrain'd,
Think you, 'twere prejudicial to his crown?
Exe. No; for he could not so resign his crown,
But that the next heir should succeed and reign.

3 *Henry VI., Act* 1, *Scene* 1.

This expresses the constitutional principle in regard to the descent of the crown. The king, in contemplation of law, never dies, nor is there by resignation or abdication a moment's interregnum, for the heir in any such event instantly becomes king *de jure*. The king cannot grant the succession. (*1 Bl. Comm. marg. p. 191 et seq.*)

(See Nos. 161, 162.)

No. 161.

War. Why should you sigh, my lord?
K. Hen. Not for myself, lord Warwick, but my son,
Whom I unnaturally shall disinherit.
But, be it as it may: I here entail
The crown to thee, and to thine heirs forever;
Conditionally, that here thou take an oath
To cease this civil war, and, whilst I live,
To honour me as thy king and sovereign;
And neither by treason, nor hostility,
To seek to put me down, and reign thyself.

3 *Henry VI., Act* 1, *Scene* 1.

This is an attempt to grant the crown, subject to a condition subsequent. The use of the word

"entail" here seems to be inaccurate, for though the use of the word "heirs" is necessary to create a fee, so the word "body" or some other words of procreation are necessary to make it a fee-tail. A gift to a man and his heirs, male or female, is an estate in fee-simple and not in fee-tail. (*2 Bl. Comm. marg. p. 114.*)

King Lear, in settling the succession to his kingdom, was more accurate, using the word "issue."

Disinherit. (See No. 162.)

Entail. (See Nos. 63, 237.)

Heirs forever. (See No. 208.)

No. 162.

Prince. Father, you cannot disinherit me:
If you be king, why should I not succeed?

* * * * * *

Q. Mar. Until that act of parliament be repealed,
Whereby my son is disinherited.

3 *Henry VI., Act* 1, *Scene* 1.

Here again the constitutional principle is asserted. But it is met by another constitutional principle, that the right of succession to the crown may from time to time be changed or limited by act of parliament. (*1 Bl. Comm. p. 191.*)

Disinherit. (See No. 161.)

Repealed. (See No. 198.)

Act. (See Nos. 56, 198.)

No. 163.

Rich. An oath is of no moment, being not took
Before a true and lawful magistrate,
That hath authority over him that swears:
Henry had none, but did usurp the place;
Then, seeing 'twas he that made you to depose,
Your oath, my lord, is vain and frivolous.

3 *Henry VI.*, *Act* 1, *Scene* 2.

Oaths. If administered by persons in a private capacity, or not duly authorized, they are *coram non judice*, and void. (*3 Inst. 165; 4 Inst. 278.*)

Depose. (See No. 120.)

No. 164.

But for the rest, you tell a pedigree
Of threescore and two years; a silly time
To make prescription for a kingdom's worth.

3 *Henry VI.*, *Act* 3, *Scene* 3.

Prescription. A title acquired by use and time, and allowed by law; as when a man claims anything he, his ancestors, or they whose estate he hath, have had, or used it all the time whereof no memory is to the contrary. (*Co. Litt. 114.*)

This time of memory commenced from the beginning of the reign of Richard I., by the statute

of Westminster, (*3 Edw. 1.*) By the statute of 32 Henry VIII., the period was fixed at sixty years.

No. 165.

Our sister shall be Edward's:
And now forthwith shall articles be drawn
Touching the jointure that your king must make
Which with her dowry shall be counterpoised.

3 Henry VI., Act 3, Scene 3.

Articles. (See Nos. 176, 259, 261.)

Dowry. (See No. 66.)

Jointure. A settlement of lands and tenements made to a woman in consideration of marriage.

Under the rule that a right or title to a freehold cannot be barred, at law, by acceptance of a collateral satisfaction, (*Co. Litt. 26,*) jointures at common law were no bar of dower, until the statute of 27 Henry VIII., *c.* 10. (*4 Rep. 3.*)

No. 166.

Clar. His majesty,
Tendering my person's safety, hath appointed
This conduct to convey me to the Tower.
Glo. Upon what cause?
Clar. Because my name is George.
Glo. Alack, my lord, that fault is none of yours;
He should, for that, commit your godfathers.

Richard III., Act 1, Scene 1.

Commit. (See Nos. 77, 136, 141, 146, 166.)

No. 167.

Clar. Heard you not, what an humble suppliant
Lord Hasting was to her for his delivery?
Glo. Humbly complaining to her deity
Got my lord chamberlain his liberty.

Richard III., Act 1, Scene 1

No. 168.

To both their death shalt thou be accessary.

Richard III., Act 1, Scene 2.

Accessary. (See Nos. 291, 297.)

No. 169.

Keep the oath that we administer.

Richard III., Act 1. Scene 3.

Oath. (See No. 267.)

No. 170.

Clar. Are you called forth from out a world of men,
To slay the innocent? What is my offense?
Where is the evidence that doth accuse me?
What lawful quest have given their verdict up
Unto the frowning judge? or who pronounc'd
The bitter sentence of poor Clarence' death?
Before I be convict by course of law,
To threaten me with death is most unlawful.
I charge you, as you hope to have redemption,
By Christ's dear blood shed for our grievous sins,
That you depart, and lay no hands on me;
The deed you undertake is damnable.
1 *Murd.* What we will do, we do upon command.
2 *Murd.* And he, that hath commanded, is our king.
Clar. Erroneous vassal! the great King of kings
Hath in the table of His law commanded,
That thou shalt do no murder; Wilt thou then

Spurn at His edict, and fulfil a man's?
Take heed; for He holds vengeance in his hand,
To hurl upon their heads that break His law.

Richard III., Act 1, Scene 4.

The demands of Clarence are those of one intimate with the phraseology of criminal trials, their order of procedure, and the rights of accused persons. More than this, there appears here in that majestic citation of the commandment of the great King of kings that full sense which Shakespeare had of the sacredness of law and of judicial functions.

Quest. Inquest; inquisition or inquiry on the oath of an impaneled jury. (*Tomlin's Law Dict.*) (See No. 298.)

Edict. (See Nos. 25, 135, 232.)

Evidence. (See Nos. 157, 285.)

No. 170*a*.

Tell them how Edward put to death a citizen,
Only for saying, he would make his son
Heir to the crown; meaning, indeed, his house,
Which, by the sign thereof, was termed so.

Richard III., Act 3, Scene 5.

This passage refers to an event often cited in the books in discussing the history of the law of treason, in which these words were construed as sufficient to constitute the crime. The sufferer was a citizen of London. (*4 Bl. Comm. marg. p. 79.*)

No. 171.

Richard yet lives, hell's black intelligencer,
Only reserv'd their factor, to buy souls,
And send them thither.

Richard III., Act 4, Scene 4.

Factor. (See No. 84.)

No. 172.

Duch. Why should calamity be full of words?
Q. Eliz. Windy attorneys to their client woes,
Airy succeeders of intestate joys,
Poor breathing orators of miseries!

Richard III., Act 4, Scene 4.

This conceit could never have occurred to a writer whose knowledge of law was only of that uncertain kind which every layman has or thinks he has, yet who would be very cautious how he used it for such purposes of illustration or personation.

Attorney. (See Nos. 127, 178, 287.)

Client. (See No. 287.)

No. 173.

Flatter my sorrows with report of it;
Tell me, what state, what dignity, what honour,
Canst thou demise to any child of mine?

Richard III., Act 4, Scene 4.

Demise. Is a conveyance either in fee, for life, or for years. According to Chief Justice Gibson, the word strictly denotes a posthumous grant, and no more. (*5 Whart. 278.*)

No. 174.

Perjury, perjury, in the high'st degree;
Murder, stern murder in the dir'st degree;
All several sins, all us'd in each degree,
Throng to the bar, crying all,—Guilty! guilty!

Richard III., Act 5, Scene 3.

In this thrilling soliloquy, Richard, after the awful procession of accusing spirits has vanished, arraigns himself as a criminal at the bar, with all his crimes confronting him with their testimony of his guilt.

Bar. A place in a court having criminal jurisdiction to which prisoners are called to plead to the indictment. (*Bouv. Law Dict.*)

(See No. 178.)

Guilty. (See Nos. 149, 275, 291.)

No. 175.

For France hath flawed the league, and hath attached our merchants' goods at Bordeaux.

Henry VIII., Act 1, Scene 1.

Attached. (See Nos. 153, 177, 254, 257, 280.)

No. 176.

This cunning cardinal,
The articles o' the combination drew
As himself pleased, and they were ratified.

Henry VIII., Act 1, Scene 2.

Articles. (See Nos. 165, 259, 261.)

Ratified. (See No. 259.)

No. 177.

He is attached:
Call him to present trial.

Henry VIII., Act 1, Scene 2.

Attached. (See Nos. 153, 175, 254, 257, 280.)

"To call" is a purely technical term, used to signify the calling a defendant or plaintiff for purposes of trial. (See No. 56.)

No. 178.

First Gent. I'll tell you in a little. The great duke
Came to the bar; where, to his accusations,
He pleaded still, not guilty, and alleg'd
Many sharp reasons to defeat the law.
The king's attorney, on the contrary,
Urg'd on the examinations, proofs, confessions
Of divers witnesses; which the duke desir'd
To have brought, *viva voce*, to his face:
At which appear'd against him, his surveyor;
Sir Gilbert Peck his chancellor, and John Carr,
Confessor to him, with that devil-monk,
Hopkins, that made this mischief.

* * * * * * *

Buck. The law I bear no malice for my death.
It has done upon the premises but justice.

Henry VIII., Act 2, Scene 1.

Bar. (See No. 174.)

After the plea of "not guilty," the king's attorney offered in evidence what were evidently the *ex parte* examinations and confessions of witnesses who had not been confronted with the accused. This was the

practice of that age, and even of later times, and is the blot on the trial of Mary queen of Scots, who was convicted on such testimony as this, against her demand to be confronted with the witnesses. This demand made by the duke in the passage quoted was evidently sustained upon the axiomatic principle of legal evidence which requires the testimony of the witnesses against the defendant in a criminal prosecution to be delivered in his presence.

Attorney. (See Nos. 127, 172, 287.)

Bar. (See No. 174.)

Premises. (See No. 1.)

No. 179.

Wol. Whilst our commission from Rome is read,
Let silence be commanded.
K. Hen. What's the need?
It hath already publicly been read,
And on all sides the authority allow'd:
You may then spare that time.

Henry VIII., Act 2. Scene 4.

The installation of a judge into his office was always by reading his commission at the opening of his court. The command of silence was part of the proclamation by which courts were opened.

No. 180.

I do believe,
Induc'd by potent circumstances, that
You are mine enemy, and make my challenge.
You shall not be my judge: for it is you
Have blown this coal betwixt my lord and me,
Which God's dew quench! Therefore, I say again,
I utterly abhor, yea, from my soul,
Refuse you for my judge, whom, yet once more,
I hold my most malicious foe, and think not
At all a friend to truth.

Henry VIII., Act 2, Scene 4.

No. 181.

I do refuse you for my judge, and here
Before you all appeal unto the pope,
To bring my whole cause 'fore his holiness,
And to be judg'd by him.

Henry VIII., Act 2, Scene 4

Challenge. An exception taken to the competency of a juror to try a particular case. One cause of challenge was always the bias or partiality of a juror against the party.

In this particular case the queen was in error, for a judge shall not generally be excepted against or challenged. (*1 Inst. 294*; *2 Inst. 422.*) Indeed, she does not purpose to be tried in that court at all, but appeals unto the pope. This appeal, though illegal, was at that time a matter of disputed right, and had often been connived at. The contro-

versy was finally put to rest by the statutes of 24, 25, Henry VIII., which made appellants liable to the pains of *præmunire*. (*4 Bl. Comm. marg. p. 115.*) The queen is thereupon called (see Nos. 56, 177) to come into court. So far there is a remarkable fidelity to the ceremonial forms of trial. Her answer to the proclamation requiring her to come into court, shows knowledge by Shakespeare of a somewhat recondite matter of legal practice and of its consequences. An appearance is the legal word for certain acts of a party, such as entering an appearance or pleading, or making a motion for incidental action in the cause by the court. The effect of an appearance is to cure all defects in the proceedings up to that time which are not jurisdictional. Katherine having protested against the competency of Wolsey to be her judge, and claiming that her appeal to the pope should operate to supersede the jurisdiction of the special court commissioned to try the case of divorce, could not thereafter appear in the case, for it would probably have been construed as a waiver of her objection to the cardinal and of her appeal to Rome. She accord-

ingly refused to make technical appearance and actually withdrew personally from the presence of court.

Mary Stuart protested against being tried by the laws of England, and demanded trial by the civil law. She said to the commissioners: "Ye make laws at your pleasure, whereunto I have no reason to submit myself, considering that the English in times past refused to submit themselves to the law Salique of France." The commissioners insisted that she ought to appear before them for the purpose of hearing, and that by both the civil and canon law she ought to make full appearance. She consented to appear, but, as she said, "by way of interlocution and not judicially." (*1 St. Tr. p. 1171.*)

Appeal. (See No. 182.)

No. 182.

Crier. Katherine, queen of England come into the court!

* * * * * * *

Q. Kath. No, nor evermore
Upon this business my appearance make
In any of their courts.

* * * * * * *

Cam. The queen being absent, 'tis a needful fitness
That we adjourn this court till further day:

Meanwhile must be an earnest motion
Made to the queen to call back her appeal.

Henry VIII., Act 2, Scene 4.

The queen having absented herself from the court, being before it neither personally nor technically, it became necessary to adjourn the court until it could obtain jurisdiction over her person. Therefore, using the strictest legal expression for this act, the court is adjourned till further day. In the disputed state of the law as to appeals to Rome in such a canonical matter as a divorce suit then was, involving as it did not only the civil but the sacramental tie of marriage, the effect of her appeal was so doubtful that it was thought best to make a motion to her to call it back, and thus reinstate beyond question the jurisdiction of the special court.

Appearance. (See Nos. 79, 187, 298.)

Appeal. (See No. 181.)

No. 183.

Cam. Put your main cause into the king's protection;
He's loving and most gracious; 'twill be much
Both for your honour better, and your cause;
For, if the trial of the law o'ertake ye,
You'll part away disgrac'd.
Wol He tells you rightly.
Q. Kath. Ye tell me what ye wish for both, my ruin:

Is this your Christian counsel? out upon ye!
Heaven is above all yet; there sits a Judge,
That no king can corrupt.

Henry VIII., Act 3, Scene 1.

No. 184.

Put my sick cause into his hands that hates me.

Henry VIII., Act 3, Scene 1.

Cause. (See Nos. 13, 60, 149, 200, 277*a*.)

No. 185.

Stay,
Where's your commission, lords? words cannot carry
Authority so weighty.

* * * * * * *

That seal,
You ask with such a violence, the king
Mine, and your master, with his own hand gave me:
Bade me enjoy it, with the place and honours,
During my life, and, to confirm his goodness,
Tied it by letters-patents: now, who'll take it?

Henry VIII., Act 3, Scene 2.

Wolsey demands the commission of his visitors. The great seal is not to be delivered up on a merely verbal message. He received it from the hand of the king, with words of bestowal for life. This life appointment had been confirmed by letters-patent. There is but one technical word capable of fully expressing the legal proposition of the cardinal, and that word is "confirmed." Had he used instead the word "granted," the force of the assertion that

he had previously received the seal manually, with words of gift, would have been lost, for a grant takes effect only from its delivery. But a confirmation is a conveyance of an estate—"a right *in esse*," —to another that hath possession thereof, or some estate therein, whereby a voidable estate is made sure and unavoidable, or a particular estate is increased or a possession made perfect. (*1 Inst. 295.*) Wolsey puts his case strongly. He stands upon his possession under the gift by parol, confirmed as it was by instruments which, in their efficacy, relate back to the time when his possession under the gift began.

It will be observed that Wolsey claims to be invested with the office of lord chancellor for life. This was an extraordinary tenure, for by the act of taking back the seal by the king the term of office has always been ended. The office is created by mere delivery of the seal into the custody of the person appointed, whereby he becomes, without writ or patent, the highest officer in the kingdom. So that Wolsey's assertion of his appointment by delivery of the seal was a sufficient legal statement of his right to the chancellorship. But the additional

claim that he was chancellor for life needed something more to make it valid, and he therefore insisted on the confirmation by letters-patent of his appointment for life. While it is laid down by Lord Coke (*2 Inst. 87*) that a chancellor may be made "at will by patent, but *it is said* not for life," the proposition was doubtful, as appears from the guarded language employed by Coke. The principle was long a disputed one. Lord Clarendon had a patent to be lord chancellor for life, though he was afterwards dismissed from office and the patent declared void. (*1 Sid. 338.*) It is remarkable that Hume or Sharon Turner or Froude do not, in their accounts of the trial of the queen or the deposition of Wolsey, treat the legal features of these events with any particularity, nor put into the mouth of queen or cardinal the legal objections that each made to the proceedings against them. For these the reader must look to the dramatist who has given, with perfect juridical accuracy, an account of the operation of those legal formalities by which the queen suffered a separation worse than the "long divorce of steel" of her successor wives, and by which, in the language of Turner,

"Wolsey fell like a loosened avalanche from its mountain summit of power and ambition, never to be replaced or dreaded any more."

Commission. (See Nos. 186, 193.)

The great seal. (See No. 186.)

Letters-patent are writings of the king, sealed with the great seal of England, whereby a person is enabled to enjoy or do that which otherwise he could not; and so called because they are open, with the seal affixed, and ready to be shown for confirmation of the authority there given. (*Tomlin's Law Dict.*)

(See Nos. 124, 137.)

No. 186.

Sur. Have at you.
First, that, without the king's assent, or knowledge,
You wrought to be a legate; by which power
You maimed the jurisdiction of all bishops.
Suff. Then that without the knowledge
Either of king or council, when you went
Ambassador to the emperor, you made bold
To carry into Flanders the great seal.
Sur. Item, you sent a large commission
To Gregory de Cassado, to conclude,
Without the king's will, or the state's allowance,
A league between his highness and Ferrara.
Suff. That, out of mere ambition, you have caus'd
Your holy hat to be stamp'd on the king's coin.
Suff. Lord cardinal, the king's further pleasure is,
Because all those things, you have done of late

By your power legatine within this kingdom,
Fall into the compass of a *præmunire*,
That therefore such a writ be sued against you;
To forfeit all your goods, lands, tenements,
Chattels, and whatsoever, and to be
Out of the king's protection.

Henry VIII., Act 3, Scene 2.

The offense of *præmunire* was one immediately affecting the king and his government, and was so called from the corrupt Latin of the writ preparatory to the prosecution thereof: "*Præmunire facias* A. B. Cause A. B. to be forewarned that he appear before us to answer the contempt wherewith he stands charged." It had its origin in the exorbitant power claimed and exercised in England by the pope. Among these pretensions was that of the right to effect an entire exemption of the clergy from any control by the civil magistrates; the separation of the ecclesiastical courts from the temporal courts; the appointment of the judges of the spiritual courts by merely spiritual authority, without any interposition of the crown; and the right of exclusive jurisdiction over all ecclesiastical causes. The statute of 16 Richard II., *c.* 5, provided that whoever procures at Rome or elsewhere any translations, processes, excommunications, bulls, instruments, or

other things which touch the king, against him, his crown and realm, and all persons aiding and assisting therein, shall be put out of the king's protection, their lands and goods shall be forfeited to the king's uses, and they shall be attached by their bodies to answer to the king and his council; or process *præmunire facias* shall be made against them as in other cases of provisors. The original definition of the offense was the introduction of a foreign power into the kingdom, thus creating an "*imperium in imperio*," by paying that obedience to papal process which constitutionally belonged to the king alone. There were several other statutes prior to Shakespeare's time creating and defining this offense. The punishment is stated by Sir Edward Coke to be, that from the conviction the defendants shall be out of the king's protection, and his lands, tenements, goods, and chattels be forfeited to the king, and that his body shall remain in prison at the king's pleasure.

The march of Cardinal Wolsey towards power reached its last stage in his appointment by the pope as legate *a latere* to England. The effect of this ecclesiastical commission was to confer upon

him the full power of the papacy within that realm. Holding this office and that of lord chancellor, as he did at the same time, his power, both spiritual and temporal, was undoubtedly greater than has ever been possessed by any English subject.

The manner in which he used it, and the downfall which resulted, is one of the most memorable lessons which history reads to ambition. Surrey and Suffolk, in summing up to the cardinal his offenses, do so with legal correctness of definition. When Wolsey, without the king's consent, wrought to be a legate and thereby to stand in the place of the pope in England, he manifestly maimed the jurisdiction of the bishops, which, in that realm was always restricted by the civil policy of the kingdom, and was intimately connected with the exercise of the royal prerogative. Affixing the great seal to a blank commission to be filled with names of commissioners out of the kingdom, authorizing them to treat with France, was considered such a high contempt of the power and authority of the crown that it was made an article of impeachment against Lord Somers during the reign of William III., although the act was done on the order of the

king. So, also, to commission an ambassador without the king's will to conclude a league between him and a foreign state, was in derogation of one of the highest attributes of royal authority. The coining of money has in all civilized states been one of the most essential functions of sovereignty, and in England it was always part of the king's prerogative. Sir Matthew Hale observes (*1 Hist. P. C. 191*) that the impression or stamping of coin is the unquestionable prerogative of the crown, and this was usually done by special grant from the king, or by prescription, which supposes one, and those who enjoyed this privilege by grant or prescription had not the authority of devising the impression, but had usually the stamp sent them from the exchequer. Hence, Shakespeare was correct in making Suffolk say to the cardinal that because of these things, done by his power legatine, he had fallen into the compass of a *præmunire*; and it will be observed how accurate was Shakespeare's understanding, not only of its consequences, but of the legal formalities necessary to enforce them. The writ of *præmunire facias* is to be sued against the cardinal, who is to forfeit all his lands, tene-

ments, and chattels, and be out of the king's protection.

Commission. (See Nos. 185, 193.)

The great seal. (See No. 185.)

No. 187.

That I can tell you, too. The archbishop
Of Canterbury, accompanied with other
Learned and reverend fathers of his order,
Held a late court at Dunstable, six miles off
From Ampthill, where the princess lay; to which
She oft was cited by them, but appear'd not.
And, to be short, for not appearance, and
The king's late scruple, by the main assent
Of all these learned men she was divorc'd,
And the late marriage made of none effect.

Henry VIII., Act 4, Scene 1.

"To cite" is to summon a person to appear before a court, and it is the one exact phrase to be used respecting a spiritual or canonical court. Default was commonly taken for non-appearance in court at a day assigned. The ground upon which Henry based his right to a divorce from Queen Katherine was her previous marriage with his brother Arthur and its consummation. From his point of view this marriage was therefore void from the beginning; and it will be observed how accurately Shakespeare expresses this, by not only saying

that she was divorced, but that the late marriage was made of none effect. And that such was the procedure appears from the reports of the trial, though some evidence was taken. The decree reads, "furthermore, the most illustrious and most powerful prince, King Henry VIII., in the forementioned cause, by his proper proctor having appeared, but the said most serene lady Katherine, in contempt absenting herself, * * * do pronounce sentence and declare for the nullity and invalidity of the said marriage, decreeing that the said pretended marriage always was and still is null and invalid; that it was contracted and consummated contrary to the will and law of God; that it is of no force or obligation, but that it always wanted and still wants the strength and sanction of law." (*1 St. Tr. 259, 260.*)

Citation. A summons to appear, applied particularly to process in the spiritual court. The ecclesiastical courts proceed according to the course of the civil and canon laws,—by *citation, libel, etc.*— (*Tomlin's Law Dict.*)

No. 188.

I do beseech your lordships,
That, in this case of justice, my accusers,
Be what they will, may stand forth face to face,
And freely urge against me.

* * * * * *

Ah, my good lord of Winchester, I thank you,
You are always my good friend; if your will pass,
I shall both find your lordship judge and juror.

Henry VIII., Act 5, Scene 3.

No. 189.

I bade the vile owl go learn me the tenor of the proclamation.

Troilus and Cressida, Act 2, Scene 1.

Tenor. An exact copy. (*Bouv. Law Dict.*)
(See Nos. 37, 56, 223, 232.)

No. 190.

There is a law in each well-order'd nation,
To curb those raging appetites that are
Most disobedient and refractory.
If Helen then be wife to Sparta's king,
As it is known she is, these moral laws
Of nature, and of nations, speak aloud
To have her back return'd; thus to persist
In doing wrong, extenuates not wrong,
But makes it much more heavy.

Troilus and Cressida, Act 2. Scene 2.

No. 191.

And, as aforesaid, Patroclus is a fool.

Troilus and Cressida, Act 2, Scene 3.

No. 192.

A kiss in fee-farm.

* * * * * * *

In witness whereof the parties interchangeably—

* * * * * * *

No perfection in reversion shall have a praise in present.
* * * * * * *
Go to, a bargain made: seal it; seal it;
I'll be witness.

Troilus and Cressida, Act 3, Scene 2.

Fee-farm. Is where the lord, upon the creation of the tenancy, reserves to himself or his heirs either the rent for which it was before let to farm, or was reasonably worth, or at least a fourth part of the value, without homage, fealty, or other services beyond what are especially comprised in the feoffment. (*2 Inst. 44.*)

Pandarus, dissatisfied with the lagging dalliance, evidently means that the kiss he has seen does not imply that either lover intends to render any other homage or service. He is throughout quite like an attorney in his remarks. He advises deeds instead of words, and this lets in the recital by him of what as to a deed is technically called the conclusion. When he thinks the lovers have concluded their agreement, he clamors to have it sealed, offering to be the witness. So Troilus has in his mind the distinction between estates in reversion and those *in presenti*, when Cressida contrasts the vauntings of lovers with their future performances.

Reversion. (See No. 122.)

No. 193.

Omission to do what is necessary,
Seals a commission to a blank of danger.

Troilus and Cressida, Act 3, Scene 3.

Seal. (See Nos. 37, 52, 108, 126, 158, 204, 207, 256, 274, 288.)

Commission. (See Nos. 185, 186.)

Blank. (See No. 124.)

No. 194.

On whose bright crest Fame with her loud'st oyez.

Troilus and Cressida, Act 4, Scene 5.

Oyez. (See No. 7.)

No. 195.

Performance is a kind of will and testament which argues a great sickness in his judgment that makes it.

Timon of Athens, Act 4, Scene 3.

Will. (See Nos. 128, 207, 208, 293.)

Testament. (See Nos. 128, 150, 207, 293.)

No. 196.

All have not offended;
For those that were, it is not square, to take,
On those that are, revenges: crimes, like lands,
Are not inherited.

Timon of Athens, Act 5, Scene 4.

No. 197.

Let us kill him, and we'll have corn at our own price. Is't a verdict?

Coriolanus, Act 1, *Scene* 1.

Verdict. (See Nos. 121, 298.)

No. 198.

—make edicts for usury, to support usurers; repeal daily any wholesome act established against the rich, and provide more piercing statutes daily, to chain up and restrain the poor. If the wars eat us not up, they will, and there's all the love they bear us.

Coriolanus, Act 1, *Scene* 1.

Statutes. (See No. 42.)

Act. (See Nos. 56, 162.)

Repeal. (See No. 162.)

No. 199.

You, Titus Lartius,
Must to Corioli back: send us to Rome
The best, with whom we may articulate,
For their own good, and ours.

Coriolanus, Act 1, *Scene* 9.

Articulate. To specify in articles. (*Worcester.*)

No. 200.

Men. You know neither me, yourselves, nor any thing. You are ambitious for poor knaves' caps and legs; you wear out a good wholesome forenoon, in hearing a cause between an orange-wife and a fosset-seller; and then rejourn the controversy of three-pence to a second day of audience. When

you are hearing a matter between party and party, if you chance to be pinched with the colic, you make faces like mummers; set up the bloody flag against all patience; and, in roaring for a chamber-pot, dismiss the controversy bleeding, the more entangled by your hearing; all the peace you make in their cause, is calling both the parties knaves: you are a pair of strange ones.

Coriolanus, Act 2, Scene 1

Rejourn. To adjourn. (*Worcester.*)

Cause. (See Nos. 13, 60, 149, 184, 277*a*.)

No. 201.

When he had no power,
But was a petty servant to the state,
He was your enemy; ever spake against
Your liberties, and the charters that you bear
I' the body of the weal.

Coriolanus, Act 2, Scene 3.

Charters. Charters of the king are those whereby the king passeth any grant to any person or body politic, such as charters of exemption or privilege.

The word is here used in the legal sense which it possessed at that time, and it peculiarly meant those instruments executed by a sovereign to the people or their representatives by which their liberties were confirmed and guaranteed, as by the great charter of liberties granted in the ninth year of King Henry III., and also by *Magna*

Charta granted by King John. It was in this form, also, that political powers and personal rights were granted and guaranteed by the English sovereigns for the establishment of colonies in America.

No. 202.

Let them assemble;
And, on a safer judgment, all revoke
Your ignorant election.

Coriolanus, Act 2, Scene 3.

Revoke. The calling back of a thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void; and where any deed or thing is revoked it is as if it had never been. (*5 Rep. 90.*)

No. 203.

Proceed by process,
Lest parties, as he is belov'd, break out,
And sack great Rome with Romans.

* * * * * *

Give me leave,
I'll go to him, and undertake to bring him
Where he shall answer, by a lawful form,
In peace to his utmost peril.

Coriolanus, Act 3, Scene 1.

Process. Is so called because it proceeds or goes out upon former matter, either original or judicial, and hath two significations: *First*, it is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end. *Second*, that is termed the process by which a man is called into

any temporal court because it is the beginning or principal part thereof, by which the rest is directed; or, taken strictly, it is the original part of the proceeding. (*8 Rep. 157.*)

(See Nos. 211, 273.)

No. 204.

Then shame to the Romans: and we here deliver,
Subscrib'd by the consuls and patricians,
Together with the seal o' the senate, what
We have compounded on.

Coriolanus, Act 5, Scene 6.

Seal. (See Nos. 37, 52, 108, 126, 158, 207, 256, 274, 288.)

Compounded. (See Nos. 64, 67.)

No. 205.

Met. Is there no voice more worthy than my own,
To sound more sweetly in great Cæsar's ear,
For the repealing of my banish'd brother?
Bru. I kiss thy hand, but not in flattery, Cæsar;
Desiring thee, that Publius Cimber may
Have an immediate freedom of repeal.
Cæs. What, Brutus!
Cas. Pardon, Cæsar; Cæsar, pardon:
As low as to thy foot doth Cassius fall,
To beg enfranchisement for Publius Cimber.

Julius Cæsar, Act 3, Scene 1.

Repeal. (See Nos. 3, 130.)

Enfranchisement. Is when a person is incorporated into any society or body politic, and it signifies the act of incorporating.

Publius Cimber, having been banished and cut off from his connection of citizenship with the body corporate of Rome, became, in the language of the civil law, *capite minutus*. Brutus and Cassius, in petitioning Cæsar for his repeal and enfranchisement, ask not merely that he be set at liberty, but that he may be restored to Roman citizenship.

No. 206.

The question of his death is enrolled in the Capitol: his glory not extenuated, wherein he was worthy: nor his offenses enforced, for which he suffered death.

Julius Cæsar, Act 3, Scene 2.

Enrolled. (See No. 43.)

No. 207.

But here's a parchment, with the seal of Cæsar;
I found it in his closet; 'tis his will:
Let but the commons hear this testament,
Which, pardon me, I do not mean to read,
And they would go and kiss dead Cæsar's wounds,
And dip their napkins in his sacred blood;
Yea, beg a hair of him for memory,
And, dying, mention it within their wills,
Bequeathing it, as a rich legacy,
Unto their issue.

Julius Cæsar, Act 3, Scene 2.

Seal. (See Nos. 37, 52, 108, 126, 158, 204, 256, 274, 288.)

Will. (See Nos. 128, 195, 208, 293.)

Testament. (See Nos. 129, 150, 195, 293.)

Bequeath. (See Nos. 57, 293.)

Legacy. A bequest or gift of goods and chattels by will or testament.
(See No. 293.)

Issue. (See Nos. 74, 97, 99, 100, 102, 237.)

It is to be remarked that Antony, in speaking of the real estate left by Cæsar to the Roman people, does not use the appropriate word "devise." Shakespeare nowhere uses the word in connection with a will. It was also unnecessary for Cæsar's will to have contained the expression "to your heirs forever," in order to give the people a perpetual estate in the realty devised.

No. 208.

Here is the will, and under Cæsar's seal.
To every Roman citizen he gives,
To every several man, seventy-five drachmas.
* * * * *
Moreover, he hath left you all his walks,
His private arbours, and new-planted orchards,
On this side Tyber; he hath left them you,
And to your heirs forever; common pleasures,
To walk abroad, and recreate yourselves.

Julius Cæsar, Act 3, Scene 2.

Will. (See Nos. 128, 195, 207, 293.)

Heirs forever. (See No. 161.)

No. 209.

That by proscription, and bills of outlawry,
Octavius, Antony, and Lepidus,
Have put to death a hundred senators.

Julius Cæsar, Act 4, Scene 3.

Proscription. Outlawry. (*Worcester.*)

It was a term of the civil law, and its exercise was one of the severest inflictions of political power in Rome. It was nearly equivalent to the outlawry of the English law, which doubtless was derived from it as both in policy and methods of execution.

Outlawry. To be put out of the protection of the law.

An outlawry in treason or felony amounted to a conviction and attainder of the offense charged in the indictment, as much as if the offender had been found guilty by a verdict. Anciently, an outlawed felon was said to have *caput lupinum*, and might be knocked on the head like a wolf by any one who should meet him. (*Co. Litt. 128b.*)

No. 210.

I'll set a bourn how far to be beloved.

Ant. and Cle., Act 1, Scene 1.

Bourn. A boundary; a limit.

(See No. 271*a*.)

No. 211.

Cleo. If the scarce-bearded Cæsar have not sent
His powerful mandate to you, "Do this, or this;
Take in that kingdom, and enfranchise that;
Perform't, or else we damn thee."
Ant. How, my love!
Cleo. Perchance,—nay, and most like,
You must not stay here longer, your dismission
Is come from Cæsar; therefore, hear it, Antony.—
Where's Fulvia's process? Cæsar's, I would say?

Ant. and Cle., Act 1, Scene 1.

Process. (See Nos. 203, 273.)

No. 212.

A lily-livered action-taking knave.

King Lear, Act 2, Scene 2.

No. 213.

His faults, in him, seem as the spots of heaven.
More fiery by night's blackness; hereditary,
Rather than purchased.

Ant. and Cle., Act 1, Scene 4.

The words "hereditary" and "purchased" are used here in no other than a legal sense. Title to real property could be acquired by descent or by purchase. In law language, by "purchase" is always intended title by some kind of conveyance, either for money or some other consideration or gift, for that is also in law a purchase; but a descent, because it cometh merely by act of law, is not said to be a purchase, and accordingly the makers of

the act of parliament (*1. Hen. V. c. 5*) speak of them that have lands or tenements by purchase or descent of inheritance. (*Co. Litt. secs. 12, 18b.*) And the meaning here is that the faults have been cast upon the person by descent, and have not been otherwise acquired by him.

(See No. 43*a*.)

No. 214.

That sleep and feeding may prorogue his honour,
Even till a Lethe'd dulness.

Ant. and Cle., Act 2, Scene 1.

Prorogue. To prolong or put off to another day. (*Tomlin's Law Dict.*)

There is a distinction between the meaning of prorogation and adjournment, as applied to parliament. The former is the continuance of parliament from one session to the next; the latter is a continuation of that session from day to day.

(See Nos. 246, 252.)

No. 215.

You have broken
The article of your oath, which you shall never
Have tongue to charge me with.

Ant. and Cle., Act 2, Scene 2.

No. 216.

I crave, our composition may be written,
And seal'd between us.

Ant. and Cle., Act 2, Scene 6.

Sealed. (See Nos. 150, 259, 262.)

No. 217.

Post. Will you? I shall but lend my diamond till your return. Let there be covenants drawn between us: my mistress exceeds in goodness the hugeness of your unworthy thinking: I dare you to this match: here's my ring.

Phi. I will have it no lay.

Iach. By the gods it is one: If I bring you no sufficient testimony that I have enjoyed the dearest bodily part of your mistress, my ten thousand ducats are yours; so is your diamond too. If I come off, and leave her in such honour as you have trust in, she your jewel, this your jewel, and my gold are yours: provided, I have your commendation, for my more free entertainment.

Post. I embrace these conditions; let us have articles betwixt us: only, thus far you shall answer. If you make your voyage upon her, and give me directly to understand you have prevailed, I am no further your enemy, she is not worth our debate: if she remain unseduced (you not making it appear otherwise,) for your ill opinion, and the assault you have made to her chastity, you shall answer me with your sword.

Iach. Your hand; a covenant: we will have these things set down by lawful counsel, and straight away for Britain; lest the bargain should catch cold, and starve: I will fetch my gold, and have our two wagers recorded.

Cymbeline, Act 1, Scene 5.

Covenant. The agreement or consent of two or more by writing, sealed and delivered, whereby

either or one of the parties doth promise to the other that something is done already or shall be done afterwards. (*Shep. Touchst. 160.*)

(See Nos. 66, 126.)

No. 218.

Ay; I said so, sir.
If you will make't an action, call witness to't.

Cymbeline, Act 2, Scene 3.

Action. Is the form of a suit given by law for recovery of that which is one's due; for it is a legal demand for a man's right. (*Co. Litt. 285.*)

(See Nos. 139, 289, 299.)

No. 219.

Granted Rome a tribute,
Yearly three thousand pounds, which by thee lately
Is left untender'd.

Cymbeline, Act 3, Scene 1.

Tender. The offering of money or of any other thing in satisfaction.

(See Nos. 2, 56, 289.)

No. 220.

We do say then to Cæsar,
Our ancestor was that Mulmutius, which
Ordain'd our laws; whose use the sword of Cæsar
Hath too much mangled; whose repair, and franchise,
Shall by the power we hold, be our good deed.

Cymbeline, Act 3, Scene 1.

No. 221.

Black as the ink that's on thee! senseless bauble,
Art thou a feodary for this act.

Cymbeline, Act 3, Scene 5.

Feodary. A tenant who holds his land by feudal service. The word also signifies an officer of the court of wards.

No. 222.

A prison for debtor that not dares
To stride a limit.

Cymbeline, Act 3, Scene 3.

Limit. As to prisoners for debt, certain boundaries were designated as prison limits. If the debtor went beyond these, either of his own will or by the permission or negligence of the officer, it constituted an escape.

As to the liability for escape, see No. 89.

No. 223.

This is the tenor of the emperor's writ.

Cymbeline, Act 3, Scene 7.

Tenor. (See Nos. 37, 56, 189, 232.)

Writ. (See No. 242.)

No. 224.

The law
Protects not us; then why should we be tender,
To let an arrogant piece of flesh threat us;
Play judge, and executioner, all himself;
For we do fear the law.

Cymbeline, Act 4, Scene 2.

No. 225.

He by the senate is accited home.

Titus Andronicus, Act 1, Scene 1

No. 226.

Marcus Andronicus, so I do affy
In thy uprightness and integrity.

Titus Andronicus, Act 1, *Scene* 1.

Affy. To put confidence in. (*Johnson.*)
(See No. 69.)

No. 227.

Titus, I am incorporate in Rome,
A Roman now adopted happily.

Titus Andronicus, Act 1, *Scene* 2.

The queen of the Goths asserts here her *status* as a Roman, upon reasons of the civil law, by the use of the words "adopted" and "incorporate."

In no other civilized community has the power of the husband and father over the family, and its absolute identification with him, been so complete as in Rome. His *status* was at once political or social, and religious. He was the high priest of his family. His own ancestors were the objects of the domestic worship; for them the sacred hearth-fire was kept burning, and when the family became extinct by the failure of male issue not only did the family cease to be, but the sacred fire of a religion was forever extinguished upon the hearth, which was also an altar. This was dreaded as a religious catastrophe. Accordingly, the father who was hope-

less of male issue was permitted to adopt a son, who, in the line of descent, became in time the father of that family and the domestic priest. To adopt, it was necessary to secure, by apt forms, the emancipation of the son from his father. When all this was done the adopted son lost all legal relations to his real kin—he became incorporate into a new family, (*in sacra transiit,*) renouncing his old worship. The same consequences of total change of legal relationship followed a woman upon her marriage. She left her kin; she was a lawful apostate from their domestic worship. In the contemplation of the law her husband became her father. "Marriage becomes for her a second birth; she is henceforth the daughter of her husband; *filiæ loco,* say the jurists. His ancestors have become her ancestors. She ceased to worship her progenitors and worshiped his." (*De Coulange, The Ancient City, pp. 59, 68; Maine, Ancient Law, p. 143.*) This religious and civic incorporation followed when the emperor married Tamora. From that instant and by that act the captive empress of the Goths became as completely a Roman matron as was the mother of the Gracchi herself.

No. 228.

Why, how now, lords!
So near the emperor's palace dare you draw,
And maintain such a quarrel openly?

Titus Andronicus, Act 2, Scene 3.

By the ancient law and before the conquest, fighting in the king's palace, or before the king's judges, was punished with death. By the statute of 33 Henry VIII., *c.* 12, malicious striking in the king's palace, wherein his royal person resided, whereby blood was drawn, was punishable by perpetual imprisonment and fine at the king's pleasure, and also with loss of the offender's right hand. (*4 Bl. Comm. marg. p. 124.*)

No. 229.

Tit. I did, my lord: yet let me be their bail:
For by my father's reverend tomb, I vow,
They shall be ready at your highness' will,
To answer their suspicion with their lives.
Sat. Thou shalt not bail them.

Titus Andronicus, Act 2, Scene 4.

Bail. A delivery of bailment of a person to his sureties upon their giving (together with himself) sufficient surety for his appearance, he being supposed to be in their friendly custody instead of going to gaol. (*4 Bl. Comm. marg. p. 297.*)

(See Nos. 35, 300.)

No. 230.

Yet, for I know thou art religious,
And hast a thing within thee, called conscience,
With twenty popish tricks and ceremonies,
Which I have seen thee careful to observe,
Therefore I urge my oath; for that, I know,
An idiot holds his bauble for a god,
And keeps the oath, which by that god he swears;
To that I'll urge him: therefore, thou shalt vow
By that same god, what god soe'er it be,
That thou ador'st and hast in reverence,
To save my boy, to nourish, and bring him up,
Or else I will discover nought to thee.

Titus Andronicus, Act 5, Scene 1.

All persons, of whatever religion or country, were competent witnesses at common law. The test was whether he believed in a God, in the obligation of an oath, and in a future state of rewards and punishments.

A Mahometan was sworn on the Koran; a Parsee, according to the custom of India. (*Leach, Cas. p. 52; 1 Atk. pp. 19, 21.*) The cases in Atkyns were decided by Lord Hardwicke, "the most consummate judge who ever sat in the court of chancery;" and he states that Coke alone, of all the authorities, "has taken upon himself to insert the word 'Christian,' and he alone has grafted this word into an oath."

No. 231.

Like a forlorn and desperate cast-away,
Do shameful execution on herself.

Titus Andronicus, Act 5, Scene 3.

Do execution. (See Nos. 22, 91.)

No. 232.

But I will gloze with him. Young prince of Tyre,
Though by the tenor of our strict edict,
Your exposition misinterpreting,
We might proceed to cancel of your days,
Yet hope, succeeding from so fair a tree
As your fair self, doth tune us otherwise:
Forty days longer we do respite you.

Pericles. Act 1, Scene 1.

Tenor. (See Nos. 37, 56, 189, 223.)

Exposition. (See No. 56.)

Respite. (See No. 28.)

Edict. (See Nos. 25, 135, 170.)

No. 233.

For if a king bid a man be a villain, he is bound by the indenture of his oath to be one.

Pericles, Act 1, Scene 3.

Indenture. (See Nos. 108, 132, 236, 276.)

No. 234.

One sorrow never comes, but brings an heir,
That may succeed as his inheritor.

Pericles, Act 1, Scene 4.

Inheritor. (See Nos. 276, 308.)

Heir. (See No. 244.)

No. 235.

Help, master, help; here's a fish hangs in the net, like a poor man's right in the law, 'twill hardly come out.

Pericles, Act 2, Scene 1.

No. 236.

Do any thing but this thou doest. Empty
Old receptacles, common sewers, of filth;
Serve by indenture to the common hangman;
Any of these ways are better yet than this.

Pericles, Act 4, Scene 6.

Indenture. (See Nos. 132, 233, 276.)

No. 237.

Of all these bounds, even from this line to this,
With shadowy forests and with champains rich'd
With plenteous rivers and wide-skirted meads,
We make thee lady: to thine and Albany's issue
Be this perpetual.

King Lear, Act 1, Scene 1.

By the use of the word "issue" Lear entailed this grant by apt words, while Henry VI., though he used the word "entail," (see No. 161,) failed to create an estate tail by using only the words "and to thine heirs, forever."

Issue. (See Nos. 74, 97, 99, 100, 102, 207.)

No. 238.

I do invest you jointly with my power,
Pre-eminence, and all the large effects
That troop with majesty. Ourself, by monthly course.
With reservation of a hundred knights,
By you to be sustain'd, shall our abode
Make with you by due turns. Only we still retain
The name, and all the additions to a king;
The sway, revenue, execution of the rest,
Beloved sons, be yours: which to confirm,
This coronet part between you.

King Lear, Act 1, *Scene* 1.

Invest. (See No. 96.)

Addition. (See No. 90.)

Confirm. (See No. 185.)

Lear perfects this grant and investiture by delivering his coronet to Albany and Cornwall, and directing them to part it between them. A livery in deed is when the feoffor takes the ring of the door or a turf or twig on the land and delivers the same on the land in the name of seizin of the land. (*Co. Litt. secs. 48a, 59.*)

Seizin is a technical term to denote the completion of that investiture by which the tenant was admitted into the tenure, and without which no freehold could be constituted or pass. (*Per Lord Mansfield, 1 Burr. 107.*)

No. 239.

Lear. It shall be done, I will arraign them straight:
Come, sit thou here, most learned justicer; [*To* Edgar.
Thou, sapient sir, sit here. [*To the* Fool.] Now,
you she foxes!

Edg. Look, where he stands and glares!
Wantest thou eyes at trial, madam?
Come o'er the bourn, Bessy, to me;

Fool. *Her boat hath a leak,*
And she must not speak
Why she dares not come over to thee.

Edg. The foul fiend haunts poor Tom in the voice of a nightingale. *Hopdance* cries in Tom's belly, for two white herrings. Croak not, black angel; I have no food for thee.

Kent. How do you, sir? Stand you not so amaz'd:
Will you lie down and rest upon the cushions?

Lear. I'll see their trial first: bring in the evidence.
Thou robed man of justice, take thy place; [*To* Edgar.
And thou his yoke-fellow of equity, [*To the* Fool.
Bench by his side: you are of the commission,
Sit you too. [*To* Kent.

Edg. Let us deal justly.

Sleepest, or wakest thou, jolly shepherd?
Thy sheep be in the corn;
And for one blast of thy minikin mouth,
Thy sheep shall take no harm.

Pur! the cat is grey.

Lear. Arraign her first; 'tis Goneril. I here take my oath before this honourable assembly, she kicked the poor king her father.

Fool. Come hither, mistress; is your name Goneril?

Lear. She cannot deny it.

Fool. Cry you mercy, I took you for a joint-stool.

Lear. And here's another, whose warp'd looks proclaim
What store her heart is made of—Stop her there!

Arms, arms, sword, fire! Corruption in the place!
False justicer, why has thou let her 'scape.

King Lear, Act 3, Scene 6.

Arraign. (See Nos. 27, 78.)

Justicer. A judge, justice, or, as he was sometimes termed, justiciary.

Cushion. A reference to the woolsack.

This is the seat of the lord chancellor in the House of Lords, and was a large cushion stuffed with wool. It is said to have had its origin from the fact that wool formerly was regarded as a chief source of the wealth of England, and the woolsack, covered with red cloth, was first put into use for the above purpose to commemorate an act passed in the reign of Queen Elizabeth forbidding the exportation of wool. Lear's conception, in his insane caprice, is that the Fool is a justice of a court of common law, and that Edgar is the chancellor, and he invites Kent to sit with them, as one of the commission.

(See No. 91.)

Bench. *Banke* is a Saxon word and signifieth a bench or high seat, or a tribunal, and is properly applied to the justices of the court of common pleas,

because the justices of that court sit there as in a certain place. (*Co. Litt. 96, 71b.*)

(See Nos. 9, 141.)

Commission. The warrant of letters-patent, which all persons exercising jurisdiction, ordinary or extraordinary, have to authorize them to hear or determine any cause or action; as the commission of the judges. (*Tomlin's Law Dict.*)

Equity. (See No. 156.)

No. 240.

Pinion him like a thief, bring him before us.
Though well we may not pass upon his life
Without the form of justice, yet our power
Shall do a courtesy to our wrath.

King Lear, Act 4, Scene 7.

Pass upon. This is the law phrase which signifies the power and act of judicial decision on any question. (See No. 17.)

No. 241.

Lear. See how yon' justice rails upon yon' simple thief. Hark, in thine ear: change places; and, handy dandy, which is the justice, which is the thief? thou hast seen a farmer's dog bark at a beggar?

Glo. Ay, sir.

Lear. And the creature run from the cur? There thou might'st behold the great image of authority: a dog's obeyed in office.

Thou rascal beadle, hold thy bloody hand:
Why dost thou lash that whore? Strip thine own back;
Thou hotly lust'st to use her in that kind
For which thou whipp'st her. The usurer hangs the cozener.

King Lear, Act 4, Scene 6.

No. 242.

Quickly send,—
Be brief in it,—to the castle; for my writ
Is on the life of Lear, and on Cordelia:
Nay, send in time.
Alb. Run, run, O, run—
Edg. To who, my Lord? who has the office? send
Thy token of reprieve.
Edm. Well thought on; take my sword.

King Lear, Act 5, Scene 3.

Writ. In general, the king's precept in writing under seal, issuing out of some court to the sheriff or other person and commanding something to be done touching a suit or action. (*1 Inst. 73.*)

(See No. 223.)

Writ of execution. Is a judicial writ grounded on the judgment of the court from whence it issues. The execution of criminals was formerly by a precept under the hand and seal of the judge. (*2 Hale, P. C. c. 31.*) Afterwards it became the usage for the recorder of London to report the result of the trial to the king in person, and who, having received the royal pleasure that the law take its course, issued his warrants to the sheriff. (*4 St. Tr. 432.*)

Reprieve. (See Nos. 30, 32.)

No. 243.

Sam. Let us take the law of our sides; let them begin.

Gre. I will frown, as I pass by; and let them take it as they list.

Sam. Nay, as they dare. I will bite my thumb at them, which is a disgrace to them, if they bear it.

Abr. Do you bite your thumb at us, sir?

Sam. I do bite my thumb, sir.

Abr. Do you bite your thumb at us, sir?

Sam. Is the law on our side, if I say—ay?

Gre. No.

Sam. No, sir, I do not bite my thumb at you, sir, but I bite my thumb, sir.

Gre. Do you quarrel, sir?

Abr. Quarrel, sir? no, sir.

Sam. If you do, sir, I am for you; I serve as good a man as you.

Romeo and Juliet, Act 1, *Scene* 1.

This is an amusing application of the law of assault and battery. Sampson and Gregory wish to affront Abraham by physical action which will fall short of assault; probably intending, however, to lay the ground-work for a plea of *molliter manus imposuit*, in case Abraham, in his rage, attacks them.

Self-defense. (See No. 275.)

No. 244.

Now old desire doth in his death-bed lie,
And young affection gapes to be his heir.

Romeo and Juliet, Act 1, *Scene* 5.

Heir. (See No. 234.)

No. 245.

And the demesnes that there adjacent lie.

Romeo and Juliet, Act 2. *Scene* 5.

No. 246.

My life were better ended by their hate,
Than death prorogued, wanting of thy love.

Romeo and Juliet, Act 2, Scene 2.

Prorogue. (See Nos. 214, 252.)

No. 247.

Ben. An I were so apt to quarrel as thou art, any man should buy the fee-simple of my life for an hour and a quarter.

Mer. The fee-simple? O simple!

Romeo and Juliet, Act 3, Scene 1.

Benvolio, in offering to sell the fee-simple of his life for an hour and a quarter, falls into contradiction in terms, and therefore Mercutio, ridiculing his ignorance, exclaims, "The fee-simple? O simple!"

Fee-simple. (See Nos. 6, 63, 159, 312.)

No. 248.

But I'll amerce you with so strong a fine,
That you shall all repent the loss of mine.

Romeo and Juliet, Act 3, Scene 1.

Amerce. Signifies the pecuniary punishment of the offender against the king or other lord in his court that he is found to have offended, and to stand at the mercy of the king or lord. The difference between an amercement and a fine is this: Fines are said to be punishments certain, and grow expressly from some statute, but amercements are such as are arbitrarily imposed. (*Tomlin's Law Dict.*)

Fine. (See Nos. 23, 56.)

No. 249.

Unless philosophy can make a Juliet,
Displant a town, reverse a prince's doom,
It helps not, it prevails not.

Romeo and Juliet, Act 3, Scene 3.

Reverse. Is the making void of an erroneous judgment for error. (*Tomlin's Law Dict.*)
(See No. 2.)

Doom. (See Nos. 2, 22.)

No. 250.

How now, wife;
Have you delivered to her our decree?

Romeo and Juliet, Act 3, Scene 5.

No. 251.

That is no slander, sir, which is a truth;
And what I spake, I spake it to my face.

Romeo and Juliet, Act 4, Scene 1.

In a suit for slander, if the defendant proves the words true, no action will lie. (*4 Rep. 13.*) Juliet's defense to the charge of slander is perfect. She avers that the words are true, and that the alleged slander was committed merely by speaking them to the face. It was never slander to say to a man's face any evil concerning him, unless it was done in the presence and hearing of one or more third persons. To charge the most flagrant crimes to another's face privately, though very annoying, and possibly injurious in its effect upon his mind, is no slander,

because there is no publication. His reputation is not assailed before others, and he cannot presumably be injured when the false charge is made only to himself. It is no slander if the party thus falsely accused repeats it to others by way of complaint or otherwise, because the publication is not made by the defamer, who, it is true, uttered the charge, but has not published it. (*Cooley, Torts, 193.*)

No. 252.

I hear thou must, and nothing must prorogue it,
On Thursday next be married to this county.

Romeo and Juliet, Act 4, Scene 1.

Prorogue. (See Nos. 214, 246.)

No. 253.

Such mortal drugs I have, but Mantua's law
Is death, to any he that utters them.

Romeo and Juliet, Act 4, Scene 1.

Utter. To deliver for an unlawful purpose any unlawful article or thing. The more restricted meaning of this word is the disposal or negotiation, with a fraudulent intent, of a forged instrument or a false coin, knowing it to be forged or false.

No. 254.

I do defy thy conjurations,
And do attach thee as a felon here.

Romeo and Juliet, Act 5, Scene 1.

Attach. (See Nos. 86, 257, 280.)

No. 255.

Condemned villain, I do apprehend thee:
Obey, and go with me; for thou must die.

Romeo and Juliet, Act 5, Scene 3.

No. 256.

seal with a righteous kiss
A dateless bargain to engrossing death!

Romeo and Juliet, Act 5, Scene 3.

Engrossing. Is the getting in one's possession, or buying up large quantities of corn or other dead victuals with intent to sell them again. The offense of engrossing is said to extend only to the necessaries of life. (*7 Moore, P. C. 239, 262.*)

The word as here used signifies that death is the great engrosser of all mortal beings.

Seal. (See Nos. 37, 52, 108, 126, 158, 204, 207, 274, 288.)

Bargain. (See No. 288.)

No. 257.

The ground is bloody; search about the church-yard:
Go, some of you, whoe'er you find, attach.

Romeo and Juliet, Act 5, Scene 3.

Attach. (See Nos. 86, 153, 177, 254, 280.)

No. 258.

Before my God, I might not this believe,
Without the sensible and true avouch
Of mine own eyes.

Hamlet, Act 1, Scene 1.

Avouch. (See Nos. 40, 106.)

No. 259.

Did slay this Fortinbras, who, by a seal'd compact,
Well ratified by law and heraldry,
Did forfeit, with his life, all those his lands
Which he stood seiz'd of, to the conqueror:
Against the which, a moiety competent
Was gaged by our king, which had return'd
To the inheritance of Fortinbras,
Had he been vanquisher, as, by the same co-mart,
And carriage of the article design'd,
His fell to Hamlet.

Hamlet, Act 1, *Scene* 1.

This technical statement of the agreement is almost pedantic in its legal phraseology. In every line a legal expression is used. Terms of art are packed into this passage so closely as to form the greater part of its composition.

Article. (See Nos. 165, 176, 261.)

Forfeit. (See Nos. 17, 25, 52, 56, 306.)

Moiety. (See Nos. 56, 132, 298.)

Ratified. (See No. 176.)

Sealed. (See Nos. 150, 216, 262.)

No. 260.

Therefore our sometime sister, now our queen,
The imperial jointress of this warlike state.

Hamlet, Act 1, *Scene* 2.

Jointress. She who had an estate settled on her by the husband, to hold during her life if she survived. (*1 Inst. 46.*)

Jointure. (See No. 165.)

No 261.

and we here despatch
You, good Cornelius, and you, Voltimand,
For bearers of this greeting to old Norway,
Giving to you no further personal power
To business with the king, more than the scope
Of these dilated articles allow.

Hamlet, Act 1, *Scene* 2.

Articles. (See Nos. 165, 176, 259.)

No. 262.

Upon his will I sealed my hard consent.

Hamlet, Act 1, *Scene* 2.

Sealed. (See Nos. 150, 216, 259.)

No. 263.

Or, that the Everlasting had not fixed
His canon 'gainst self-slaughter!

Hamlet, Act 1, *Scene* 2.

Canon. (See No. 111.)

No. 264.

Oph. He hath, my lord, of late, made many tenders
Of his affection to me.
Pol. Affection! pooh! you speak like a green girl,
Unsifted in such perilous circumstance.
Do you believe his tenders, as you call them?
Oph. I do not know, my lord, what I should think.
Pol. Marry, I'll teach you: think yourself a baby,
That you have ta'en these tenders for true pay,
Which are not sterling. Tender yourself more dearly,
Or, not to crack the wind of the poor phrase,
Wronging it thus, you'll tender me a fool.

Hamlet, Act 1, *Scene* 3.

Tender. (See Nos. 2, 56, 289.)

No. 265.

Do not believe his vows, for they are brokers,
Not of that die which their investments show,
But mere implorators of unholy suits,
Breathing like sanctified and pious bawds,
The better to beguile.

Hamlet, Act 1. *Scene* 3.

Brokers. Those who contrive, make, and conclude bargains and contracts between merchants and tradesmen in matters of money and merchandize for which they have a fee or reward.

The distinction between a broker and a factor (see Nos. 84, 171) is that the factor is entrusted with possession, management, control, and disposal of the goods, while a broker, on the contrary, usually has no such possession. It will be observed that

in each case where Shakespeare speaks of a broker or factor, he uses the words with this distinction.

No. 266.

So the whole ear of Denmark,
Is, by a forged process of my death,
Rankly abus'd.

Hamlet, Act 1, Scene 5.

Process. The word "process" generally means the writ of the court, yet it has also the special meaning of an official statement designed to memorialize and authenticate an event, as the *proces-verbal* of the French law.

No. 267.

Propose the oath, my lord.

Hamlet, Act 1, Scene 5.

Oath. (See No. 169.)

No. 268.

Having ever seen in the prenominate crimes,
The youth you breathe of, guilty, be assured.

Hamlet, Act 2, Scene 1.

Prenominate. Is the synonym of 'aforesaid.'

No. 269.

I did repel his letters and denied
His access to me.

Hamlet, Act 2, Scene 1.

No. 270.

sends out arrests
On Fortinbras, which he, in brief, obeys;
* * * * * *
Gives him three thousand crowns in annual fee.

Hamlet, Act ., Scene 2.

No. 271.

May one be pardon'd, and retain the offence?
In the corrupted currents of this world,
Offence's gilded hand may shove by justice,
And oft 'tis seen, the wicked prize itself
Buys out the law: but 'tis not so above:
There is no shuffling; there the action lies
In his true nature, and we ourselves compell'd,
Even to the teeth and forehead of our faults,
To give in evidence.

Hamlet, Act 3, Scene 3.

Here, as in many passages, Shakespeare attests his reverence for justice as judicially administered, and his abhorrence of judicial corruption. The phrase "the action lies" is a legal formula to express that a suit can be maintained in a court. It lies in its true nature. In the court above there is none of that shuffling which quashes the declaration because it does not conform to the writ, or which quashes the writ itself because its framer has adopted a wrong form and has brought an action of the wrong nature; perhaps having sued in trover when his action lay only in trespass or case, or misapprehended the distinction between the action of covenant and that of debt.

No. 271*a*.

The undiscovered country from whose bourn
No traveller returns.

Hamlet, Act 3, Scene 1.

Bourn. (See No. 210.)

No. 272.

Besides, to be demanded of a sponge! What replication should be made by the son of a king?

Hamlet, Act 4, Scene 2.

Replication. An exception or answer made by the plaintiff to the defendant's plea.
(See No. 311.)

No. 273.

thou may'st not coldly set
Our sovereign process, which imports at full,
By letters conjuring to that effect,
The present death of Hamlet.

Hamlet, Act 4, Scene 3.

Process. (See Nos. 203, 211.)

Homage. (See Nos. 1, 124.)

No. 274.

King. Now must your conscience my acquittance seal,

* * * * * * *

Laer. It well appears: but tell me,
Why you proceeded not against these feats.
So crimeful and so capital in nature.

Hamlet, Act 4, Scene 7.

Acquittance. (See Nos. 4, 45.)

Seal. (See Nos. 37, 52, 56, 108, 126, 158, 204, 207, 256, 288.)

No. 275.

1 *Clo.* Is she to be buried in Christian burial, that wilfully seeks her own salvation?

2 *Clo.* I tell thee, she is; therefore make her grave straight: the crowner hath set on her, and finds it Christian burial.

1 *Clo.* How can that be, unless she drowned herself in her own defense?

2 *Clo.* Why, 'tis found so.

1 *Clo.* It must be *se offendendo;* it cannot be else. For here lies the point: If I drown myself wittingly, it argues an act: and an act hath three branches; it is, to act, to do, and to perform: Argal, she drowned herself wittingly.

2 *Clo.* Nay, but hear you, goodman delver.

1 *Clo.* Give me leave. Here lies the water; good: here stands the man; good: if the man go to this water, and drown himself, it is, will he, nill he, he goes; mark you that: but if the water come to him, and drown him, he drowns not himself: Argal, he, that is not guilty of his own death, shortens not his own life.

2 *Clo.* But is this law?

1 *Clo.* Ay marry is't; crowner's-quest law.

2 *Clo.* Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out of Christian burial.

Hamlet, Act 5, Scene 1.

In the argument between the clowns Shakespeare ridicules the proceedings in a case reported by Plowden. (*3 Eliz.*) The question arose in the case of *Hales* v. *Petit*, upon a demurrer in an action of trespass brought by Lady Margaret Hales, widow of Sir James Hales, against Cyriack Petit. It appeared that it was claimed that Sir James

Hales had feloniously and voluntarily drowned himself, and that fact had been found by an inquisition before the coroner. It was maintained that by reason of the felony of suicide and this inquisition, Sir James had forfeited his interest and that of his wife in certain property. A commission had been issued out of the court of exchequer directing commissioners to inquire what kinds of goods and chattels, real and personal, were possessed by Sir James at the time of his death, to take the same into their hands for the king and queen, and the commission found among such property a leasehold interest in the premises in question, to Sir James and Margaret his wife. The defendant Petit claimed that under these circumstances the interest in the term which James and Margaret possessed jointly had been totally forfeited to the king and queen; that the interest of Margaret was ended and extinct; and he pleaded a grant from the king and queen of the same premises to himself. It was to this plea that Lady Margaret demurred.

Sergeants Southcote and Puttrell argued that the plea in bar was not good, and did not disclose sufficient matter to divest the term out of the plaintiff

and put it in the king and queen; that the felony of her husband did not take away her title as survivor. They said: "Now, in this matter of felony, two things are to be considered,—*first*, the cause of the death; *secondly*, the death ensuing the cause; and these two make the felony, and without both of them first done the felony is not consummate. And the cause of the death is the act done in the party's life-time which makes the death to follow. And the act which brought on the death here was the throwing himself voluntarily into the water, for this was the cause of his death. And if a man kills himself by wound, if he kills himself with a knife or if he hangs himself, as the wound or hanging, which is the act done in the party's life-time, is the cause of his death, so is the throwing himself into the water here. And this act done, which he has done to himself, is to be considered in the same light as if he had done it to another; and if he had given another mortal wound whereof he afterwards died, there, although the wound was the cause of the death, yet it should not have relation as to the forfeiture of his goods to the time of the wound given. So, here, the death has not relation

to the cause of it, but for the forfeiture; it has relation to the death itself, and when so caused he shall be adjudged a felon. And forasmuch as he cannot be attainted of his own death because he is dead before there is any time to attaint him, the finding of his body by the coroner or other person authorized is, by necessity of law, equivalent to an attainder in fact, coming after his death, as to his goods."

It was argued on the other side by Walsh, Cholmey, Bendlow, and Carus, sergeants, that the forfeiture of the goods and chattels, real and personal, shall have relation to the act done in the party's life-time, which was the cause of his death, and upon this the parts of the act are to be considered, and Walsh said that "the act consists of three parts. First, is the imagination, which is a reflection or meditation of the mind whether or no it is convenient for him to destroy himself, and what way it can be done. The second is a resolution, which is a determination of the mind to destroy himself, and to do it in this or that particular way. The third is the perfection, which is the perfection of what the mind has resolved to do, and this perfection

consists of two parts, viz., the beginning and the end. The beginning is the doing of the act which causes the death, and the end is the death, which is only a sequel to the act, and of all the parts the doing of the act is the greatest in the judgment of law, and it is in effect the whole, or the only part that the law looks upon to be material, for the imagination of the mind to do wrong without an act done is not punishable in our law; neither is the resolution to do that wrong which he does not, punishable, for the doing of the act is the only point which the law regards. And here the act done by Sir James Hales, which is evil, and the cause of his death, is the throwing himself into the water, and the death is but a sequel thereof, and this either act ought some way to be punished." Justice Brown, in delivering his opinion, said: "Sir James Hales was dead, and how came he to his death? It may be answered, by drowning. And who drowned him? Sir James Hales. And when did he drown him? In his life-time. So that Sir James Hales, being alive, caused Sir James Hales to die. The act of the living man was the death of the dead man." It was adjudged that the plea in bar was sufficient to

preclude Margaret from having her action, and it was considered that she take nothing by her writ, but be in mercy for her false claim. (*1 Plowden, 253.*)

Sir James Hales was a justice of the common pleas during the reign of Edward VI. When that king insisted that the judges should sign the deed of settlement by which he attempted to settle the crown upon Lady Jane Grey, Hales was the only judge who refused. He could not, though a Protestant, be induced to do any act against the right of the Princess Mary, whom he considered the heir apparent. After her accession he acted as a magistrate in the county of his residence presiding at the quarter sessions, and charged the grand jury that the acts of the former reigns respecting religious worship were still in force. Under this charge an indictment was found for unlawfully celebrating mass, and the defendant, having been convicted, was sentenced by Hales according to law. For this he was not allowed to take the oath of office before the chancellor under Mary, and was committed to the Fleet. While there he was so terrified by stories told him by the keeper of the torments in store for

him, that he attempted to stab himself, and did, after his release, drown himself, and then the relentless and unfeminine zealot, whose rights he had so stoutly stood for, followed him with a rancor which the grave could not abate, and insisted on the forfeiture of his wife's claim as joint tenant of his leasehold estate.

Self-defense. (See No. 243.)

Guilty. (See Nos. 149, 174, 291.)

No. 276.

Ham. There's another: Why may not that be the skull of a lawyer? Where be his quiddits now, his quillets, his cases, his tenures, and his tricks? why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Humph! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will hardly lie in this box; and must the inheritor himself have no more? ha?

Hor. Not a jot more, my lord.

Ham. Is not parchment made of sheep-skins?

Hor. Ay, my lord, and of calves-skins too.

Ham. They are sheep, and calves, which seek out assurance in that.

Hamlet, Act 5, Scene 1.

Here the lawyer descants upon mortality in the abstrusest language of his science. With the skull in his hand, Hamlet does not here speculate on the base uses to which the dust of Alexander or the imperial clay of Cæsar may have returned. Nor does he indulge in any of those stately and dirge-like meditations in which the literature of Shakespeare's time was so abounding, and in which Shakespeare himself could teach the nothingness of all human things so feelingly as to persuade us all, —a time when a chief justice in a peerage case could pause to moralize on the extinction of great families,—saying, "and yet Time hath his revolutions; there must be a period and an end to all temporal things—*finis rerum*—an end of names and dignities and whatever is terrene,—and why not of De Vere? for where is Bohun? where is Mowbray? where is Mortimer? nay, which is more and most of all, where is Plantagenet? They are entombed in the urns and sepulchres of mortality."

Action of battery. (See Nos. 12, 20.)

Statutes. Statutes-staple and statutes-merchant were securities for money,—the one entered

into before the chief magistrate of some trading town, pursuant to *13 Edw. I. St. 3, de mercatoribus*, and therefore called a statute-merchant; the other pursuant to *27 Edw. III. St. 2, c. 9*, before the mayor of the staple, which was the grand mart for the principal commodities and manufactures of the kingdom, formerly held, under act of parliament, in certain trading towns, from which this security was called a statute-staple. Under them not only could the debtor be imprisoned and his goods seized to satisfy the debt, but also his lands could be delivered to the creditor, to be held by him until he should satisfy the debt out of the rents and profits. By these statutes, and by that of Acton Burnel, (*11 Edw. I.*,) the creditor was empowered to cause the debtor to appear before the mayor and acknowledge the debt by recognizance, which was enrolled. These securities, therefore, became the sources of title to lands, and estates by statute-merchant and statute-staple were classed as estates defeasible on condition subsequent.

Fine and recovery. (See Nos. 6, 85.)

Assurance. (See Nos. 69, 99.)

Cases. (See No. 92.)

Double-voucher. This was an incident of alienation of lands by a common recovery. A. desired to suffer a common recovery so as to bar entails, remainders, and reversions, and thereby to convey the land in fee-simple to B. To effect this B. brought a suit against A. for the lands, alleging that A. had no legal title, but that he came into possession after one C. (a fictitious person) had turned the plaintiff out. Whereupon A., the defendant, appeared, and called on D., (who was usually the crier of the court, who was used for that purpose,) who, by fiction, was supposed to have warranted the title to A. when the latter bought, to come in and vouch and defend the title which he had so warranted. D. thereupon pleaded, defending the title. B. then requested leave of the court to imparl or confer with the voucher D. in private, which was done. B. returned into court, but D. absented himself and made default. Whereupon judgment was given that B. recover the lands of A., and A. had judgment to recover lands of equal value of D., the man of straw. This recovery was with a single voucher. But D. being a mere man of straw, it was manifest that A. had only a nominal recom-

pense for the lands. It was customary to have a recovery, with double voucher, by first conveying an estate of freehold to any indifferent person against whom the suit was brought, who vouched the tenant in tail who wished to carry through the recovery, who in turn vouched the man of straw again. The reason of this double voucher was that if a recovery was had immediately against the tenant in tail, (A.,) it barred only such estate in the lands of which he was then actually seized, but if the recovery was had against another person, and A., the tenant in tail, was vouched, it bound every latent or contingent right which he might have in the premises recovered. Death is therefore the fine and common recovery of all things and the man himself, and his vouchers, single or double, vouch him nothing then.

Indenture. (See Nos. 108, 132, 233, 236.)

Inheritor. (See Nos. 234, 308.)

Parchment. (See No. 158.)

No. 277.

Hor. How was this seal'd?
Ham. Why, even in that was heaven ordinant.
I had my father's signet in my purse,

Which was the model of that Danish seal:
Folded the writ up in form of the other,
Subscrib'd it, gave't the impression, plac'd it safely,
The changeling never known.

Hamlet, Act 5, Scene 2.

No. 277*a*.

Had I but time as this fell sergeant, death,
Is strict in his arrest, O, I could tell you,—
But let it be: Horatio, I am dead;
Thou liv'st; report me and my cause aright
To the unsatisfied.

Hamlet, Act 5, Scene 2.

Sergeant. Sergeants-at-arms were officers whose duty it was to attend the king and to arrest persons of condition offending. The office survives in our time, in legislatures. There were also sergeants of an inferior dignity, as sergeants of the mace, who attended the mayor or other head officers of cities for purposes of justice. Formerly all justices in eyre had certain officers attending them who were called sergeants, who were in the nature of tip-staves. (*Stat. Westm. 1, 3 Edw. I. c. 30.*) There was also a sergeant of the hundred, who was no more than the bailiff of the hundred. (*Bract. lib. 5, c. 4.*)

Arrests. (See Nos. 11, 17, 86, 87, 137, 138, 295, 300.)

Hamlet desires that his cause may be reported aright. He has failed, and is held in the strict arrest of death. The merits of his controversy have never been tried. His own procrastination

has postponed the arbitrament, and he asks Horatio to make a legal memorial which will show its justice.

Cause. (See Nos. 13, 60, 149, 184, 200.)

No. 278.

And, in conclusion, nonsuits
My mediators.

Othello. Act 1, *Scene* 1.

Nonsuits. When the plaintiff failed to make out his case by adducing insufficient evidence to support it, he was called, and failing to answer was nonsuited or adjudged not to have followed his remedy.

No. 279.

It seems not meet, nor wholesome to my place,
To be produc'd (as, if I stay, I shall,)
Against the Moor: for, I do know, the state,
However this may gall him with some check,
Cannot with safety cast him.

Othello. Act 1. *Scene* 1.

Produced. An accuser or adverse witness is said in law to be produced against the accused.
(See No. 53.)

Cast. Is to be defeated in a lawsuit; often expressed by the common phrase "cast in costs;" probably derived from the words of judgment against a plaintiff, "*cassetur breve.*"
(See No. 282.)

No. 280.

Bra. I therefore apprehend and do attach thee,
For an abuser of the world, a practiser
Of arts inhibited and out of warrant—
Lay hold upon him; if he do resist,
Subdue him at his peril.
Oth. Hold your hands,
Both you of my inclining, and the rest:
Were it my cue to fight, I should have known it
Without a prompter. Where will you that I go
To answer this your charge?
Bra. To prison, till fit time
Of law, and course of direct session,
Call thee to answer.

Othello, Act 1, *Scene* 2.

Attach. (See Nos. 86, 153, 177, 257.)

If the felon in any case resists or flies, whether after arrest or before, the officer may kill him, and such killing is justifiable. (*2 Hale, P. C. 90, 95, 120.*)

Session. A sitting of justices in court upon their commission. (*Tomlin's Law Dict.*)

(See Nos. 78, 79, 283, 296*a*.)

No. 280*a*.

Whoe'er he be that in this foul proceeding
Hath thus beguiled your daughter of herself,
And you of her, the bloody book of law
You shall yourself read in the bitter letter,
After your own sense, yea, though our proper son
Stood in your action.

Othello, Act 1, *Scene* 3.

Action. (See Nos. 139, 218, 289, 299.)

No. 281.

Bra. I therefore vouch again,
That with some mixtures powerful o'er the blood,
Or with some dram conjur'd to this effect,
He wrought upon her.
Duke. To vouch this, is no proof;
Without more certain and more overt test,
Than these thin habits, and poor likelihoods
Of modern seeming, do prefer against him.

Othello, Act 1, *Scene* 3.

No. 282.

What, man! there are ways to recover the general again: You are but now cast in his mood; a punishment more in policy than in malice: even so as one would beat his offenceless dog, to affright an imperious lion; sue to him again, and he's yours.

Othello, Act 2, *Scene* 3.

Recover. The obtaining anything by judgment or trial of law. (*Tomlin's Law Dict.*)

Cast. (See No. 279.)

No. 283.

who has a breast so pure,
But some uncleanly apprehensions
Keep leets, and law-days, and in session sit
With meditations lawful?

Othello, Act 3, *Scene* 3.

Leets. A court-leet is a court of record having the same jurisdiction within some particular precinct which the sheriff's tourn hath in the county. (*4 Bl. Comm. p. 273.*) It is also a word used for a law-day in several ancient statutes. (*Dyer, 30b.*) It is the most ancient court for criminal matters.

Law-day. Called also court-leet. It was any day of open court and commonly used for courts of a county or hundred.

Session. (See Nos. 78, 79, 280, 296*a*.)

No. 284.

Yet, 'tis the plague of great ones;
Prerogativ'd are they less than the base.

Othello, Act 3, Scene 3.

No. 285.

Villain, be sure thou prove my love a whore;
Be sure of it; give me the ocular proof.

Othello, Act 3, Scene 3.

Evidence. (See Nos. 157, 170.)

No. 286.

I was (unhandsome warrior as I am)
Arraigning his unkindness with my soul;
But now I find, I had suborn'd the witness,
And he's indited falsely.

Othello, Act 3, Scene 4.

Arraign. (See Nos. 27, 78, 239.)

Suborned. (See Nos. 88, 95, 304.)

Indicted. A bill of indictment is a written accusation of one or more persons of a crime or a misdemeanor preferred to and presented on oath by a grand jury. (*4 Bl. Comm. p. 302.*)

No. 287.

But when the heart's attorney once is mute,
The client breaks, as desperate in his suit.

Venus and Adonis.

Attorney. (See Nos. 127, 172, 178.)

Client. (See No. 172.)

No. 288.

Pure lips, sweet seals in my soft lips imprinted,
What bargains may I make, still to be sealing?
To sell myself I can be well contented,
So thou wilt buy, and pay, and use good dealing,
Which purchase if thou make, for fear of slips,
Set thy seal-manual on my wax-red lips.

Venus and Adonis.

Bargain. (See No. 256.)

Seal. (See Nos. 37, 52, 56, 108, 126, 158, 204, 207, 256, 274.)

No. 289.

Now let me say *good night*, and so say you;
If you will say so, you shall have a kiss.
Good night, quoth she; and ere he says *adieu*,
The honey fee of parting tender'd is.

Venus and Adonis.

Fee. (See No. 111.)

Tendered. (See Nos. 2, 56, 264.)

No. 290.

Guilty thou art of murder and of theft;
Guilty of perjury and subornation;
Guilty of treason, forgery, and shift;
Guilty of incest, that abomination;
An accessory by thine inclination
To all sins past, and all that are to come,
From the creation to the general doom.

The Rape of Lucrece.

Guilty. (See Nos. 149, 174, 275.)

Accessory. (See Nos. 165, 297.)

Guilty of a felonious offense, not principally, but by participation,—as by command, device, or concealment.

Subornation. (See No. 156.) The connection of this word with perjury is most accurate.

No. 291.

No man inveigh against the wither'd flower,
But chide rough winter that the flower hath kill'd:
Not that devour'd, but that which doth devour,
Is worthy blame. O, let it not be hild
Poor women's faults, that they are so fulfill'd
With men's abuses: those proud lords, to blame,
Make weak-made women tenants to their shame

The Rape of Lucrece.

No. 292.

And with my trespass never will dispense,
Till life to death acquit my forced offense.

The Rape of Lucrece.

Acquit. (See No. 148.)

No. 293.

My stained blood to Tarquin I'll bequeath,
Which by him tainted, shall for him be spent,
And as his due, writ in my testament.
My honor I'll bequeath unto the knife
That wounds my body so dishonoured,
* * * * * *
Dear lord of that dear jewel I have lost,
What legacy shall I bequeath to thee?
* * * * * *
This brief abridgment of my will I make:
My soul and body to the skies and ground.

The Rape of Lucrece.

Bequeath. (See No. 57.)

Legacy. (See No. 207.)

Testament. (See Nos. 129, 150, 195, 207.)

Will. (See Nos. 128, 195, 207, 208.)

No. 294.

Mine enemy was strong, my poor self weak,
And far the weaker with so strong a fear;
My bloody judge forbade my tongue to speak;
No rightful plea might plead for justice there:
His scarlet lust came evidence to swear
That my poor beauty had purloin'd his eyes,
And when the judge is robb'd, the prisoner dies.

The Rape of Lucrece.

Plea. (See Nos. 54, 297.)

No. 295.

The deep vexation of his inward soul
Hath served a dumb arrest upon his tongue;

The Rape of Lucrece.

Served. The execution of process.
(See No. 140.)

Arrest. (See Nos. 11, 17, 86, 87, 137, 138, 277*a*, 300.)

No. 296.

Rough winds do shake the darling buds of May,
And summer's lease hath all too short a date;

XVIII. Sonnet.

Lease. The conveyance of land for a certain time or at will. (See Nos. 100, 303, 308.)

No. 296*a*.

When to the sessions of sweet silent thought
I summon up remembrance of things past.

XXX. Sonnet.

Sessions. (See Nos. 78, 79, 280, 283.)

No. 297.

Thy adverse party is thy advocate,
And 'gainst myself a lawful plea commence;
Such civil war is in my love and hate,
That I an accessary needs must be
To that sweet thief, which sourly robs from me.

XXXV. Sonnet.

Accessary. (See Nos. 165, 291.)

Plea. That which either party alleges in a suit.
(See No. 54, 294, 298.)

No. 298.

My heart doth plead; that thou in him dost lie,
A closet never pierced with crystal eyes,
But the defendant doth that plea deny,
And says in him thy fair appearance lies.
To 'cide this title is empanelled
A quest of thoughts, all tenants to the heart,
And by their verdict is determined
The clear eye's moiety, and the dear heart's part.

XLVI. Sonnet

Plea. (See Nos. 54, 294, 297.)

Appearance. (See Nos. 79, 182, 187.)

Verdict. (See Nos. 121, 197.)

Empanelled. The writing and entering into a parchment schedule by the sheriff the names of the jury.

Quest. Inquest. Inquisition or inquiry upon the oaths of an empanelled jury.

Moiety. (See Nos. 56, 132, 259.)

No. 299.

Since brass, nor stone, nor earth, nor boundless sea,
But sad mortality o'er-sways their power,
How with his rage shall beauty hold a plea,
Whose action is no stronger than a flower?

LXV. Sonnet.

Hold a plea. An ancient phrase for holding a court. "Pleas before the honorable," etc.

Action. (See Nos. 139, 218, 280*a*, 289.)

No. 300.

But be contented: when that fell arrest
Without all bail shall carry me away,
My life hath in this line some interest,
Which for memorial still with thee shall stay.

LXXIV. Sonnet.

Arrest. (See Nos. 11, 17, 86, 87, 137, 138, 277*a*, 295.)

Bail. (See Nos. 35, 229.)

No. 301.

But do thy worst to steal thyself away,
For term of life thou art assured mine.

XCII. Sonnet.

Term. The limitation of time or estate; as a lease for term of life, or years. (*Tomlin's Law Dict.*)

Assured. (See No. 51.)

No. 302.

Let me not to the marriage of true minds
Admit impediments.

CXVI. Sonnet.

Impediments. And (because in the times of popery a great variety of degrees of kindred were made impediments to marriage, which impediments might, however, be bought off for money) it is declared by the statute 32 Henry VIII., *c.* 38, that nothing, God's law except, shall impeach any marriage but within the Levitical degrees, the

furthest of which is that between uncle and niece. (*Gilb. Rep. 158.*)

No. 303.

It fears not policy, that heretic,
Which works on leases of short-number'd hours.
CXXIV. Sonnet.

Lease. (See Nos. 100, 296, 308.)

No. 304.

Hence, thou suborn'd informer! a true soul,
When most impeach'd, stands least in thy control.
CXXV. Sonnet.

Suborned. (See Nos. 88, 95, 286.)

Informer. The person who informs against or prosecutes in any of the king's courts those who offend against any law or penal statute.

Impeach. To accuse and prosecute for felony or treason.

No. 305.

Her audit, though delay'd, answer'd must be,
And her quietus is to render thee.
CXXVI. Sonnet.

Quietus. A word made use of in the exchequer in the discharge given to accountants. It also signifies the discharge of an administrator.

No. 306.

So now I have confess'd that he is thine,
And I myself am mortgaged to thy will;
Myself I'll forfeit, so that other mine
Thou wilt restore, to be my comfort still;
But thou wilt not, nor he will not be free,
For thou art covetous, and he is kind;
He learn'd but, surety-like, to write for me,
Under that bond that him as fast doth bind.
The statute of thy beauty thou wilt take,
Thou usurer, that put'st forth all to use,
And sue a friend, came debtor for my sake;
So him I lose through my unkind abuse.
Him have I lost; thou hast both him and me;
He pays the whole, and yet I am not free.

CXXXIV. Sonnet

Mortgage. A conveyance of property as security. The property at common law became absolutely forfeited to the mortgagee upon default in the performance of the condition.

Forfeit. (See Nos. 17, 25, 52, 56, 259.)

Bond. (See Nos. 40, 51, 52, 56, 98, 99, 131.)

Statute. (See No. 276.)

Surety. (See No. 50.)

No. 307.

Why should my heart think that a several plot,
Which my heart knows the wide world's common place?

CXXXVII. Sonnet.

Common. (See Nos. 47, 208.)

No. 308.

Poor soul, the center of my sinful earth,
Fool'd by those rebel powers that thee array,
Why dost thou pine within, and suffer dearth,
Painting thy outward walls so costly gay?
Why so large cost, having so short a lease,
Dost thou upon thy fading mansion spend?
Shall worms, inheritors of this excess,
Eat up thy charge? Is this thy body's end?
Then, soul, live thou upon thy servant's loss,
And let that pine to aggravate thy store;
Buy terms divine in selling hours of dross;
Within be fed, without be rich no more:
So shalt thou feed on death, that feeds on men,
And Death once dead, there's no more dying then.

CXLVI. Sonnet.

Lease. (See Nos. 100, 296, 303.)

Term. (See No. 301.)

Inheritor. (See Nos. 234, 276.)

No. 309.

Whence hast thou this becoming of things ill,
That in the very refuse of thy deeds
There is such strength and warranties of skill.

CL. Sonnet.

Deeds. (See Nos. 56, 67.)

Warranties. A promise or covenant by deed by the bargainor, for himself and his heirs, to warrant or secure the bargainee and his heirs against all men in the enjoyment of the thing granted.

No. 310.

Think women still to strive with men,
To sin, and never for to saint:
There is no heaven, by holy then,
When time with age shall them attaint.

Passionate Pilgrim, XVII.

Attaint. (See Nos. 44, 130, 153.)

No. 311.

So on the tip of his subduing tongue
All kinds of arguments and question deep,
All replication prompt, and reason strong,
For his advantage still did wake and sleep.

Lover's Complaint.

Replication. (See No. 272.)

No. 312.

My woeful self, that did in freedom stand,
And was my own fee-simple, (not in part.)

Lover's Complaint.

Fee-simple. (See Nos. 6, 63, 159, 247.)

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