on Cawdor," *matter*, "made good," *indenture, object; tenor*, &c. &c. It may suffice to say that on the Senator's principles every Elizabethan dramatist may be pronounced a lawyer without further research.

That some of the other dramatists do display similar legal knowledge he appears to be aware, herein transcending Campbell. But the knowledge only moves him to the assertion that Ben Jonson is "not so precise in his use of legal terms or in reports of legal proceedings" as is Shakespeare, and that in Beaumont and Fletcher, though both were lawyers, "we can find no such disposition or facility in the use of law terms or the procedure of the courts."[1] The last proposition may be left to work its effect on readers who have had in view the Baconian thesis that it was lawyership that inspired the alleged lawyerism of the plays. The first statement is simply false. As we have seen, Jonson uses a multitude of legal expressions of a more technical character than any used by Shakespeare; and his treatment of legal procedure is realistic where Shakespeare's is merely romantic. On the trial scene in THE MERCHANT OF VENICE the Senator pronounces that "The whole of this exquisite scene is forensic. The author's mind, in its employment of legal terms, has, like the dyer's hand, been subdued to what it works in."[2] On that particular folly, the reader may be referred to what has been said in the previous chapter. But the Senator's words might with fair propriety be applied to the mimicry of legal procedure in Ben Jonson, as here:

Pru. Nor murmur her pretences: master Lovel,
For so your libel here, or bill of complaint
Exhibited, in our high court of sovereignty,
At this first hour of our reign, declares
Against this noble lady, a disrespect
You have conceived, if not received, from her.
Host. Received: so the charge lies in our bill.
Pru. We see it, his learned counsel, leave your plaining.

[1] *The Law in Shakespeare*, pp. 52–3. [2] *Id.* p. 116.

We that do love our justice above all
Our other attributes . . . do here enjoin . .
Host. Good !
Pru. Charge, will, and command
Her ladyship, pain of our high displeasure,
And the committing an extreme contempt
Unto the court, our crown and dignity. . . .
To entertain you for a pair of hours. . . .
To give you all the titles, all the privileges
The freedoms, favours, rights, she can bestow. .
Or can be expected, from a lady of honour
Or quality, in discourse, access, address. . . .
For each hour a kiss
To be ta'en freely, fully, and legally
Before us in our court here, and our presence.

The New Inn, ii, 2.

Pru. Here set the hour ; but first produce the parties,
And clear the court : the time is now of price. . . .
Ferret. Oyez, oyez, oyez.
Trundle. Oyez, oyez, oyez.
Ferret [*Trundle repeating each line*].
Whereas there hath been awarded—
By the queen regent of love—
In this high court of sovereignty—
Two special hours of address—
To Herbert Lovel, appellant—
Against the lady Frampul, defendant—
Herbert Lovel come into the court—
Make challenge to thy first hour—
And save thee and thy bail—

[*Enter Lady Frampul, and takes her place on the other side.*]

Host. She makes a noble and a just appearance.
Set it down likewise, and how arm'd she comes.
Pru. Usher of Love's court, give them both their oath
According to the form, upon Love's missal.
Host. Arise, and lay your hands upon the book.

Herbert Lovel, appellant, and Lady Frances Frampul, defendant, you shall swear upon the liturgy of Love, Ovid *de arte amandi*, that you neither have, nor will have, nor in any wise bear about you, thing or things, pointed or blunt, within these lists, other than what are natural and allowed by the court: no inchanted arms or weapons, stones of virtue, herb of grace, charm, character, spell, philtre, or other power than Love's only, and the justness of your cause. So help you Love, his

mother, and the contents of this book. Kiss it. [Lovel *kisses the book.*] Return unto your seats.—Crier, bid silence.

Ferret [*Trundle repeating*]
In the name of the sovereign of Love—
Notice is given by the court—
To the appellant and defendant—
That the first hour of address proceeds—
And Love save the sovereign—
Every man or woman keep silence, pain of imprisonment. . . .

[*Conclusion*]

Lady F. Prue, adjourn the court.
Pru. Cry, Trundle.
Trund. Oyez.
Any man or woman that hath any personal attendance
To give unto the court : keep the second hour,
And Love save the sovereign ! *Id.* iii, 2.

All this in two scenes of one play. For more matter of the same order of realistic parody, *see* CYNTHIA'S REVELS, v, 2 ; EVERY MAN OUT OF HIS HUMOUR, iii, 1 ; THE POETASTER, v, 1 ; THE SILENT WOMAN, v, 1 ; to say nothing of the Induction to BARTHOLOMEW FAIR and the trial scene in VOLPONE. Could they have found a fraction of it in Shakespeare, Lord Campbell and Senator Davis would have thankfully dropped half the rest of their case ; and the latter would have been more sure than ever that the dramatist knew more law than Beaumont and Fletcher. As it is, he is satisfied that Shakespeare must have had a hand in the play SIR JOHN OLDCASTLE, because " 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."[1] The Senator is unaware that just such a scene occurs in GEORGE A-GREENE, which some deny to Robert Greene, but none has yet assigned to Shakespeare ; and seeing that just such an escapade is narrated *of* Greene by his friend Nashe,[2] the legalist's simple solution of the authorship of the other play, it is to be feared, will not be found

[1] *The Law in Shakespeare*, pp. 51–52.
[2] *Four Letters Confuted.* Works, ed. McKerrow, i, 271.

decisive. And as SIR JOHN OLDCASTLE undoubtedly contains legal matter such as (i, 1) :

> The King's justices, perceiving what public mischief may ensue this private quarrel, in his majesty's name do straitly charge and command all persons, of what degree soever, to depart this city of Hereford, except such as are bound to give attendance at this assize, and that no man presume to wear any weapon, especially Welsh-hooks and forest-bills—and that the Lord Powis do presently disperse and discharge his retinue, and depart the city in the King's peace, he and his followers, on pain of imprisonment,

we are left to wonder whether Drayton, Hathway, Munday, and Wilson, to whom Fleay ascribes the play, were all lawyers like their dramatist brethren.

Characteristically, Senator Davis finds the best ground for ascribing Act I of THE TWO NOBLE KINSMEN to Shakespeare in the fact that it includes the phrases, "the tenor of thy speech," "prorogue," "fee," "moiety," and "seal the promise."[1] He can thus be thankful for small mercies; but if he had found in any alleged or putative Shakespearean play such a trial-scene as that in Massinger's THE OLD LAW, of which he declares that "as a forensic representation" it "is crude, *lacks detail*, and displays none of that pomp of justice which all courts of any dignity exhibit,"[2] he would probably have seen it with other eyes. Massinger certainly yields many less scanty crops of quasi-legal terminology than that culled by the Senator from Act I of the TWO NOBLE KINSMEN.

His treatise, in fine, is a piece of indiscriminate and uncritical special pleading, serving only to prove how a fixed idea can hypnotise judgment. Without adopting the Baconian theory, the Senator has taken up a standpoint which equally excludes any rational conception of dramatic art. For him the author of the plays is a writer obsessed with legal knowledge, and constantly bent on embodying it in the plays, to the extent of grafting it all over his recast of the old HAMLET, "all with the

[1] *The Law in Shakespeare*, p. 52. [2] *Id.* p. 54.

greatest painstaking to be full and accurate"[1]—as if the end of drama for Shakespeare were the communication of legal lore. As we have seen, the entire conception is a hallucination. Shakespeare, like his corrivals, made his characters talk law as they talked Euphuism, because it was the fashion of the age; and we have only to compare his legal phraseology with theirs to see that he was no more a lawyer than were Jonson, Chapman, Heywood, Greene, Peele, and Dekker in his own day, and Massinger after him.

§ 3. *Castle*

Something of a diversion is created in our inquiry by the performance of Mr. E. J. Castle, K.C., entitled SHAKESPEARE, BACON, JONSON, AND GREENE. Mr. Castle, albeit something of a Baconian, is driven, as we have seen, to reject the hyperbolical panegyric of Shakespeare's law by Lord Campbell, and to formulate a theory of his own, to the effect that there are "non-legal" as well as "legal" plays; that in the latter only did the dramatist "receive assistance" from a lawyer, probably Bacon; and that in the former he makes so many mistakes as to prove that he "personally had not the education of a lawyer." We thus have one of the profession denying that all the plays exhibit a firm hold of its "freemasonry." Indeed he premises a doubt as to the force of the general argument from the use of legal terms.

> I do not lay so much stress upon their presence in the plays, &c., as other persons have done, because I believe they are capable of being learned from books, and are therefore not so valuable a test, to my mind, as the familiarity with the habits and thoughts of counsel learned in the law, which I think is the peculiar characteristic of the legal plays.[2]

Further, he notes that Lord Campbell was "in many

[1] *The Law in Shakespeare*, p. 14.

[2] *Shakespeare, Jonson, Bacon, and Greene.* A Study. By Edward James Castle, One of Her Majesty's Counsel. (Late Lieutenant Royal Engineers.) London, 1897. P. 11.

cases only repeating what Malone had said before him. The consequence of confining his attention to legal expressions is that he has missed entirely the more subtle evidence which points to the life and habits of a lawyer, which may not happen to be clothed in legal language."

I am not concerned to found upon this conflict of authorities, or to dwell upon the chaos which the half-and-half theory makes of the Baconian case in general. It is more important to point out that Mr. Castle is as innocent as Lord Campbell of any general knowledge of Elizabethan literature, and frames his own theory *in vacuo*, finding "subtle evidence" of lawyerism in what any familiarity with Elizabethan drama would have shown him to be the ordinary run of lay conversation. As little need we curiously inquire whether in the "non-legal" plays Shakespeare commits the "laughable mistakes" which Mr. Castle discovers. Mr. Castle speaks modestly enough of his handling of his own legal case; avowing that "mistakes may have crept in."[1] What is much more serious in his total ignorance of the *similar* literature of the period. He discusses the sonnets in general, No. 134 in particular, and the lawyerlike lines in VENUS AND ADONIS, with no suspicion that other Elizabethan poets wrote so. The result is that when he proceeds to make his own contribution to the legal theory he wastes his labour as utterly as did Campbell.

Thus he finds "some of the most remarkable references to law" in LUCRECE;[2] and he dwells especially on the use of the word "colour," which, he tells us, "as used in legal pleadings has a very specialized meaning." Knowing vaguely that the legal meaning has partly survived in ordinary language, he cites the definition that "colour in pleading is a feigned matter which the defendant or tenant uses in his bar," and so forth; concluding that "colour sets out a title which, though probable, is really false." Then he undertakes to show that "in the plays

[1] *Shakespeare, Jonson, Bacon, and Greene*, p. 25. [2] *Id.* p. 18.

we find 'colour' used in the strict legal sense as I have explained it, as well as in its more colloquial manner of pretence or appearance."

The very first instance he offers is conclusive against him. He cites :

> Cæsar's ambition . . . against all colour, here
> Did put the yoke upon us.
>
> *Cymbeline*, iii, i.

That is to say, on Mr. Castle's own interpretation, Cæsar's ambition put a yoke on Britain *against a probable but false title*. A layman could hardly be guilty of such self-stultification. The lines simply mean that Cæsar usurped sovereignty in defiance of legal forms : there is no special or technical connotation whatever. Citing Florizel's lines in the WINTER'S TALE (iv, 3) :

> What colour for my visitation shall I
> Hold up before him ?

Mr. Castle uneasily writes : "Here the technical use of the word is perhaps not quite so certain, but I think a stronger meaning is given to the language if we use it in the legal sense of title or justification. However, in the next example, the word is used in its strict legal sense." The next example is the passage :

> For, of no right, or colour like to right,
> He doth fill fields with harness in the realm.
>
> 1 *Henry IV*, iii, 2.

Then we have Beaufort's

> But yet we want a colour for his death.
>
> 2 *Henry VI*, iii, 1,

—with the explanation that "the Cardinal does not seek a pretext, but a justification or title for the act, as he is to be condemned by law."

Any competent lay reader will at once see that the whole theorem is a mare's nest. Shakespeare uses "colour" just as a hundred other Elizabethans use it, in a sense which includes both "pretext" and

"justification." Pretext is alleged justification; and pretended title is just alleged title—Mr. Castle's own definition. In this broad sense the word was used constantly in Shakespeare's day. I find it four times in ten pages of Fenton's translation of Guicciardini (1579):

> They attempted, under *colour* to defend the liberty of the people of Milan, to make themselves lords of that State (P. 3).
>
> The original of the *colour* under the which [two kings were] . . . stirred up by the Popes to make many invasions . . . (P. 12).
>
> She brake that adoption under *colour* of ingratitude (*Ib.*).
>
> The *titles and colours of right* changing with the time (P. 13).

Again we have it twice on two successive pages (24, 25):

> To give some *colour* of justice to so great an injustice.
>
> The better to strengthen their usurpation with a show of right, to strengthen first with *colours* lawful.

The translator of Gentillet's diatribe against Machiavelli (1577) uses it as legally as may be:

> He hath a certain subtilty (such as it is) to give *colour* unto his most wicked and damnable doctrines.
>
> *Discourse upon the Means of Well Governing, &c., . . . against Nicholas Machiavel*, trans. by Simon Patericke. Ed. 1608, pref. A ii, *verso*.

The word was in fact of very old standing in common English. In Wiclif's treatise AGAINST THE ORDERS OF FRIARS we have the statement that the friars

> *colour* their own wicked laws under the name of these saints . . . and so . . . sin is maintained by *colour* of holiness;

and again:

> Yet friars will *colour* these sins and undertake for these sinful men.
>
> Treatise cited, ch. ii. (Rep. from ed. of 1608 in *Tracts and Treatises of Wycliffe*, 1845, pp. 228, 253.)

In the sixteenth century it was in constant use. We have it frequently in Elyot's GOVERNOUR:

> Inasmuch as liberality wholly resteth in the giving of money, it sometime coloureth a vice. B. II, c. 10 (Dent's rep. p. 160).

Under the colour of holy Scripture, which they do violently wrest to their purpose. B. III, c. 3 (p. 205).

It seems to have been equally common in books and in sermons. Thus we have it in Latimer's sermons again and again :

Under a colour of religion they turned it [church property] to their own proper gain and lucre.

Third Sermon before Edward VI.

And so under this colour they set all their hearts and minds only upon this world.

Seventh Sermon on the Lord's Prayer.

It occurs repeatedly in Ralph Robinson's translation (1551) of More's UTOPIA :

Under the same colour and pretence.

Under this colour and pretence.

A shew and colour of justice.

B. I (Dent's rep. pp. 22, 37, 38).

It is used in the same way by Jewel (1565) :

By any sleight or colour of appeal.

Reply to M. Harding's Answer, Art. V, 21st Div. Works, Parker Soc. ed. i, 389.

and again :

Pighius granteth simply, without colour . . .

Sermon at Paul's Cross, 1560. Works, as cited, i, 8.

The translator (Tyndale ?) of the ENCHIRIDION MILITIS CHRISTIANI of Erasmus (1533) has :

With *false title and under a feigned colour* of honesty.

Methuen's rep. p. 75.

Lest under a colour of pastime he might entice . . .

Id. p. 101.

It was evidently a normal term for the clergy. Bale has it many times :

Sincerely and faithfully, without craft or colour.

The Image of Both Churches : Works, Parker Soc. ed. p. 265.

As the matter is without feigned colour in every point performed.

Examination of Oldcastle, vol. cited, p. 43.

> Seekest . . . the blood of this innocent woman, under a colour of friendly handling.
>
> *Examination of Anne Askewe*, vol. cited, p. 162.

The Protestant Roye, who attacked Wolsey in 1528, has

> By coloure of their faulce prayres,
> Defrauded are the ryght heyres
> From their true inheritance.
>
> *Rede Me and be nott Wrothe*, Whittingham's rep. p. 57.

Hooker uses it repeatedly :

> Some judicial and definitive sentence, whereunto neither part that contendeth may under any pretence or colour refuse to stand.
>
> Pref. to B. I of *Eccles. Polity* (1549), ch. vi, 1.

> Under this fair and plausible colour whatsoever they utter passeth for good and current.
>
> *Id.* B. I. ch. i, §1.

And in the CONSTITUTIONS AND CANONS ECCLESIASTICALL issued in 1604 we have :

> Purely and sincerely, without any colour or dissimulation (P. 2.).

Spenser uses it in his VIEW OF THE PRESENT STATE OF IRELAND :

> But what colour soever they allege, methinks it is not expedient that the execution of a law once ordained should be left to the discretion of the judge or officer.
>
> Globe ed. of Works, p. 639.

and in the SHEPHEARD'S CALENDAR (February) he has :

> His coloured crime with craft to cloak.

Among Shakespeare's known books, again, we find the word in North's Plutarch, as in these passages :

> That it might appear they had just cause and colour to attempt that they did against him.
>
> Cloak and colour the most cruel and unnatural fact.
>
> *Life of Julius Cæsar* (Skeat's *Shakespeare's Plutarch*, pp. 13, 92);

and in many others, for which *see* Skeat's index. The legal metaphor had in fact entered into the body of the language, and is as common in the drama as elsewhere.

It is used at least five times, with more or less concrete application, in Lady Lumley's translation of IPHIGENIA AT AULIS, written about 1550, the English law term being imposed on the classic diction.

If there is anywhere a "technical" use of the word in ordinary literature it is in Greene and Lodge's LOOKING-GLASS FOR LONDON, where we have twice:

> It was your device that, to colour the statute.
> A device of him to colour the statute.
>
> Dyce's ed. of Greene and Peele, pp. 121, 125.

Jonson uses it with the same "legal" bearing:

> How, how, knave, swear he killed thee, and by the law? What pretence, what colour hast thou for that?
>
> *Every Man in his Humour*, iii, 3.

Dekker and Webster are just as technical:

> Though your attempt, lord treasurer, be such
> That hath no colour in these troublous times
> But an apparent purpose of revolt.
>
> *The Famous History of Sir Thomas Wyat*, Sc. 6.

Massinger uses the term as does Shakespeare:

> There is no colour of reason that makes for him.
>
> *The Unnatural Combat*, i, 1.

Similarly Chapman:

> Passion, my lord, transports your bitterness
> Beyond all colour.
>
> *Byron's Tragedy*, v, 1.
>
> His own black treason in suggesting Clermont's,
> Colour'd with nothing but being great with me.
>
> *Revenge of Bussy D'Ambois*, iv, 1.

If there were not all this habitual use of the word in plays and books, the public were made familiar with it in the ordinary course of executive justice. An offender, we read, was pilloried with a paper on his breast stating that he was punished "For practising to colour the detestable facts of George Saunders' wife."[1] But the literary, dramatic, and theological usage, as we have

[1] *Brief Discourse of the Murther of George Saunders*, 1573, in Simpson's *School of Shakespeare*, ii, 228.

seen, was universal. Shakespeare was in fact simply using the word as every one else did.

Thus Mr. Castle's laboured argument from Shakespeare's use of "colour" comes to nothing, being but one more instance of the "method of ignorance" by which the Baconians and the simple legalists alike proceed. When he goes on to set forth his view of the "legal plays" he pursues the same method; but in nearly every instance his argument destroys itself. Thus he contends that MEASURE FOR MEASURE is a truly legal play inasmuch as it shows knowledge of the law of precontract of marriage. He is aware that the play is founded upon Whetstone's PROMOS AND CASSANDRA; and he avows that in refining upon the old plot by positing a precontract between Claudio and Julia the recast "takes all point out of the story," "so that in reality there is no motive left for the play."[1] This is partly true: the case of Julia and Claudio is on all fours with the case of Mariana and Angelo, in which the Duke, after treating Claudio as liable for the same thing to capital punishment, plans the intercourse of the precontracted persons. And we are asked to believe that the dramatist who thus played fast and loose with his legal plot was "one thoroughly acquainted with legal proceedings"![2]

As if this were not fiasco enough, Mr. Castle adds a piece of elaborate nonsense in the shape of a theory that the name Escalus was coined from the "escue" in the name of Sir John Fortescue, the famous English judge and legalist. "Escalus" is the name of the Prince in ROMEO AND JULIET—the first name in the *dramatis personæ* of that play, produced long before MEASURE FOR MEASURE. Shakespeare got it from Brooke, and it was the kind of stage name that could do repeated duty. Over such a chimera one is disposed to ask what kind of minds we are dealing with in the debate over the "legal element" in the plays.

[1] *Id.* p. 37.

[2] *Id.* p. 41.

On the general question as to MEASURE FOR MEASURE it suffices to say that Mr. Castle's summing-up, to the effect that the play must have been "written either by one who has drawn the scene from the life or has been assisted by one well versed in the every-day life of English law courts,"[1] is naught. Many Elizabethan dramatists were so "versed"; and Shakespeare had the same opportunities as they. In reading Nashe's SUMMER'S LAST WILL AND TESTAMENT one can see that Nashe had attended courts. But who in his day had not? Had Mr. Castle read Chapman and Shirley's play, THE ADMIRAL OF FRANCE, he would have found a much more elaborate parody of legal proceedings, perhaps based upon a reading of French law reports. He gravely tells us that Angelo, when exposed by the Duke, "acknowledges his guilt as a lawyer would." The wicked judge in Whetstone's PROMOS AND CASSANDRA and the corrupt Chancellor in THE ADMIRAL OF FRANCE do the same thing. Were Whetstone and Chapman and Shirley then lawyers?

Proceeding in his vain task, Mr. Castle, after granting that TITUS ANDRONICUS is non-Shakespearean, insists upon treating the HENRY VI plays as Shakespeare's, representing that Malone pronounced 1 HENRY VI non-Shakespearean "principally because there were certain contradictions about Henry's age." This is an idle travesty: the ground on which Malone and the great majority of critics reject the play is substantially that of its plainly non-Shakespearean style. Mr. Castle accepts the argument in the case of TITUS, and rejects it in the case of the other play, mainly because that course suits his argument. But we need not try that issue here. The authors of the play were probably Marlowe, Peele, and Greene; and that they were no more lawyers than Shakespeare might be gathered from Mr. Castle's own argument. Thus he notes that in the third scene the law style of the proclamation is correct, adding:

[1] *Id.* p. 50.

"but the occasion was not one, in my opinion, in which it would or should have been used."[1] To what end, then, is all the learned research to show that the author exhibited special knowledge of Temple life in making Plantagenet say, "Come, let us four to dinner"? The recondite legal fact that "four makes a mess" was available to Shakespeare in Lilly's MOTHER BOMBIE (ii, 1).

Coming to 2 HENRY VI, we find Mr. Castle endorsing Lord Campbell's deliverance in regard to the legal language of Jack Cade. Contentedly ascribing both the CONTENTION and the later play to Shakespeare, he makes no difficulty over the discrepancy of "heart can wish" and "heart can think," and gravely concludes that "it requires a lawyer of some study to be able to quote from the Year Books, and we find the author of both Quarto and Folio doing this."[2] So that, once more, Thomas Nashe was a lawyer of some study, inasmuch as he tells how his PIERS PENNILESSE has been

> maimedly translated into the French tongue, and in the English tongue as rascally printed and ill interpreted as heart can think or tongue can tell.
>
> *Have with You to Saffron Walden*: Works, iii, 33.

Legal learning, as Hobbes would say, is capable of a more excellent foolishness than laymen could well attain to. If Mr. Castle had but read Udall's RALPH ROISTER DOISTER, which was written about 1553, he would have found Gawyn Goodlucke saying to Dame Christian Custance (v, 3):

> Neither heart can thinke nor tongue tell
> How much I joy in your constant fidelity.

If he had read KING LEIR AND HIS THREE DAUGHTERS, he would have noted the line (sc. 24):

> My toung doth faile to say what heart doth think.

And if he had further read a little in Elizabethan literature outside of drama and law he might have divined that

[1] *Id.* p. 63. [2] *Id.* p. 74.

ordinary folk in those days even read many "legal" documents for various reasons. When Nashe in his tirade against Harvey cries: "Letters do you term them? they may be Letters patents well enough for their tediousness. . . . Why they are longer than the Statutes of clothing or the Charter of London,"[1] he is not addressing himself to lawyers. He knows that many lay folk had seen the Charter, and that many traders had read the Statute of Clothing; and when he speaks of "calling a fellow knave that hath read the Book of Statutes, since by them all in general they were made,"[2] he really does not mean that lawyers are all, or are the only, knaves, or that only lawyers read the volume. Even when he writes of

> never reading to a period (which you shall scarce find in thirty sheets of a lawyer's declaration),
>
> *Lenten Stuff:* Works, iii, 214,

he is assuming that others than lawyers have perused lawyers' documents. That he was no lawyer may be held to be proved by his lines:

> Smooth-tonguèd Orators, the fourth in place,
> Lawyers our commonwealth entitles them;
> Mere swash-bucklers and ruffianly mates
> That will for twelve pence make a doughty fray,
> Set men for strawes together by the ears.
>
> *Summer's Last Will and Testament:* Works, iii, 276.

When Mr. Castle goes on to quote Gloster's lines:

> Let these have a day appointed them
> For single combat in convenient place,

with the comment that "All this correctly states the appeal by combat, the essential point of which is, there must be a doubt,"[3] he does but show that, like Lord Campbell, he knew nothing of Webster, who exhibits a detailed and technical knowledge of the law of trial by combat, without being a lawyer. Ten thousand lay-

[1] *Have with You,* as cited, p. 34.
[2] *Id.* p. 119.
[3] Work cited, p. 75.

men could have said all that is implied in the lines cited; as they might have known and said that Gloster had used torture beyond legal rule.[1] It is edifying to learn that, on re-reading HENRY VI, Mr. Castle finds "something fresh" for his purpose in the story of Gloster's cross-examination of the sham blind-man. This, he assures us, is a further "trace of the author being acquainted with a lawyer's training."[2] As if any intelligent layman who told the well-known tale would not have brought out the points in the same fashion.

It is after this lamentable series of *non sequiturs* that Mr. Castle claims to have indicated in Shakespeare's works "not only the mere legal acquirements as collected by Lord Campbell . . . but . . . pictures drawn of the different members of the legal profession." What then are we to say of the "pictures" drawn by Jonson and Chapman, Greene, Webster, and Massinger? Mr. Castle modestly begins his preface with the avowal: "I have some doubts whether I should publish this book. The world does not like to have its established beliefs questioned. . . ." The world might fairly urge that those who undertake such questioning should take a reasonable amount of pains to prove their case. Mr. Castle has not done so. He writes concerning "Shakespeare, Bacon, Jonson, and Greene" without having read beyond Shakespeare and Bacon, save in so far as the commentators tell him of the relations of Greene and Jonson to Shakespeare. Of the plays of the two last-named, and of Greene's prose writings, he appears to know nothing. He is careful and laborious in matters of strictly legal research: of the necessary literary research he has apparently no idea.

The result is that when he approaches the strictly literary question of the alleged coincidences of phrase in Bacon and Shakespeare he is wholly at the mercy of such an egregious guide as Mr. Ignatius Donnelly, from whom

[1] *Id.* p. 76. [2] *Id.* p. 77.

he cites[1] instances of (1) identical expressions, (2) identical metaphors, (3) identical opinions, and (4) identical studies. Under the first head he gives only this egregious example :

> Custom ! an ape of nature.
>
> *Bacon.*
>
> Oh sleep, thou ape of death.
>
> *Shakespeare.*

In a later chapter we shall deal with that and many other of the alleged " identities " of expression in Bacon and Shakespeare. But it is impossible to part from Mr. Castle without a final protest against the sheer thoughtlessness of his handling of this aspect of his problem. From Mr. Donnelly, whose cipher he sees to be a farce, he accepts a few utterly inconclusive parallels as proof of Mr. Donnelly's conclusion, without even putting the question whether other Elizabethan writers do not exhibit the same kind of " identities " with Bacon. In the same way he ascribes to Bacon and Shakespeare " identical studies " on the sole strength of one allusion in each to gardens and one to the formation of knots in trees, never even inquiring how it comes that all the main lines of Bacon's studies and aims are wholly unrepresented in Shakespeare. Such incredible laxity in the handling of evidence would discredit any literary critic as such.

When it is exhibited by trained lawyers and judges, it is one more ground for disregarding their mere asseverations as to the presence of legal knowledge in the plays. If Mr. Castle's argument be regarded as an improvement upon Campbell's, the breakdown of the whole is complete, for his specially selected and presented instances of legal knowledge in the plays, as we have seen, are just as nugatory as the rest.

[1] *Id.* p. 196.

CHAPTER VI

LITIGATION AND LEGALISM IN ELIZABETHAN ENGLAND

FOR all who have cared to follow it, the process of confronting with parallel passages the evidence offered for the legal training of the author of the Shakespearean Plays must be decisive as to the fallacy involved. But even without that tedious process of confutation, any alert student of Elizabethan literature might be expected to reject a thesis which proceeds upon lack of familiarity with the life which that literature more or less clearly mirrors. Most of the champions of the "legal" theory—orthodox, Baconian, and anti-Stratfordian alike—simply ignore the evidence for the general currency of legal phrases in the Elizabethan and Jacobean period. Mr. Grant White, as we have seen, does avow the frequency of legal allusions in the drama in general, but goes on to posit the false proposition that in Shakespeare they are much more numerous than elsewhere. In reality, as we have already to some extent seen, they pervade all Elizabethan literature, and they tell of a general litigiousness which is at once the cause and the explanation. "Thou'lt go to law with the vicar for a tithe goose," says Hobson in Heywood's EDWARD IV.[1] As Nashe has it in PIERCE PENILESSE HIS SUPPLICATION TO THE DIVELL: "Lawyers cannot devise which way in the world to beg, they are so troubled with brabblements and suits every term, of yeomen and gentlemen that fall out for nothing. If John a Nokes his hen do but leap into Elizabeth de Yappe's close, she will never

[1] Part I. Pearson's Heywood, vol. i, p. 71.

leave to haunt her husband till he bring it to a *Nisi prius*. One while the parson sueth the parishioner for bringing home his tithes: another while the parishioner sueth the parson for not taking away his tithes in time.'' [1] All the while the burden of "the law's delays" was known to all men. Chapman makes a character declare that "cures are like causes in law, which may be lengthened or shortened at the discretion of the lawyer: he can either keep it green with replications or rejoinders, or sometimes skin it fair a' th' outside for fashion sake: but so he may be sure 'twill break out again by a writ of error, and then he has his suit new to begin.'' [2]

Roger Hutchinson, in his Sermons Of Oppression, Affliction, and Patience (1553) is amusingly careful to explain that when Paul blames Christians for going to law, "the fault which he affirmeth to be in suits must be referred to one party, not to the plaintiff and defendant both. . . . These words ['Why rather suffer ye not wrong?'] are spoken to unjust and contentious suitors, and do not disprove rightful suits'' [3]—an audacity of misinterpretation at which an attorney would have blenched. The England of that day, in fact, appears to have been a scene of manifold oppression as well as of litigiousness; and a doctrine of non-resistance would not have won much assent. But Hutchinson devoutly protests that "for as much as . . . malice increaseth daily by delays, and long continuance of suits through the covetousness of lawyers; would God the King's Majesty, by the assent of his Parliament, would make some statute that all suits should be determined and judged within the compass of a year, or of half a year if their value were under a hundred pound, upon pain of some great forfeiture to the judges before whom such matters come.'' [4]

[1] Works, ed. McKerrow, i, 189. [2] *All Fools*, iv, 1.
[3] *Works of Roger Hutchinson*, Parker Soc. ed. 1842, p. 328.
[4] *Id.* p. 332.

It might have been well to set up some machinery for the discouragement of frivolous suits. Latimer in his first Sermon before King Edward VI tells of a lawsuit

> betwixt two friends for a horse. The owner promised the other should have the horse if he would: the other asked the price; he said twenty nobles (five pounds). The other would give him but four pound. The owner said he should not have him then. The other claimed the horse, because he said he should have him if he would. Thus this bargain became a Westminster matter: the lawyers got twice the value of the horse; and when all came to all, two fools made an end of the matter.[1]

In his Second Sermon before the King, again, Latimer tells of unjust judges, who listen only to the rich litigant, and help him to oppress the poor. "I cannot go to my book, for poor folks come unto me, desiring that I will speak that their matters may be heard."[2] Purely oppressive suits were common; but there were as many fools as knaves, all making work for the lawyers.

This mania for litigation is dramatically set forth again in the poor play, IF YOU KNOW NOT ME, YOU KNOW NOBODY, Part II—obviously, as it stands, the work of several hands and different times, but ascribed to Heywood, who doubtless had "a hand or a main finger" in it as in two hundred more. In one of the earlier scenes Gresham and Sir Thomas Ramsey, the eminent London merchants, are brought together to be reconciled over a foolish lawsuit in which they have been embroiled for six or seven years. Doctor Nowell tells

> How by good friends they have been persuaded both,
> Yet both but deaf to fair persuasion;

and old Hobson jovially rates them on their passion

> To beat yourselves in law six or seven year,
> Make lawyers, "turneys'" clerks, and knaves to spend
> Your money in a brabbling controversy,
> Even like two fools.

The two litigants for a time snap at each other, revealing the animal pugnacity of the race, which turned sponta-

[1] *Sermons of Hugh Latimer*, ed. in "Everyman's Library," p. 76.

[2] *Id.* p. 108.

neously to litigation when the reign of law set limits to private warfare. Their ground of quarrel was that Ramsey had "given earnest" for a piece of land which Gresham, not knowing of the previous transaction, bought and built upon; and they are now induced to shake hands upon the friendly arbiter's decision that Gresham shall pay Ramsey a hundred pounds compensation, each losing the five hundred pounds he has spent during the futile lawsuit. If it be objected that plays are not valid evidence as to social usage or habit, it may suffice to cite Mr. Hubert Hall's account[1] of the lawsuits over the inheritance of "Wild Darrell" for unimpeachable evidence of Elizabethan manners, morals, and practices. We there seem to find ourselves in a world still half-savage, where law and lawlessness are in a perpetual, breathless grapple, and where the authentic record at once makes credible many episodes in the contemporary and later drama which at a first reading seem grotesque exaggerations. The litigiousness and the lawlessness, the legal and the illegal frauds and violences, are correlative.

Apart from such stress of strife, the whole Elizabethan drama tells of a normal resort to the procedure of arrest for debt. One of the commonest situations is that in which a personage is either rightfully or fraudulently "attached" or arrested; and the invariable question, "At whose suit?" tells of a general familiarity with the occurrence. People in humble life are made normally to use technical language in regard to such mishaps. In the play last cited, the pedlar, Tawnycoat, utters a soliloquy which, had it occurred in a Shakespearean play, would have been triumphantly cited by the critical tribe of Lord Campbell as proof positive of the playwright's "profound" acquaintance with legal procedure:

> I broke my day with him. O had that fatal hour
> Broken my heart; and, villain that I was,

[1] *Society in Elizabethan England.*

Never so much as writ in my excuse ;
And he for that default hath sued my bill,
And with an execution is come down
To seize my household stuff, imprison me,
And turn my wife and children out of doors.

Ed. cited, p. 303.

Heywood was no lawyer, but he makes a non-legal character, still in the same play, quote in due form legal maxims that would have proved his lawyership for both Lord Campbell and Mr. Rushton. Twice over, Jack Gresham quotes one such maxim, the second time thus :

Friend, Ployden's proverb : *the case is alter'd ;* and, by my troth, I have learn'd you a lesson ; *forbearance is no acquittance.*[1]

That phrase, "The case is alter'd," is a standing tag in Elizabethan drama, and Ben Jonson makes it the title of a play. In the second part of his KING EDWARD THE FOURTH, again, where Aire, after being saved from execution for piracy by the influence of Jane Shore, is executed for succouring her, Heywood makes the doomed man thus play on legal terms and procedure in his farewell speech :

Jane, be content!
I am as much indebted unto thee
As unto nature : I owed thee a life
When it was forfeit unto death by law.
Thou begdst it of the King and gav'st it me.
This house of flesh, wherein this soul doth dwell,
Is thine, and thou art landlady of it,
And this poor life a tenant but at pleasure.
It never came to pay the rent till now,
But hath run in arrearage all this while,
And now for very shame comes to discharge it
When death distrains for what is but thy due.

Pearson's ed. of Works, i, 181.

Here we have the very fashion of lawyerism seen in those Sonnets of Shakespeare which are cited as proof of his "profound technical knowledge," and this in a play meant for common folk and tolerable only to them. To such phraseology they were daily accustomed. Such a

[1] *Id.* p. 332. (Cp. p. 329.)

proclivity meant, further, a habitual haunting of law courts; and in Stratford-on-Avon, where a fortnightly court was regularly held, it is morally certain that people with any idle time on their hands would frequently seek there what must have been the most interesting entertainment regularly open to them. If such resort is still common in days of newspapers and in towns supplied with theatres, it must have been much more so in a time and in places where news-sheets were still unknown and theatres non-existent. Drayton draws a picture which generalises one that must have been familiar to many thousands of his countrymen:

> Like some great learned judge, to end a weighty cause,
> Well furnished with the force of arguments and laws,
> And every special proof that justly may be brought;
> Now with a constant brow, a firm and settled thought,
> And at the point to give the last and final doom:
> The people crowding near within the pester'd room.
> A slow soft murmuring moves amongst the wond'ring throng,
> As though with open ears they would devour his tongue.[1]

In respect of the state of society in which this was a normal experience, it is hardly necessary to prove that Shakespeare had any special inducement in youth to take an interest in legal procedure. But, as it happened, he had. It is generally known, and the legalists might have been expected to remember, that Shakespeare's father was a man of many lawsuits. But nowhere in connection with this question, I think, has note been taken of the extent and significance of that experience in the Shakespeare household. It has been left to a clerical writer—partly bent on proving the quite arguable thesis that John Shakespeare was a Puritan recusant, partly on pressing the fantastic one that William Shakespeare was a profound Biblical student—to bring out the full force of the evidence as to the father's manifold experience of law courts. The summary is that "He was one of the most litigious of men. . . . From July, 2 Philip

[1] *Polyolbion*, 5th Song, ii, 29-36.

and Mary, to March, 37 Elizabeth, there are no less than sixty-seven entries of cases in which his name appears on one side or the other; and *some of his actions are with his best friends*, as Adrian Quiney, Francis Herbage, Thomas Knight, and Roger Sadler; but in 1591 there is only one entry, wherein John Shakespeare sued as plaintiff in a debt recovery action and won with costs."[1]

N.B.

This noteworthy record, and many of the details on which it is based, bring out three facts of obvious importance in the biography of Shakespeare: (1) the *normality* of litigation in Stratford as in Elizabethan England in general; (2) the abundant share of the Shakespeares in legal experience; and (3) the possibility of error in the old inference, accepted by most of us, as to the father's impecuniosity. The fact seems to be that when John Shakespeare was distrained upon for debt and the writ was returned (1586) endorsed with the note, "quod praedictus Johannes Shakspere nihil habet unde distringere potest habet," he was not at all devoid of means, but was simply baffling the suit against him. Real property he certainly possessed at that time,[2] as did other substantial citizens who were also being proceeded against;[3] to say nothing of the obvious consideration that he must have had household furniture. I will not attempt here to decide the problem as to whether the whole episode of John Shakespeare's finings and the disqualification consequent on his non-attendance at the Council was simply a matter of his recusancy. The *prima facie* case for that view is extremely strong; but it calls for a more searching investigation than I have yet met with; and I simply note that it puts in doubt the whole theory of John Shakespeare's progressive impecuniosity, which in the past I had accepted like others. Mr. Halliwell-Phillipps had indeed pointed out that when Alderman

[1] Rev. T. Carter, *Shakespeare: Puritan and Recusant*, 1897, p. 166.

[2] Work last cited, pp. 30, 93, 124, 159. [3] *Id.* p. 165.

Shakespeare went on paying heavy fines for persistent non-attendance at the Council, it was "not an evidence of falling-off in circumstances, but rather the opposite, for it implies on the contrary the ability to pay the fines for non-attendance, for we cannot doubt that if he had not paid them some notice would have appeared in the books."[1] This, however, was not convincing; and the theory of lack of funds was ostensibly the reasonable one. But on a review of all the data the question must be pronounced unsettled; and among other things the theory that the boy William *had* to leave school at thirteen because of his father's pecuniary embarrassments is obviously put in doubt.

Whatever be the ultimate solution, it is at least clear that the boy Shakespeare had not less but more than the normal Elizabethan ground of interest in legal matters. It would be idle for the "anti-Stratfordians" to argue that we have no evidence of his taking any interest in his father's litigations. It might as well be said that we have no evidence of his caring about anything. Common sense warrants the belief that he heard endless talk in the home circle on legal matters; and the very illiteracy of his father, so often stressed by the Baconians and their allies, carries the irresistible presumption that the boy was called on to read some legal documents for his parents. In view of our previous survey of the legalisms in the plays it is worth noting that the enigmatic document of agreement between John Shakespeare and Robert Webbe, entered into in 1579, makes mention of "feoffments, grants, entails, jointures, dowers, leases, wills, uses, rent charges, rent sects, arrearages of rent, recognizance, statute merchant and of the staple, obligations, judgments, executions, condemnations, issues, fines, amercements, intrusions, forfeitures, alienations without license," &c.[2] Of most of these terms John Shakespeare, with his many litigations and title-deeds, was likely enough

[1] Citation by Carter, p. 125.

[2] Carter, as cited, p. 98.

to know the meaning, whether or not he could sign his name. Between the documents and the lawsuits, his son had occasion enough to know as well as any layman of his day the common vocabulary of lawyers, which is practically all that his plays indicate him to have known. And as that very transaction about the Asbies, with which the Webbe agreement connects, dragged on long after he was a grown man, and came into the court of Chancery in 1597—"after the days of persecution were over," as Mr. Carter notes, when a recusant could go to law without fear of amercement—William Shakespeare had a personal interest in studying all the documents concerned. If Mr. Grant White and the legalists had taken such things into account, they might have found a simple solution for the occurrence of legal terms in the plays.

But Shakespeare's experience, be it repeated, was not abnormal in that litigious and court-haunting age. The public in general had the same proclivities, and the other dramatists, as we have seen, catered freely for the same appetite. The habit of court-haunting is indicated in Webster and Rowley's CURE FOR A CUCKOLD (iii, 1):

> A judge, methinks, looks loveliest when he weeps,
> Pronouncing of death's sentence;

and in the same scene a character sententiously puts sex attraction in a legal figure:

> Although the tenure by which land was held
> In villanage be quite extinct in England,
> Yet you have women there at this day living
> Make a number of slaves.

Latimer in the pulpit (1529) turns to homiletic account three terms which we have common and usual amongst us, that is to say, the sessions of inquirance, the sessions of deliverance, and the execution day. Sessions of inquirance is like unto judgment; for when sessions of inquiry is, then the judges cause twelve men to give verdict of the felon's crime, whereby he shall be judged to be indicted: sessions of deliverance is much like council: for at sessions of deliverance the judges go among themselves to council, to determine sentence against the felon;

execution-day is to be compared with hell-fire. . . . Wherefore you may see that there are degrees in these our terms, as there be in those terms.[1]

The same habit of court-haunting is taken for granted by Sir Thomas Elyot (1531) :

And in the country, at a sessions or other assembly, if no gentyl men be thereat, the saying is that there was none but the commonalty.[2]

The habits of Henry the Eighth's day in this regard had not changed in Elizabeth's. No matter in what country they lay their scene, the dramatists assume the universal interest in matters of law and litigation.

> I walking in the place where men's lawsuits
> Are heard and pleaded—
>
> Chapman, *All Fools*, ii, 1,

is quite a natural way of beginning an account of an episode ; equally by the way is the description :

> Heard he a lawyer, ne'er so vehement pleading,
> He stood and laugh'd.
>
> *Id. Revenge of Bussy D'Ambois*, i, 1 ;

and Chapman had made a personage say, before Dickens :

> The law is such an ass.
>
> *Revenge for Honour*, iii, 2.

The natural result of such a general preoccupation is that not merely the phraseology but the procedure of the law-courts everywhere obtrudes itself in literature. Even in our day, trial scenes are often the central features in melodramas, the spontaneously dramatic character of a trial giving the playwright an easy opportunity ; and as soon as the Elizabethan drama had come in touch with normal life, even on a poetic plane, it availed itself of this obvious resource. Not only does the drama swarm with trials and trial scenes, lawsuits, advocates, judges, magistrates, scriveners, warrants, sergeants and affairs of justice, but the judicial procedure and the legal

[1] *Sermons*, ed. cited, pp. 9–10.
[2] *The Boke named the Governour*, ed. in same series, p. 2.

terminology are alike constantly resorted to in poetic and polemic literature.

Nashe, in one of his hilarious wrangles with Gabriel Harvey, in FOUR LETTERS CONFUTED, plunges into the trial form as naturally as any dramatist, thus :

> The Arraignment and Execution of the Third Letter.
> *To every reader favourably or indifferently affected.*
> Text, stand to the Bar. Peace there below.

After a quotation and a comment, we have :

> You would foist in *non causam pro causa*. . . . If you have any new infringement to destitute the indictment of forgery that I bring against you, so it is.
>
> Here enters *Argumentum a testimonio humano*, like Tamburlaine drawn in a chariot by four kings.[1]

In Greene's story, A QUIP FOR AN UPSTART COURTIER, similarly, the onlooker in the quarrel between Velvet-breeches and Cloth-breeches says to the former :

> Listen to me, and discuss the matter by law; . . . you claim all, he [Cloth-breeches] would have but his own : both plead an absolute title of residence in this country : then the course between you be trespass or disseisin of frank tenement : You, Velvet-breeches, in that you claim the first title, you shall be plaintiff and plead a trespass of disseisin done you by Cloth-breeches, so shall it be brought to a jury, and tried by a verdict of twelve or four-and-twenty.

The reply is that Velvet-breeches cannot rely on juries' justice, " for my adversary is their countryman and less chargeable : he shall have the law mitigated if a jury of hinds or peasants should be empannelled." Upon this comes the rejoinder :

> You need not doubt of that, for whom you distrust and think not indifferent, him you upon a cause manifested, challenge from your jury.
>
> If your law allow such large favour, quoth Velvet-breeches, I am content my title be tried by a jury, and therefore let mine adversary plead me *Nul tort nul disseisin*.[2]

[1] Works, ed. cited, i, 293.
[2] Works, ed. Grosart, xi, 228–9.

Later there is a literary jury-trial, and the narrator addresses the jury, first naming a knight as foreman :

> Worshipful sir, with the rest of the jury, whom we have solicited of choice honest men, whose consciences will deal uprightly in this controversy, you and the rest of your company are here upon your oath and oaths to inquire whether Cloth-breeches have done disseisin unto Velvet-breeches, yea or no, in or about London, in putting him out of frank tenement, wronging him of his right and imbellishing [weakening] his credit : if you find that Cloth-breeches hath done Velvet-breeches wrong, then let him be set in his former estate and allow him reasonable damages.[1]

Greene's story, as it happens, is a systematic plagiarism from the doggerel poem THE DEBATE BETWEEN PRIDE AND LOWLINESS, by Francis Thynne, a young attorney, probably written and privately printed, but not published, before 1570.[2] The curious thing is, however, that Greene puts the case in a more lawyerlike way than does the lawyer, who is mainly concerned to moralise, and whose point lies in the destruction of Cloth-breeches by a miscellaneous jury whose sympathies are with Velvet-breeches, the rich oppressor ; whereas Greene gives the legal victory to the man with right on his side, on legal grounds. Thynne mentions the maxim *nul tort, nul disseisin*, merely as a comment in epilogue : Greene brings it into the case. The story was long popular : evidently the public taste for legalism could be relied on by both authors and publishers. And Greene, as we have seen, freely employs legal phraseology in other tales. In this he has a phrase about " statute marchant or staple " which is not in his original ; and in the DEFENCE OF CONEY-CATCHING (Works, xi, 55), among other " legal " expressions, there is a transaction in which a borrower " promised to acknowledge a statute staple " to the borrower, " with letters of defeysance," and further " made an absolute deed of gift from wife

N.

[1] *Id.* p. 293.

[2] See J. P. Collier's preface to the Shakespeare Society's reprint (1841) of Thynne's poem.

and children to this usurer of all his lordship," [worth in "rent of assise seven score pounds by the year"] "and so had the 2000 marks upon the plain forfeit of a bond." In ALCIDA, GREENE'S METAMORPHOSIS (1588), we have the dictum "Where love serveth his writ of command, there a *supersedeas* of reason is of no avail" (Works, ix, 42). If such a quantity of technical phraseology and procedure had been found in a Shakespearean play, it would have been pronounced proof positive of the saturation of the poet's mind with legal ideas through a legal training. But Greene was no more a lawyer than Nashe.

Even Spenser in the FAERIE QUEENE[1] follows the prevailing fashion:

> On a day when Cupid held his court,
> As he is wont at each Saint Valentine,

a fair cruel maid is found to have "murdred" many sighing lovers.

> Therefore a Jury was impannelled straight . . .
> Of all these crimes she there indited was.
> All which when Cupid heard, he by and by
> In great displeasure willed a Capias
> Should issue forth t' attach that scornful lass.
> The warrant straight was made, and therewithal
> A Bailiff-errant forth in post did pass,
> Whom they by name there Portamore did call,
> He which doth summon lovers to love's judgment hall.
>
> The damsel was attacht, and shortly brought
> Unto the bar whereas she was arraigned;
> But she thereto nould plead, nor answer ought. . . .
> So judgment past, as is by law ordained
> In cases like, which when at last she saw . . .
> Cried mercy, to abate the extremitie of law.

Turning to the drama, we find the expedient of a trial resorted to by half the dramatists of the period. Peele makes a trial the central matter of his ARRAIGNMENT OF PARIS (1584), which precedes Marlowe. Jonson employs the expedient again and again. In THE POETASTER he

[1] B. VI. c. vii, 33–37.

puts into the form of a trial his quarrel with his rivals and calumniators, as does his antagonist Dekker in SATIROMASTIX. An elaborate trial scene is inserted in VOLPONE, with "Avocatori, Notario, Commandatori, Saffi, and other officers of justice": and the procedure is incomparably more court-like than that in the trial of the case of Antonio and Shylock. In THE SILENT WOMAN there is a long scene in which a divine and a canonist debate at length on the law of divorce as they might have done in a court. In THE STAPLE OF NEWS there is a parade of characters representing legal abstractions—Mortgage, Statute, Band, Wax, with a lawyer Picklock; and in THE NEW INN we have, as aforesaid,[1] a "Court of Love" scene in a room "furnished as a tribunal," where the maid Prudence "takes her seat of judicature" and calls for the clearing of the court and administration of oaths. In his other plays, as we have seen, legalisms abound: in THE MAGNETIC LADY, as we shall see, there is far more legal "shop" and talk about lawyers than in any three plays of Shakespeare. A play-scene was in fact counted-on as a "draw," though Jonson did not succeed with THE NEW INN. Chapman and Rowley make their entire play of THE ADMIRAL OF FRANCE a tissue of judicial investigations. An inquiry, held by way of a trial, and corruptly swayed by an iniquitous Chancellor, is followed by another trial, in which, the King's Advocate prosecuting, the Chancellor is exposed and brought to justice. One or both of the authors had certainly watched trials, as nearly everybody in that day did; and there is a probability that the elaborate harangues in this play were modelled upon printed reports. Yet neither Chapman nor Rowley was a lawyer. A less elaborate but still lengthy trial scene occurs in BYRON'S TRAGEDY: the device was evidently popular in the period; and in Chapman's plays it must have been the main attraction.

N.B.

[1] Above, pp. 123–5.

Other playwrights show the same proclivity. In Dekker's OLD FORTUNATUS (v, 2), in the scene in which Vice and Virtue and Fortune dispute, the effect of a trial is got by a reference to the Queen in the audience :

> *Fortune.* Thou art too insolent : see, here's a court
> Of mortal judges : let's by them be tried,
> Which of us three shall most be deified.

And in IF THIS BE NOT A GOOD PLAY, THE DEVIL IS IN IT [1] we have similar extempore effects :

> *Pluto.* Sit, call a sessions : set the souls to a bar.
> 3. *Jud.* Make an Oyes ! . . .
> *Shacklesoul.* A jury of brokers impannell'd and deeply sworn, to pass on all the villains in hell.

Then follows a trial of souls of bad men—Ravaillac, Faust, &c. In A WARNING FOR FAIRE WOMEN (1599) there is a long trial scene to which, for detail, formality, and general realism, there is no parallel in Shakespeare's plays. A murderer, concerning whose case there has already been much amateur detective investigation, is tried before "the Lord Mayor, the Lord Justice, and the four Lords, and one clerk, and a Sheriff," who enter in due form. The Lord Justice calls :

> Bring forth the prisoner, and keep silence there.
> Prepare the Inditement that it may be read.

The clerk duly does so, the document being given in full, in the strict form of the day. The criminal is told in full legal detail how "with one sword, price six shillings," he accomplished his crime : and on his pleading guilty the case proceeds exactly as such a case might, the judge pronouncing a homily before passing sentence. The abettors of the crime are then brought in and indicted "jointly and severally," with the same technical precision, and searching questions are put to the guilty persons. The "inditements" stand as documents of Elizabethan criminal procedure. Had such a scene been found in a Shakespearean play, it would have been

[1] Pearson's ed. vol. iii, p, 353.

claimed by the legalists as overwhelming evidence of Shakespeare's lawyership. The play is anonymous, and is conjecturally ascribed by Fleay to Lodge, whose training was in medicine. Shakespeare's it certainly is not, though Shakespeare in MACBETH echoed some of its lines. (*See below*, Ch. ix.)

In A LOOKING GLASS FOR LONDON, Greene and Lodge insert an elaborate trial scene for the purpose of showing how justice was perverted both by advocates and judges in the interest of usurers : the trial being here presented, as it were, for its own sake.

In THE FATAL DOWRY, Massinger sets out, in "A Street before the Court of Justice," with a discussion on the arbitrary ways of law courts ; and the second scene consists in the hearing of a plea to set aside the rigour of justice in the case of a dead body seized for debt. In the second Act the debate is continued. In the fourth Act the wronged husband causes his father-in-law, an ex-judge, to try the cause of the unfaithful wife, telling the servants to set down the body of the slain seducer "before the judgment seat" ; and the wife is to "stand at the bar" :

> For me, I am the accuser.

In the fifth Act, finally, the husband is himself formally tried in court for his act of vengeance ; the victim's father, a judge, being present. The whole conduct of these trials is sufficiently unlawyerlike ; but that is not the question. The point is that, like Shakespeare, the other dramatists, without legal training and without concern for strict legal form, spontaneously resorted to trials and court procedure as a dramatic method.

In THE MAID OF HONOUR, Massinger makes the heroine plead her cause before the King as before a judge :

> To do me justice,
> Exacts your present care, and I can admit
> Of no delay. If, ere my cause be heard,
> In favour of your brother you go on, sir,

> Your sceptre cannot right me. He's the man,
> The guilty man, whom I accuse ; and you
> Stand bound in duty, as you are supreme,
> To be impartial. Since you are a judge,
> As a delinquent look on him, and not
> As on a brother : Justice painted blind
> Infers her ministers are obliged to hear
> The cause : and truth, the judge, determine of it ;
> And not sway'd or by favour or affection,
> By a false gloss or wrested comment, alter
> The true intent or letter of the law. . . .
> I stand here mine own advocate.

Legal style and diction are lent to the scene in excess of any need in the situation, for it takes place in a room of the palace. The King in judicial style says :

> Let us take our seats.
> What is your title to him ?

And the heroine answers :

> By this contract,
> Seal'd solemnly before a reverend man,
> I challenge him for my husband.
> [*Presents a paper to the King.*]

We are witnessing a drama cast in legal forms, for the entertainment of an audience accustomed to hear law and talk law, by a dramatist who has no more special legal knowledge than they. Had Lord Campbell had it before him as a Shakespearean work he would unquestionably have professed to find in it proof of close familiarity with legal procedure, though in point of fact, like Shakespeare's own legal scenes, it is as loose as may be in its imitation of the real work of courts.

Middleton, in turn, makes the whole play of THE WIDOW turn on the getting of warrants, arrests, bails, the attempt to secure a widow in marriage by having concealed witnesses to her verbal "contract," the attempt on her part to escape by litigation, and her "deed of gift" which, as she announces, "was but a deed in trust." Middleton, we shall be told, was a barrister ; and it must have been his professional experience that so filled his

head with legal ideas and terms that he bestows them on the widow. But in his other plays he uses no such machinery; and Webster, who was a "Merchant Taylor," makes three of his plays—THE WHITE DEVIL, THE DEVIL'S LAW CASE, and APPIUS AND VIRGINIA—turn upon formal trials, besides introducing a trial scene into THE FAMOUS HISTORY OF SIR THOMAS WYAT, which he wrote in collaboration with Dekker. Concerning the second of the plays named, Mr. Devecmon has remarked that it contains "more legal expressions, some of them highly technical, and all correctly used, than are to be found in any single one of Shakespeare's Works."[1] Upon my citation of this judgment[2] Mr. Greenwood protests[3] that

> the fact is that the statement as to *The Devil's Law Case* is not only not true, but so preposterously contrary to the truth that one can hardly believe that Mr. Devecmon had read the drama in question. There is, incredible as it may sound, practically *no law at all* in Webster's play! There are indeed a few legal terms such as "livery and seisin," a "caveat," "tenements," "executors," thrown in here and there, and there is an absurd travesty of a trial where each and everybody—judge, counsel, witness, or spectator—seems to put in a word or two just as it pleases him; but to say that there are "more legal expressions" in the play "(and some of them highly technical and all correctly used) than are to be found in any single one of Shakespeare's works," is an astounding perversion of the fact, as any reader can see who chooses to peruse Webster's not very delicate drama. I cannot but think that Mr. Robertson had either not read the play, or had forgotten it when he quoted this amazing passage.

I am quite willing to stake the entire question upon this issue. Mr. Greenwood might, I think, have taken the trouble to collate the legal references in THE DEVIL'S LAW CASE, and compare them with Lord Campbell's citations from any one Shakespearean play: it would have been more to the purpose than any amount of simple

[1] *In re Shakespeare's Legal Acquirements*, p. 8.
[2] *Did Shakespeare write 'Titus Andronicus'?* 1905, p. 54.
[3] *The Shakespeare Problem Restated*, p. 398.

asseveration, however emphatic. He would thus have learned that the "few" legal terms which he dismisses as of no account are exactly on a par with most of those cited by Campbell from Shakespeare (only more realistic), and with those cited by Grant White in a passage which he himself has quoted with approbation. Having read Webster's play thrice—which is more, I fear, than Mr. Greenwood had done by Campbell's book—I will make good his omission. The following "legal" phrases are cited as they come, Act by Act:

ACT I. SCENE I.

Romelio. He makes his colour
Of visiting us so often, to sell land.

Contarino. The evidence of the piece of land
I motion'd to you for the sale.

Leonora. To settle your estate.

ACT I. SCENE 2.

Jolenta. Do you serve process on me?

Rom. Keep your possession, you have the door by the ring. That's livery and seisin in England.

Ercole. To settle her a jointure.

Jolenta. To make you a deed of gift.

Winifred. Yes, but the devil would fain put in for's share
In likeness of a separation.

Contarino. You have delivered him guiltless.

ACT. II. SCENE 1.

Julio. Any action that is but accessory.

Crispiano. One that compounds quarrels.

Ercole. Your warrant must be mighty.

Contarino. has a seal
From heaven to do it.

ACT II. SCENE 3.

Ariosto. What should move you
Put forth that harsh inter'gatory?

Romelio. The evidence of church land. . . .
A supersedeas be not su'd.

Lonora. To come to his trial, to satisfy the law.

ACT II. SCENE 4.

Capuchin. The law will strictly prosecute his life.

ACT III. SCENE 2.

Romelio. He has made a will . . . and deputed Jolenta his heir.

Romelio. If we can work him, as no doubt we shall,
To make another will, and therein assign
This gentleman his heir.

Romelio. I must put in a strong caveat.
To put in execution Barmotho pigs.
Here's your earnest.

ACT III. SCENE 3.

Romelio. You are already made, by absolute will,
Contarino's heir : now, if it can be prov'd
That you have issue by Lord Ercole,
I will make you inherit his land too. . . .
I have laid the case so radically
Not all the lawyers in [all] Christendom
Shall find any the least flaw in't. . . .
No scandal to you, since we will affirm
The precontract was so exactly done
By the same words us'd in the form of marriage,
That with a little dispensation,
A money matter, it shall be register'd
Absolute matrimony.

ACT IV. SCENE I.

A long quibbling dialogue between Ariosto, the advocate, and Sanitonella, who has been "dry-founder'd" in a pew of a law office "this four years, seldom found non-resident from my desk," and presents a brief which "cost me four nights' labour." Ariosto tears it up ; and the clerk "must make shift with the foul copy." Cantilupo, being next consulted, pronounces, "'Tis a case shall leave a precedent to all the world" ; Sanitonella concluding, "The court will sit within this half hour ; peruse your notes ; you have very short warning."

ACT IV. SCENE 2. TRIAL.

Ercole pays an officer to get a seat in "a closet belonging to the court," where he "may hear all unseen" ; and Sanitonella warns the officers to "let in no brachygraphy-men to take notes," and, as "this cause will be long a-pleading," produces a pie which he "may pleasure some of our learned counsel with," as he has done "many a time and often when a cause" has dragged long.

The judge asks whether the parties are present; and on Romelio saying he is ignorant of what he is to be charged with, says:

> I assure you, the proceeding
> Is most unequal then, for I perceive
> The counsel of the adverse party furnish'd
> With full instruction . . .
> Sir, we will do you
> The favour, you shall hear the accusation;
> Which being known, we will adjourn the court
> Till a fortnight hence: you may provide your counsel.

After further dialogue, Cantilupo opens:

> May it please your lordship and the reverend court
> To give me leave to open to you a case
> So rare, so altogether void of precedent,
> That I do challenge all the spacious volumes
> Of the whole civil law to show the like.
> We are of counsel for this gentlewoman.
> We have receiv'd our fee: yet the whole course
> Of what we are to speak is quite against her.
> Yet we'll deserve our fee too.

After he has lengthily stated his case, the judge comments:

> A most strange suit this; 'tis beyond example, &c.

and proceeds to question the parties. When a witness is asked for, Sanitonella responds, "Here, my lord, *ore tenus*," and there is a long cross-examination.

In Act v, Scene 4, we have a passage which may be instructively contrasted with Lord Campbell's illustration of Shakespeare's deep and accurate knowledge of the procedure of trial by battle:

> *Julio.* I have undertaken the challenge very foolishly.
> *Prospero.* It would be absolute conviction
> Of cowardice and perjury; and the Dane
> May to your public shame reverse your arms,
> Or have them ignominiously fasten'd
> Under his horse-tail.

And in Scene 6 we have the actual trial by battle. The Marshal begins in due form:

> Give the appellant his summons: do the like
> To the defendant;

the proceedings go on with ostensible technical accuracy; and we have the herald's cries: "*Soit la bataille, et victoire à ceux qui ont droit!*" What would not Lord Campbell have made of it all!

How Mr. Greenwood, in the face of all this matter, can say that Mr. Devecmon's assertion "is an astounding perversion of the fact," I cannot understand. He must have written in total oblivion, or ignorance, of the matter upon which Lord Campbell founded *his* amazing dicta. If there is "no law at all in Webster's play," Lord Campbell has cited none from Shakespeare; and Mr. Greenwood's handling of the matter, in view of the use he has made of Lord Campbell's egregious treatise, calls for somewhat serious reprehension. Evidently he had no idea of the nature of the grounds on which Campbell proceeds. He speaks of "a few legal terms thrown in here and there." What did Campbell produce from Shakespeare? If the trial in Webster is an "absurd travesty of a trial, where each and everybody—judge, counsel, witness, or spectator—seems to put in a word or two just as it pleases him," what, in the name of honest controversy, is the trial in THE MERCHANT OF VENICE, which Lord Campbell alleged to be "conducted according to the strict forms of legal procedure"? Upon Lord Campbell's scandalous deliverances Mr. Greenwood founds his main case. Will *he* venture to discriminate between Shakespeare's law case and Webster's? And if Lord Campbell is entitled to ascribe to Shakespeare a full knowledge of the procedure of trial by battle on the sole ground of his use of the word "craven," and to make this unspeakable absurdity part of his case for Shakespeare's "profound and accurate knowledge of law," upon what critical principle does Mr. Greenwood sweep aside the actual trial by battle in Webster, with all its technicalities?

I am not concerned to go into the question of the accuracy of Webster's or Massinger's phraseology: that

is neither here nor there. Even Campbell, in flat contradiction of his own claims, admitted inaccuracies in Shakespeare; and Mr. Greenwood, in turn, fatally pressed by Mr. Devecmon, makes further admissions, forgetting that they absolutely destroy his own case, which rested not upon mere citation of legal matter in Shakespeare, but upon the repeated claim that Shakespeare's law was impeccable, never open to demurrer or writ of error, and therefore possible only to one within the freemasonry of the profession. It may be left to either lawyers or laymen to judge for themselves whether there is not much more show of legal knowledge and recourse to legal phraseology in Webster than in Shakespeare. From twenty-three of Shakespeare's plays Lord Campbell can cite on the average only two or three legal allusions apiece: Webster's one play yields over thirty. I do not for a moment pretend that they exhibit "deep" or "accurate" knowledge: I leave these follies to the other side, who profess to certify a playwright's lawyership on grounds that would move a policeman to derision. The question is whether Webster's multitude of "legalisms" do not, by every principle on which Lord Campbell proceeded in his extracts and his comments, exhibit tenfold more preoccupation with legal matters than do Shakespeare's, and, by mere variety of allusion, far more "knowledge."

I have dealt thus far only with one of Webster's plays—apart from the incidental citations I have made from him in common with other playwrights in dealing with Lord Campbell's proofs. But an almost equal abundance of legal allusion is found in APPIUS AND VIRGINIA, as the following citations show:

> Were you now
> In prison, or arraign'd before the senate
> For some suspect of treason;
>
> (i, 1.)
>
> Virginius, we would have you thus possess'd,
> We sit not here to be prescrib'd and taught,

Nor to have any suitor give us limit
Whose power admits no curb.

(i, 3.)

Is my love mispriz'd ?

(ii, 3.)

Hadst thou a judge's place above all judges
That judge all souls, having power to sentence me.

(*Ib.*)

Your rashness we remit.

(*Ib.*)

Blind misprision.

(*Ib.*)

I'll produce
Firm proofs, notes probable, sound witnesses,
Then, having with your lictors summon'd her,
I'll bring the cause before your judgment seat,
Where upon my infallid evidence
You may pronounce the sentence on my side.

(*Ib.*)

The cause is mine ; you but the sentencer
Upon that evidence which I shall bring.
The business is, to have warrants by arrest
To answer such things at the judgment bar
As can be laid against her : ere her friends
Can be assembled, ere himself can study
Her answer, or scarce know her cause of summons,
To descant on the matter, Appius may
Examine, try, and doom Virginia.

(*Ib.*)

The most austere and upright censurer
That ever sat upon the awful bench.

(iii, 1.)

If you will needs wage eminence and state
Choose out a weaker opposite.

(*Ib.*)

First, the charge of her husband's funeral, next debts and legacies, and lastly the reversion.

(iii, 2.)

The term-time is the mutton-monger in the whole calendar.
Do your lawyers eat any salads with their mutton ?

(iii, 2.)

Deny me justice absolutely, rather
Than feed me with delays.

(*Ib.*)

My purse is too scant to wage law with thee:
I am enforc'd be mine own advocate.

(*Ib.*)

to let you know,
Ere you proceed in this your subtlement,
What penalty and danger you accrue
If you be found to double.

(*Ib.*)

Having compounded with his creditors
For the third moiety.

(*Ib.*(

Your reverence to the judge, good brother.

(iv, 1.)

May it please your reverend lordships.

(*Ib.*)

Now the question
(With favour of the bench) I will make plain
In two words only without circumstance.

(*Ib.*)

Here's her deposition on her death-bed.

(*Ib.*)

If that your claim be just, how happens it
That you have discontinu'd it the space
Of fourteen year?

(*Ib.*)

I shall resolve your lordship.

(*Ib.*)

Where are your proofs of that?
Here, my good lord,
With depositions likewise.

(*Ib.*)

For your question
Of discontinuance: put case. . . .

(*Ib.*)

I bend low to thy gown, but not to thee.

(*Ib.*)

Let us proceed to sentence.

(*Ib.*)

Over and above all this resort to forms of trial, the habit of legal phraseology and legal allusion, as we have seen, pervades the Elizabethan drama to an extent which implies a general proclivity in the people. Even the many parallels above presented to the citations of Lord

Campbell from Shakespeare give but an inadequate idea of the extent of the practice; and at the risk of wearying the reader I will transcribe for him a string of the legalisms and references to law and litigation in a single play of Ben Jonson's—THE MAGNETIC LADY.

Compass. He is the prelate of the parish here. . . .
Makes all the matches and the marriage feasts
Within the ward; draws all the parish wills,
Designs the legacies. . . .
For of the wardmote quest he better can
The mystery, than the Levitic law.

Lady Loadstone. He keeps off all her suitors, keeps the portion
Still in his hands, and will not part withal
On any terms.

[Many references to this]

Compass. Master Practice here, my lady's lawyer
Or man of law (for that is the true writing),
A man so dedicate to his profession
And the preferments go along with it. . . .
So much he loves that night-cap! the bench-gown
With the broad gard on the back! these shew a man
Betroth'd unto the study of our laws. . . .
He has brought your niece's portion with him, madam,
At least, the man that must receive it, here
They come negociating the affair;
You may perceive the contract in their faces,
And read the indenture.

Sir Diaphanous. I have seen him wait at court there, with his maniples
Of papers and petitions.

Practice. He is one
That over-rules though, by his authority
Of living there; and cares for no man else:
Neglects the sacred letter of the law;
And holds it all to be but a dead heap
Of civil institutions: the rest only
Of common men, and their causes, a farrago
Or a made dish in court; a thing of nothing.

Compass. And that's your quarrel with him! a just plea.

Lady Loadstone. Will Master Practice be of counsel against us?

Compass. He is a lawyer and must speak for his fee,
Against his father and mother, all his kindred,

His brothers or his sisters ; no exception
Lies at the common law. He must not alter
Nature for form, but go on in his path ;
It may be, he'll be for us. . . .
He shall at last accompt for the utmost farthing
If you can keep your hand from a discharge.

Sir Moth. The portion left was sixteen thousand pound :
I do confess it as a just man should. . . .
Now for the profits every way arising.
Well sir, the contract
Is with this gentleman, ten thousand pound.
An ample portion for a younger brother . . .
He expects no more than that sum to be tender'd
And he receive it : these are the conditions.

Practice. A direct bargain, and sale in open market.

Sir Moth. And what I have furnish'd him withal o'the by
To appear or so, a matter of four hundred
To be deduced upon the payment. . . .
Draw up this
Good Master Practice, for us, and be speedy

Practice. But here's a mighty gain, sir, you have made
Of this one stock : the principal first doubled,
In the first seven year, and that redoubled
In the next seven, beside six thousand pound,
There's threescore thousand got in fourteen year,
After the usual rate of ten in the hundred,
And the ten thousand paid . . .

Sir Moth. . . . 'Tis certain that a man may leave,
His wealth or to his children or his friends ;
His wit he cannot so dispose by legacy. . . .

Compass. He may entail a jest upon his house,
Or leave a tale to his posterity,
To be told after him.

Practice. . . . The reverend law lies open to repair
Your reputation. That will give you damages !
Five thousand pound for a finger, I have known
Given in court ; and let me pack your jury.
. . . Sir, you forget
There is a court above, of the Star Chamber
To punish routs and riots.

Compass. . . . There's no London jury but are led,
In evidence, as far by common fame
As they are by present disposition

. . . a man
Mark'd out for a chief justice in his cradle.

Practice. . . . I am a bencher, and now double reader

Compass. But run the words of matrimony over
My head and Mistress Pleasance's in my chamber ;
There's Captain Ironside to be a witness,
And here's a license to secure thee.—Parson
What do you stick at ?

Palate. It is afternoon, sir,
Directly against the canon of the church.

Sir Diaphanous. I saw the contract and can witness it.

Compass. Varlet, do your office.

Serjeant. I do arrest your body, Sir Moth Interest,
In the King's name, at suit of Master Compass,
And dame Plancentia his wife. The action's enter'd,
Five hundred thousand pound. . . .

Lady Loadstone. I cannot stop
The laws, or hinder justice : I can be
Your bail, if it may be taken.

Compass. With the captain's,
I ask no better.

Rut. Here are better men
Will give their bail.

Compass. But yours will not be taken. . . .

Serjeant. You must to prison, sir,
Unless you can find bail the creditor likes.

Compass. Bring forth your child, or I appeal you of murder.

Prac. The law is plain : if it were heard to cry,
And you produce it not, he may indict
All that conceal it, of felony and murder.

Polish. . . . Here your true niece stands, fine Mistress Compass,
To whom you are by bond engag'd to pay
The sixteen thousand pound, which is her portion
Due to her husband, on her marriage-day.
I speak the truth, and nothing but the truth. . . .

Ironside. You'll pay it now, Sir Moth, with interest. . . .

Sir Moth. Into what nets of cozenage am I cast
On every side ? . . . What will you bate ?

Compass. No penny the law gives.

Sir Moth. Yes, Bias's money.

Compass. What, your friend in court!
I will not rob you of him, nor the purchase.

Lady Loadstone. . . . There rests yet a gratuity from me
To be conferr'd upon this gentleman,
Who, as my nephew Compass says, was cause
First of the offence, but since of all amends.
The quarrel caused the affright, the fright brought on
The travail, which made peace; the peace drew on
This new discovery, which endeth all
In reconcilement.

Compass. When the portion
Is tender'd, and received.

Sir Moth. Well, you must have it;
As good at first as last.

The whole play, in fine, is the working out, without resort to courts, of a dispute in law. Plays in a similar taste will be found in Chapman, Heywood, Dekker, and Massinger, who were not lawyers, and in Middleton, who was. But, as it happens, no such play of pervading legal intrigue is to be found in Shakespeare. In no Shakesperean play, indeed, apart from the MERCHANT OF VENICE, is there to be found nearly so much reliance upon and reference to a legal interest as is to be seen in Chapman's first play, THE BLIND BEGGAR OF ALEXANDRIA, where a question about a mortgage alleged to be forfeited recurs half a dozen times, with long discussions about "statutes" and "assurances" such as Shakespeare nowhere indulges in. Where Shakespeare merely uses legal phrases, as often as not metaphorically, the other dramatists introduce actual matters of litigation.

N.B.

Apart from the endless allusions to concrete litigation in Tudor literature, again, we find in the writings even of the theologians constant evidence of the legalist habit of mind. They often put religion in lawyer-fashion; knowing their readers would so relish it. Thus Bishop

N.

Hooper, answering Bishop Gardiner on the subject of the Eucharist, writes of

> the promise of God . . . of the which . . . these Sacraments be testimonies, witnesses ; as the seal annexed unto the writing is a stablishment and making good of all things contained and specified within the writing. This is used in all bargains, exchanges, purchases, and contracts.
>
> When the matter entreated between two parties is fully concluded upon, it is confirmed with obligations sealed interchangeably, that for ever those seals may be a witness of such covenants as hath been agreed upon between the both parties. And these writings and seals maketh not the bargain, but confirmeth the bargain that is made. No man useth to give his obligation of debtor before there is some contract agreed upon between him and his creditor. No man useth to mark his neighbour's ox or horse in his mark before he be at a full price for the ox, or else were it felony and theft to rob his neighbour. Every man useth to mark his own goods, and not another man's ; so God, in the commonwealth of his church, doth not mark any man in his mark, until such time as the person that he marketh be his. There must first be had a communication between God and the man, to know how he can make any contract of friendship with his enemy, the living God.[1]

In a similar vein he handles the Ten Commandments :

> Forasmuch as there can be no contract, peace, alliance, or confederacy between two persons or more, except first the persons that will contract agree within themselves upon such things as shall be contracted . . . ; also, seeing these ten commandments are nothing else but the tables or writings that contain the conditions of the peace between God and man, Gen. xix, and declareth at large how and to what the persons named in the writings are bound unto the other . . . ; it is necessary to know how God and man was made at one, that such conditions could be agreed upon and confirmed with such solemn and public evidences, as these tables be, written with the finger of God. The contents whereof bind God to aid and succour, keep and preserve, warrant and defend man from all ill, both of body and soul, and at the last to give him eternal bliss and everlasting felicity.[2]

[1] *Answer to the Bishop of Winchester*, Parker Soc. vol. p. 136.

[2] *Declaration of the Ten Commandments :* pref. "Unto the Christian Reader," 1550.

And this comes from an evangelical writer, a martyr, much prized in the generation following him.

After this we can understand how a later divine, Thomas Adams, could deliver in a sermon the "legal" passages cited from him by Mr. Judge Willis, and candidly quoted by Mr. Greenwood,[1] who can offer no better semblance of a rebuttal than the suggestion that Adams had "*probably* looked into some law books, and *perhaps* been thrown into legal company." Now, the passages cited are so technical that, had Lord Campbell found them in Shakespeare, he would have reckoned them "the best stakes in his hedge," as Hooker would say. And if it be rational to explain Adams's law by the "probably" and the "perhaps" above cited, why, in the name of reason and consistency, should not the same suggestion hold in the case of Shakespeare?

It is idle on Mr. Greenwood's part to fall back on an appeal to the "intelligent and unprejudiced reader" to go through the plays and poems and note "the persistence, the accuracy with which he makes use of legal terms and legal allusions, in season and out of season," and all the rest of it, "and then say if he thinks these expressions, culled from the sermons of Thomas Adams, furnish anything like a parallel case to that which we have been considering." The intelligent and unprejudiced reader will reply (1) that the expressions of Adams are more technically lawyerlike than anything in Shakespeare, and (2) that parallel cases to Shakespeare's are furnished by half a dozen of the dramatists whom we have put in evidence, and whom Mr. Greenwood, like Lords Campbell and Penzance and the other lawyers, had never thought of examining—the only difference being that Jonson and Webster and Chapman show much *more* knowledge of and interest in law than does Shakespeare.

Mr. Greenwood's answer to me on the subject of THE DEVIL'S LAW CASE is a sufficient proof that he had adopted

[1] *The Shakespeare Problem Restated*, pp. 392–3.

the conclusions of Lord Campbell without studying his exposition. I will not believe, unless he makes affidavit to that effect, that he thinks the trial-scene in the MERCHANT OF VENICE is lawyerlike in comparison with that in Webster's play. His attack on that is a mere distortion of the issue. He has prodigally and blindly endorsed alike Lord Campbell and Mr. Castle and the other legalists —save where he candidly avows (p. 381) that he " cannot attach much weight to the judgment of a critic [Mr. Churton Collins] who sees the trained lawyer's hand in TITUS ANDRONICUS " on the strength of such items as " affy," " warrants," " *suum quique*," " seizeth," " fee," " purchase," and so forth. But it is just on such things as these that the case of Campbell is mostly built up. It includes even far weaker items. If such data be disallowed, nine-tenths of his book goes by the board at once.

Replying to Mr. Devecmon, Mr. Greenwood strangely protests (p. 400) against what he calls the " curious idea " that " a dramatist cannot be a lawyer unless he makes his ladies and laymen speak in the language that a trained lawyer would employ," Mr. Devecmon having shown that Shakespeare did not do so. At this line of argument I must express my astonishment. Twice over, Mr. Greenwood has in effect surrendered his case. Proceeding as he does upon Lord Campbell's deliverance, without examining the absurd evidence by which it is supported, he at a pinch throws over that evidence while still insisting upon the judge's finding. Met by Judge Willis with *more* technical legalisms than Shakespeare's in the writings of a divine of Shakespeare's day, he denies that such instances furnish " any analogy with the case of Shakespeare."

It is not (he goes on) a question of the mere use of legal phrases or maxims, such as " acknowledging a fine," " a writ *ad melius inquirendum*," " *non est inventus*," " *noverint universi*," " seised," " *volenti non fit injuria*," " tenants at will," " tenants

in capite," "bargain and sale," and the like. The question is, whether Shakespeare, when we consider his works as a whole, does not exhibit such a sound and accurate knowledge of law, such a familiarity with legal life and customs, as could not possibly have been acquired (or "picked up") by the Stratford player; whether it be not the fact, as Richard Grant White puts it, that "legal phrases flow from his pen as part of his vocabulary, and parcel of his thought"? *It is not to the purpose* to compile mere lists of legal terms and expressions from the pages of *other* Elizabethan writers, and those who do so simply display an *ignoratio elenchi*, as the old philosophers would say. [1]

I regret to have to say that there is something worse here than *ignoratio elenchi;* but I will not characterise it further than by use of the phrase of the distinguished living statesman who pronounced certain political arguments to be samples of the "black arts of surrebuttal and surrejoinder." Mr. Greenwood has simply sought to change the issue while professing to argue it. It *is* a question of "the mere use of legal phrases or maxims" —or, still worse, of the inferences to be drawn from mere scoffing allusions to the practices of lawyers. Campbell did not scruple to found on *these* as proofs of an inside familiarity with legal life. He actually cited the phrase "crow like a craven" as proof of a technical knowledge of the law of wager by battle. Beyond such ineptitudes as these, he could cite *only* the use of legal phrases, apart from a very few claims as to legal knowledge being implied in the plots of plays. To all the ineptitudes of Campbell's case Mr. Greenwood is committed when he founds on the deliverances which Campbell so justified. If Mr. Greenwood means to assert that a "sound and accurate knowledge of law" is to be proved in the plays *apart from* the use of legal phrases, he is talking, I must say, even more heedlessly than Campbell, for Campbell did at least make a parade of evidence in respect of the legal phrases. Had Campbell found "writ *ad melius inquirendum*" in Shakespeare he would have made it the head-

[1] Work cited, p. 395.

stone of the corner. It is really carrying special pleading beyond the bounds of professional licence to turn round as Mr. Greenwood does, after staking his whole case on a judgment[1] *founded* on a "mere list of legal terms and expressions," and assert that lists of other men's legal terms and expressions count for nothing as against an alleged general knowledge of law in the Shakespeare plays for which he has no other evidence worth mentioning.

I am at a loss, I confess, to know finally what Mr. Greenwood does mean; for in this very passage, disparaging mere legal phrases, he resumes the claim that "legal phrases flow from Shakespeare's pen as part of his vocabulary and parcel of his thought." Does he mean that other men's legal phrases flowed from their pens in some other way? If so, whose? The plain truth is that Mr. Greenwood had never looked at the legal phrases of the other Elizabethan and Jacobean dramatists. Had he done so, he would not have written his book. Indeed I cannot believe that if, instead of taking Campbell's mere dictum at second hand from Lord Penzance, he had merely gone through the Shakespeare plays *ad hoc* in the critical spirit in which he approached the Shakespeare biography, he would ever have dreamt of formulating for himself any legalist theory. Reading the trial scene in the MERCHANT OF VENICE, he would have said of that, as he quite irrelevantly says to me concerning the DEVIL'S LAW CASE, that it "contains no law at all." He dismisses with just contempt the "legal" phrases cited by Mr. Churton Collins from TITUS ANDRONICUS, and agrees with Mr. Castle that the play "seems to do everything that a lawyer would not do, and leave undone everything that he would." I am curious to know whether he would say otherwise of the MERCHANT OF VENICE, which Mr. Castle does not examine. But the phrases cited by Mr. Collins from TITUS are not a whit more

[1] Lord Penzance, be it remembered, merely quoted Campbell, making no investigation of his own.

nugatory than most of those founded upon by Campbell. Furthermore, on his unfortunate presupposition that what eminent lawyers affirm in his favour about law in Shakespeare must be true, Mr. Greenwood has committed himself to Mr. Castle's special claim about the use of "colour" in Shakespeare, which we have seen to be as worthless as Campbell's and Grant White's claim about "purchase," and Campbell's case in general.

Mr. Greenwood's respect for legal opinion vanishes, of course, when it goes against his thesis. We have seen how he treats the dicta of Mr. Devecmon. I fancy that any open-minded lawyer who has followed the discussion will give Mr. Greenwood short shrift—if I may so mix professional metaphors. In his impatience of the other lawyer's contradiction, he unwittingly falls foul of a fellow legalist, Senator Davis. From that writer Mr. Devecmon quoted the admission that "Antony in speaking of the real estate left by Cæsar to the Roman people, does not use the appropriate word 'devise.'" Upon which Mr. Greenwood retorts (p. 403) that the dramatist was not "so absurdly pedantic" as to make Antony use a correct legal expression when the "left" of North sufficed. Then he proceeds to quote "the critic" as saying that the expression "unto your heirs for ever" was unnecessary. "Really, really!" exclaims Mr. Greenwood, "This is just a little irritating." Perhaps; but the offence comes from Senator Davis, who affirms in general the profundity and accuracy of Shakespeare's legal knowledge, not Mr. Devecmon, who denies it! And only thirty pages earlier (p. 374), Mr. Greenwood had cited *this very Senator Davis* as one giving weighty testimony to Shakespeare's command of a legal vocabulary in which "no legal solecisms will be found." If then the irritating phrase is, as Mr. Greenwood protests, "surely an argument fit only for the least intelligent of readers," the protest should go to the right address.

When he repugns against Mr. Devecmon's criticisms

of Shakespeare's law, Mr. Greenwood merely cuts the bough on which he sits. In an amusing footnote he quotes from my book on TITUS ANDRONICUS the phrase, "putting a few necessary caveats." "No lawyer," he comments, "would speak of 'putting a caveat.' The legal term is to '*enter* a caveat.'" And the compiler of his index sternly clinches the matter by the entry, "Robertson, Mr. J. M., betrays his ignorance on law, 372, note." The most amusing item of all, perhaps, is that I happen to have spent four and a half years of my youthful life in a law office. But it was a Scotch office (to say nothing of the fact that I was immensely more interested in literature than in law); and in Scotch law they do not, to my recollection, speak of "caveats," which word is therefore for me simple English, and not "jargon." "Enter a caveat" is a phrase well entitled to the latter label. But let Mr. Greenwood's and the indexer's judgment stand: what then becomes of Mr. Greenwood's attempted rebuttal of Mr. Devecmon?[1] He really cannot have it both ways. If he insists that no lawyer would say "put a caveat," he has quashed his own objection to the argument that Shakespeare makes his characters talk law as no lawyer would. He does not deny that Shakespeare makes Queen Catherine "challenge" a judge, as lawyers "challenge" jurors. Then Shakespeare was no lawyer. It is idle for Mr. Greenwood to say that "challenge" was used in a general sense. What about "caveat"? . . .

[1] At one point, I will offer Mr. Greenwood my humble literary support against Mr. Devecmon, my ally. Mr. Devecmon criticises Shakespeare's use of "statutes" in *Love's Labour's Lost*, i, 1. "A statute," he objects, "is an act of the legislature." It was really other things as well! Apart from its perfectly legitimate application to the laws of a college, the word was habitually applied in Shakespeare's day to "statutes marchant" &c. *without* the defining term. I think my ally is in the wrong for once—in the course of an argument in which he is overwhelmingly in the right.

I am not concerned to follow Mr. Greenwood through the rest of the difficulties in which he has enmeshed himself. It is sufficient to repeat that he cannot without self-stultification plead that the laxities of Shakespeare's law do not prove him to have been no lawyer. The summing-up of Campbell, upon which Mr. Greenwood proceeded, was to the effect that Shakespeare *did* invariably use legal terms—that is, make his characters use them—as a trained lawyer would. It was Mr. Greenwood's citation of that and similar enormities of nonsense that enabled Mark Twain to die contented in the Baconian faith. The breakdown of Campbell's case at the first serious push tells of the levity with which it was framed. But if we allow Mr. Greenwood to recall Campbell's extravagances and restate the proposition as he will, it is annihilated for every candid student by that comparison of the Shakespeare plays with those of his contemporaries which has been made in these pages, and which neither Campbell nor Mr. Greenwood attempted.

When, then, Mr. Greenwood winds up his legal chapter by citing the passage about "common" and "several" from LOVE'S LABOUR'S LOST (ii, 1), and the similar passage from the Sonnets, and triumphantly puts the questions, "Did the provincial player, the 'Stratford rustic,' write such sonnets as those [*i.e.* the various 'legal' sonnets] I have quoted? Is it *his* law which appears in Venus's allusion to a common money bond, or in the various passages of LUCRECE? Did *he* write the travesty of 'Hales *v.* Petit' in HAMLET? Did *he* discourse of 'common of pasture' and 'severalty' in LOVE'S LABOUR'S LOST? Is it to *him* that we owe the thousands (!) of legal allusions scattered throughout the plays?"—to the whole series of challenges we answer, Yes!—with the qualification that "thousands" should be "dozens." On the very previous page Mr. Greenwood had obliviously cited an allusion to a "several" in the First Part of SIR JOHN OLDCASTLE. Was *that* play written by a lawyer? The jesting

figure about "common" and "enclosed" ground, applied to a woman, occurs twice in Dekker's HONEST WHORE (Pt. II, iv, 1). Was *that* written by a lawyer? In Bacon's APOPHTHEGMS Mr. Greenwood will find a sufficiently free jest about "common and several" ascribed to Sir Walter Raleigh. Was Raleigh a lawyer? And can Mr. Greenwood doubt that such stories were widely current in Shakespeare's day? In his own words, "I think not. *Credat Judæus*"; or let us rather say, "*Credant judices*"—Campbell and Penzance!

The other items in Mr. Greenwood's challenge are as void as this. We have seen them one and all put down on test. His final affirmation of "profusion of legal phraseology and wealth of legal knowledge," made *without* any judicial comparison of Shakespeare's plays with other men's, will not, I trust, be repeated after such a comparison has been laid before him. But I am moved to put two additional challenges, after the model of his. (1) If "Shakspere" the actor *were* a "Stratford rustic," why on earth should that rustic, of all people, be supposed to be ignorant of the rurally notorious facts about the usage of "common" and "several"? (2) But why, on the other hand, should Shakespeare, coming to London in early manhood and living there till near his death, be singled out for rusticity any more than Bacon? Myself born a rustic, I have some interest in the answer.

CHAPTER VII

THE ALLEGED CLASSICAL SCHOLARSHIP OF THE PLAYS

(I) *Lord Penzance* and *Mr. Donnelly*

ONE province of our inquiry, that constituted by the argument from "legal knowledge," has been traversed, not without tedium. Two others remain to be explored. The "legal" argument is backed up by the "classical"—the argument from the "classical scholarship" said to be revealed by the Plays; and both are sought to be corroborated by the citation of "coincidences of thought and phrase" in the Shakespearean plays and Bacon's works. We are now to deal with the "classical" position.

The dialectical experience will be found to be curiously similar to that which we have undergone. The pervading fallacy of the legalist argument has been, in a word, that of incomplete induction. The quality of lawyership has been assigned to one playwright mainly by inference from a study of his plays alone; when a wider survey proves that he had no special proclivity or accomplishment. Where a form of testing *has* been gone through, it has been carelessly and misleadingly applied. Substantially the same error we shall find made in respect of the inference that the plays of Shakespeare exhibit wide classical scholarship because they contain classical allusions and classical commonplaces. For in this case also the conclusion has been drawn without resort to the comparative method, which would reveal non-classical sources for Shakespeare's small classical knowledge.

Much of the discussion, indeed, proceeds on the assump-

tion that the commonplaces of antiquity are unique, and incapable of being independently invented by other peoples, whereas it is of the very nature of commonplaces to be universal. Such tropes as that of "a sea of troubles," such saws as "time tries all," "your father lost, lost his," and so forth, have been seriously cited as ideas possible only to men who knew them by classic quotation. The late Professor Churton Collins, while repeatedly conceding that such phrases are mere coincidences of ordinary reflection, claimed that the saw "Fat paunches have lean pates" (L. L. L. i, 1) is "*undoubtedly* from the anonymous Greek proverb" to the same effect. It was a current English proverb, and is found in two forms in Dekker's OLD FORTUNATUS:

> For a lean diet makes a fat wit.
>
> (i, 2).
>
> I am not fat.
>
> *Andel.* I'll be sworn thy wit is lean.
>
> (ii, 2).

Even as regards less common sayings, common sense and common experience remind us that a hundred lessons of life are learned and briefly recorded by common folk to-day even as they were by the ancients. An old friend of my own, a Scotch foreman carpenter, once remarked to me, with regard to his function as foreman, "I can say, 'Come on, chaps'; I canna say, 'Go on.'" I am very sure he knew nothing of the classic *Docet tolerare labores, non jubet*: the idea was as natural to him as to any ancient. And in the case of a writer so obviously given to sententious phrase as the author of the Shakespearean plays and poems, common sense might admit the probable spontaneity of many items of every-day reflection that happen to have been penned in antiquity. Antithesis and alliteration, again, are natural devices in all languages. Learned Professors—Mr. Churton Collins and Mr. Lowell, for instance—cannot read such a line as:

> Unhouseled, disappointed, unaneled,

without suspecting reminiscence of Greek sets of terms beginning with the privative *α*. Now, not only are lines of sequences of words in "un" common in Spenser,[1] they are common in Fairfax's translation of Tasso's JERUSALEM DELIVERED (1600), and still more common in Daniel's CIVIL WARS :

> Unseen, unheard, or undescried at all.
>
> Fairfax, B. i, st. 65.
>
> Unseen, unmarked, unpitied, unrewarded.
>
> *Id.* B. ii, st. 16.

Daniel has :

> Uncourted, unrespected, unobeyed.
>
> B. ii, st. 52.
>
> Unheard and unarraigned.
>
> B. iii, st. 23.
>
> Undaunted, unaffeared.
>
> B. iii, st. 76.
>
> Unsupported and unbackt.
>
> B. iii, st. 79.

There is no reason to infer here any reminiscence of Greek tragedy : the device goes back to Chaucer, and might be independently reinvented. Daniel and Fairfax were not Greek scholars.

The main stress of the "classical" case, of course, is laid upon direct classical allusions and upon non-proverbial passages which may fairly be described as quotations. But in this connexion also the inference of original scholarship is often quite uncritically drawn. Even Shakespearean scholars in some cases seem to fail to realise how much popular knowledge of classical matters was scattered by both homilies and popular plays in the Tudor period, apart from the publication of translations. Some of the Interludes are notably abundant in their classical allusions. That of THE TRIAL OF TREASURE, printed in black-letter in 1567, has references, often discursive and explanatory, to Diogenes, Alexander, Antisthenes, Pythagoras, Pegasus, Morpheus, Hydra,

[1] See refs. in *Montaigne and Shakespeare*, 2nd ed. p. 299.

Hercules, Hector, Tully, Epicurus, Crœsus (thrice), Esop, Aristippus, Prometheus, Solon, Adrastia, Circe, Dionysius, Tarquin Superbus, Heliogabalus, Helen, Thales, and Cressida, to say nothing of gods and goddesses. It contains such passages as these :

> The advice of Aristippus have in your mind
> Which willed me to seek such things as be permanent. . .
> For treasures here gotten are uncertain and vain,
> But treasures of the mind do continually remain.
>
> Thou never remembrest Thales his sentence,
> Who willeth men in all things to keep a measure,
> Especially in love to incertainty of treasure.

The remarkable interlude called THE FOUR ELEMENTS, with its elaborate argument to prove the roundness of the earth, its discussions of natural phenomena, its introduction of the scholastic "Nature Naturate," and its frequent allusions to "cosmography," is a notable reminder that the stage even in the time of Henry VIII could be a source of popular culture as well as of entertainment.[1]

In this fashion, people who could not read might have some acquaintance with the lore of "clerks"; and common folk whose reading did not go beyond homiletic works could easily meet with a multitude of classical allusions, sufficiently explained. Tyndale's translation of the ENCHIRIDION MILITIS CHRISTIANI of Erasmus, printed in 1533 by Wynkyn de Worde, is a small storehouse of such lore, the many allusions of Erasmus being

[1] Dr. C. W. Wallace, after the most thorough research yet made upon the subject (*The Evolution of the English Drama up to Shakespeare :* Berlin, Reimer, 1912), confidently decides that *The Four Elements* and several of the better Interludes ascribed to Heywood were written by his predecessor Cornish. It may well be so ; but documentary evidence seems still to be lacking. Dr. Wallace holds that the best Interlude work was produced for the court ; and that this play is "evidently" by Cornish (p. 17). Yet it lacks the dramatic character which he ascribes to Cornish's work. In any case, as printed, it appears to have been intended for general performance.

marginally "glossed" by the translator with long elucidations. Thus the English reader was brought into much contact with Plato, reading, for instance, the famous similitude of the cave, and getting accounts of Phocion, Apelles, Crates, Alcibiades, Hesiod, and of Catullus, besides mythic personages such as Prometheus and Pandora, Proteus, Ajax, Achilles, Æneas, Ixion, Tantalus, Hercules and Hydra, Ulysses and the Sirens, &c. &c. Similar allusions must often have been made in the pulpit, though the later Puritan school would tend to shun the scholarly liberalism of Erasmus. In the treatise of the Minister Northbrooke AGAINST DICING, DANCING, PLAYS AND INTERLUDES (1577) there are scores of quotations from both Fathers and pagan writers, with exact translations and much elucidatory comment, embracing a wide range of classical allusion. In the face of such a variety of ordinary sources for matters of ordinary classical knowledge, it is a sufficiently reckless course to credit Shakespeare with scholarly knowledge on the score of the very ordinary classical references in his plays.

Here again, orthodox writers are as deep in fallacy as any of the Baconians. Long ago, Dr. Farmer proved to the satisfaction of the scholars of his generation that the author of the Plays had little classical scholarship, and that the instances put forward by Upton, Lewis Theobald, and others, were all reducible to English sources. The contrary thesis, however, has been zealously revived in recent times by two strongly anti-Baconian scholars, the late Professor Fiske and the late Professor Churton Collins, who drew upon the previous argumentation of Dr. Maginn and Professor Baynes. Having elsewhere[1] discussed at length the "classical" case put by these critics and by Mr. Greenwood, I will first deal with it mainly as it is put by Lord Penzance, who proceeds uncritically upon the data given him by

[1] See the author's *Montaigne and Shakespeare*, 2nd edition, 1909; per index.

Mr. Donnelly and upon the sweeping assertions of several "orthodox" scholars. For Lord Penzance, who could not believe that the Plays were written by the Stratford actor, it is quite certain that their author was "master of French and Italian as well as of Greek and Latin, and capable of quoting and borrowing largely from writers in all these languages," and this mainly because the assertion is made by certain "orthodox" scholars, though he attaches no weight whatever to the authority of these scholars when they contemptuously repudiate the Baconian theory. And he appears to attach equal weight, on the classical question, to the authority of Mr. Donnelly, who appears to have had no classical scholarship whatever. Yet he accepts at the same time,[1] on the authority of Mr. Halliwell-Phillipps, the statement that Shakespeare's "acquaintance with the Latin language throughout his life was of a very limited character," though Mr. Halliwell-Phillipps grounds this verdict largely if not mainly on the internal evidence of the Plays. Lord Penzance does not seem ever to have asked himself what critical method means.

The first piece of evidence offered by him to prove the classical scholarship of the author of the dramas is the familiar citation from 1 HENRY VI (i, 6) :

> Thy promises are like Adonis' gardens,
> That one day bloom'd and fruitful were the next.

It is almost needless to say that Lord Penzance does not once glance at the critical case for the attribution of the HENRY VI plays—Part I in particular—in large measure or wholly to other hands than Shakespeare's. Here he is in accord with the whole Baconian school. Mr. Greenwood, I think, is the only "anti-Stratfordian" writer who realises that a large portion of "Shakespeare" is alien matter; that TITUS ANDRONICUS, for instance, is non-Shakespearean; and that Shakespeare merely wrought

[1] P. 50.

over the HENRY VI group. Lord Penzance was quite unaware, apparently, that a large number of Shakespearean critics, for over a century, have ascribed the bulk of 1 HENRY VI to Marlowe, Peele, and Greene.

But even as to the significance of the particular passage under notice he has, as usual, made no critical investigation. It suffices for him that Mr. Grant White, whose treatment of the Baconian problem he regards as utterly uncritical, made the astonishing assertion that "no mention of any such garden in the classic writings of Greece and Rome is known to scholars, as the learned Bentley first remarked."[1] Even this grossly erroneous passage Lord Penzance quotes without any first-hand investigation, for he goes on [2] to write :

> A recent commentator, James D. Butler, has found out the source of this allusion, says Mr. Donnelly. He pointed out that the couplet might have been suggested by a passage in Plato's *Phædrus*, which he translated thus : "Would a husbandman (said Socrates) who is a man of sense, take the seeds which he values and wishes to be fruitful, and in sober earnest plant them in some garden of Adonis, that he may rejoice when he sees them in eight days appearing in beauty ? "

Now, the very passage here cited from the PHÆDRUS was actually produced by Mr. Grant White in 1869 in his essay on "Glossaries and Lexicons" (reprinted in his STUDIES IN SHAKESPEARE, 1885). There, improving slightly on his note to the passage in his first edition of Shakespeare—where, however, he had already fathered the negative statement on Bentley, and cited Milton's allusion—Mr. Grant White blunderingly writes :

> The mention of Adonis' gardens in *Henry VI*, Pt. I, Act i, Scene 6, *gave Bentley the opportunity* of remarking that there is no authority for the existence of any such gardens, in Greek or Latin writers ; the κῆποι Ἀδώνιδος being mere pots of earth planted with a little fennel and lettuce, which were borne by women on the feast of Adonis, in memory of the lettuce-bed where Venus laid her lover. But Spenser, writing before Shakespeare, says :

[1] Note *in loc.* in his ed. of Shakespeare. [2] P. 60.

> But well I wote by tryale that this same
> All other pleasant places doth excell,
> And callèd is by her lost lover's name,
> The Garden of Adonis, far renown'd by fame.
>
> . . . . . .
>
> Daily they grow and daily forth are sent
> Into the World.
>
> *Faerie Queene*, Book III, Canto 6, st. 29, 36.

And the scholar-poet Milton calls Eden

> Spot more delicious than those gardens feigned
> Or of revived Adonis or renowned
> Alcinous.
>
> *Paradise Lost*, ix, 440.

But, after all, Shakespeare, or the author of the First Part of *King Henry VI*, whoever he was, whether from knowledge or by chance, was more correct, or rather less incorrect, than Spenser or Milton. He does not speak of the gardens of Adonis as a place, or as a spot: he only compares speedily redeemed promises to "Adonis's gardens, that one day bloomed and fruitful were the next." So Plato says in his *Phaedrus*:

> Now do you think that a sensible husbandman would take the seed that he valued, and, wishing to produce a harvest, would seriously, after the summer had begun, scatter it in the gardens of Adonis for the pleasure of seeing it spring up and look green in a week? [1]

When all is said, however, the whole theorem remains a mare's nest. The "gardens of Adonis" referred to in the PHÆDRUS are just the proverbial κῆποι Ἀδώνιδος, the baskets or pots or trays of lettuces or herbs borne by women at the feast of Adonis. What the worshippers did was to plant seeds (or put young plants) in earth, in their trays or pots—here employing a primitive form of "sympathetic magic," now well understood by anthropologists,[2] for the promotion of all plant life. Even as Mr. Donnelly discusses Grant White without reading him, and Lord Penzance copies Mr. Donnelly's citations without reading Mr. Grant White, Mr. Grant White in

[1] *Studies in Shakespeare*, 1885, pp. 296-7.

[2] *See* the classical references and the anthropological explanation in Dr. Frazer's *Adonis, Attis, Osiris*, 1906, ch. ix.

turn had cited Bentley without reading *him*. Bentley's note has no reference whatever to the play. It is to be found in his edition of Milton,[1] wherein he sets forth his theory that PARADISE LOST was (not written by Bacon! but) edited by a fraudulent and incompetent personage who committed many blunders and many forgeries. The allusion to the gardens of Adonis *or* Alcinous gives Bentley the opportunity to convict this imaginary villain at once of bad taste and bad scholarship; and the note is a standing warning of what a scholar may come to under the spell of a fixed idea.

> Our Editor [says Bentley] confesses that those gardens were feigned. Why then brought in here at all? What *Deliciousness* can exist in a fable? or what proportion, what compare, between Truth and Fiction? And then for Solomon's Garden, which he makes real, not mystic, contriv'd it seems for the *sapient King's Dalliance*, our Editor might have had more Sapience than to introduce such silly and prophane Ideas. But if these exceptions do not fully detect his Forgery, what follows, certainly will. He supposes the *Garden of reviv'd Adonis* to be some magnificent and spacious Place, like that of *Alcinous* in *Homer*. There was no such Garden ever existent or even feigned. Κῆποι Ἀδώνιδος, the Gardens of Adonis, so frequently mentioned by Greek writers, Plato, Plutarch, &c., were nothing but portable earthen Pots, with some lettuce or fennel growing in them. On his yearly Festival, every woman carried one of them for *Adonis's* worship, because Venus had once laid him in a lettuce bed. The next day they were thrown away; for the herbs were but raised about a week before, and could not last for want of root. Hence the *Gardens of Adonis* grew to be a proverb of contempt for any fruitless, fading, perishable affair. And now is not a *Garden of Adonis*, a Pot with a few Herbs in't, a proper comparison for the Garden of Paradise? They that can believe Milton guilty of such Ignorance, have not the opinion of his Learning, which I profess to have.

Thus Bentley, cracked but learned still. Mr. Grant White cannot have seen this note, which has no shadow of connection with the passage in 1 HENRY VI, and applies solely to that in Milton. So far from denying that there were references in the classics to "Gardens of Adonis,"

[1] 1732, 4to. Pp. 282-3.

Bentley gives an exact account of what those references convey, contending—rightly enough, at the height of his hallucination, save as regards an overlooked passage in Pliny—that there was no classic mention of *such* Gardens of Adonis as are described by Milton. Had Bentley known his Spenser as he knew his classics, he would have realised that Milton had simply followed his predecessor's wrong lead—unless he and Spenser had alike been misled by Pliny or some Italian poet.[1] Upon this subject there was a comprehensive brawl among the Shakespearean commentators of the eighteenth century, duly recorded in the variorum editions. The only excuse to be made for Spenser and Milton is the passage in Pliny (xix, 4) :

> Antiquitas nihil prius mirata est quàm Hesperidum *hortos* ac regum Adonidos Alcinoi,

which Bentley might justly have dismissed as a mere utterance of Roman error, cited to justify that of two English poets. Mr. Grant White, overlooking all this, and knowing nothing about the point in question, blunderingly applied Bentley's negative to the use of the phrase in 1 HENRY VI, where it is *not* applicable, since the lines there, as he sees later, are loosely compatible with the classic description. In the end, accordingly, he claims for the dramatist a scholarship more accurate than that of Spenser and Milton. But he is still astray. The very nature of his conclusion, raising as it does the question *how* the young Shakespeare could have acquired a wider and more exact scholarship than Milton's, might have startled him into distrust of the whole theorem of the classic scholarship of the author of the Plays. His own, clearly, was neither wide nor exact. If on the one hand he had but consulted the variorum edition, and on the other either looked up Bentley's note, or but turned to

[1] Warton, who does not seem to realise the nature of Spenser's error (*Observations*, ed. 1807, i. 122), mentions no Italian source, but I have some vague recollection of one.

the old Classical Dictionary of his countryman, Professor Anthon, he would have learned that "the expression Ἀδώνιδος κῆποι became proverbial, and was applied to whatever perished previous to the period of maturity"— as is witnessed by the ADAGIA VETERUM, p. 410. The passage in 1 HENRY VI is simply a loose application of this proverbial phrase, and expressly excludes knowledge of the PHÆDRUS, where "eight days" are allowed for the growth of the plants.

Such then, on analysis, is the foundation for Lord Penzance's assertion that "William Shakespeare (if he was the author) had so far progressed in his studies by the month of March 1592, as to have *mastered the Greek language thus early*; and that he had pushed his reading in directions not traversed by the ordinary run of classic readers." We are witnessing a game of literary blind-man's-buff. Nobody in the whole discussion, not even Bentley, turned monomaniac, has drawn a sane inference. Bentley, knowing the classical facts, cannot believe that Milton was ignorant of them. The clear fact is that both Spenser and Milton—the latter copying the former, or both following an Italian poet—were *misled* by the bare traditional phrase, and created in imagination an idea which had no conformity with its historical origin. Spenser commits his error repeatedly—in the FAERIE QUEENE, B. II, c. x, st. 71; in the motto to the canto before cited; in Stanza 39 of the same canto; and in COLIN CLOUT'S COME HOME AGAIN, l. 855. Nor was he the only Elizabethan who so erred. So ripe a scholar as Ben Jonson, probably following Spenser, has the phrase:

> Remember thou art not now in Adonis' garden, but in Cynthia's presence.
>
> *Cynthia's Revels*, v, 3.

Where Spenser, Jonson, and Milton fell short, it was not by dint of deep scholarship that the playwright came nearer the truth. An unquestioning acceptance of Mr. Grant White's fallacious note, and of the fallacies appended

thereto by himself and the Baconians, serves as passport to the wildest generalisations concerning the scholarship of the playwright. It is all in the air. The writer of the lines in 1 HENRY VI was probably Marlowe, who was no very deep classicist, and was here merely employing a classic commonplace. But Shakespeare, much less of a classicist still, *might* very well have known it as such.

In this connection it may be well to note a cognate error on the part of Mr. Grant White, whose fundamental mistakes as to the legal and classical knowledge in the Plays have given so much countenance to the Baconian theory, which he contemned. In the same essay on "Glossaries and Lexicons," dealing with Achilles' speech in TROILUS AND CRESSIDA (iii, 3) as to the eye being unable to see itself, he quotes from Plato's FIRST ALCIBIADES this passage:

> We may take the analogy of the eye. The eye sees not itself, but from some other thing; for instance, a mirror. But the eye can see itself also by reflection in another eye; not by looking at any other part of a man, but at the eye only;

remarking that the "similarity of thought between it and Achilles' speech . . . seems quite inexplicable, except on the supposition that Shakespeare was acquainted with what Plato wrote." Now, as Mr. Grant White ought again to have remembered, the commentators long ago pointed out, on the similar passage in JULIUS CÆSAR (i, 2), that in Sir John Davies' poem NOSCE TEIPSUM (1599), the classicism about the eye being unable to see itself is fully elaborated (Grosart's ed. i, 20, 25):

> It is because the mind is like the eye
> Through which it gathers knowledge by degres—
> Whose rays reflect not, but spread outwardly:
> Not seeing itself when other things it sees.
>
> Mine eyes, which view all objects, nigh and far,
> Look not into this little world of mine,
> Nor see my face, wherein they fixed are.

That Shakespeare[1] had read Davies' poem, whether or not he found the idea there for the first time, is nearly certain, in view of the fact that in TROILUS AND CRESSIDA he twice uses the phrase "spirits of sense," which is thrice used in NOSCE TEIPSUM. But, further, as I have elsewhere pointed out,[2] the classicism about the eye was available to him in Cicero's TUSCULANS, which had been translated by Dolman in 1561; and the expatiation on this and other themes in the speeches of Achilles and Ulysses, and in the analogous passages in MEASURE FOR MEASURE (i, 1), could all have been derived by him from Davies *plus* passages in Cicero and Seneca which lay to his hand in Florio's translation of Montaigne. The late Professor Churton Collins, who independently advanced the reference to Plato's FIRST ALCIBIADES for the same purpose, has wasted his labour like Mr. Grant White, for lack of resort to the comparative method.

Returning to Lord Penzance, we find him accepting as perfectly conclusive the allegation of Charles Knight, who in turn was no classical scholar, that

> the marvellous accuracy, the real and substantial learning, of the three Roman plays of Shakespeare, present the most complete evidence to our minds that they were the result of a profound study of the whole range of Roman history, including the nicer details of Roman manners, not in those days to be acquired in a compendious form, but to be brought out by diligent reading alone.[3]

Over such utterances one has a discouraging sense of the waste of time and thought set up in all fields of criticism by heedless assertion. No scholar will to-day grant a tithe of the claim made by Knight for Shakespeare in regard to Roman history, even if we put aside the consideration that JULIUS CÆSAR is probably founded on or inclusive of other men's work, of which, in the

[1] Whether or not we assume him to have written originally the whole of *Julius Cæsar*.

[2] *Montaigne and Shakespeare*, 2nd ed. pp. 95–105.

[3] *Biography of Shakespeare*, p. 61.

judgment of some of us, there are palpable remains in the extant play.[1] It is now perfectly well established that Shakespeare drew for his Roman plays mainly on North's translation of Amyot's Plutarch;[2] that where

[1] As to this problem, see Fleay's argument (*Life of Shakespeare*, p. 215) to the effect that the play is a condensation of two, a *Cæsar's Tragedy* and a *Cæsar's Revenge*. "That the present play has been greatly shortened," remarks Fleay, "is shown by the singularly large number of instances in which mute characters are on the stage; which is totally at variance with Shakespeare's usual practice. The large number of incomplete lines in every possible position, even in the middle of speeches, confirms this point." Fleay's theory has not been duly considered by later critics, though they have noted Gildon's remark that the play is rather a *Brutus* than a *Cæsar;* and though Craik had argued (*The English of Shakespeare*, 6th ed. p. 55) that "it might almost be suspected that the complete and full-length Cæsar had been carefully reserved for another drama." The question arises: If the play be a condensation, what and whose work does it condense? As we have no text before that of the Folio, it is impossible to say that Shakespeare has not taken up the composite performance of Dekker, Munday, Drayton, Webster, and Middleton, entitled *Cæsar's Fall* (or "The Two Shapes") mentioned in Henslowe's Diary, May 22, 29, 1602. Unless this can be excluded, the view that Drayton copied Shakespeare in the phrase about "the elements . . . so mixed" cannot be established. Professor MacCallum, in discussing the point in his *Shakespeare's Roman Plays*, takes no account of the possibilities of mixed authorship, though these are obtruded by the style of much of the play; and though a recognition of them would suggest a solution of the anomalies in the characterisation, on which he dwells.

[2] See Professor MacCallum's *Shakespeare's Roman Plays and their Background*, 1910, Appendices, as to the possible use of Appian (of which Bynniman's translation had been published in 1578) in *Julius Cæsar*, and the very probable use of it in *Antony and Cleopatra*. For *Coriolanus* there appears to be no source save North's Plutarch. But all along Shakespeare's own creative genius vivifies and expands his material, achieving what mere "culture" could never do. As to his possible knowledge of Garnier's *Marc Antoine* or the Countess of Pembroke's translation, of Garnier's *Cléopatre* or Daniel's translation, and of Garnier's *Cornélie* or Kyd's translation, see the same work, introd. §3. That Shakespeare recalled some lines of Kyd's version of Garnier's *Cornélie* in the speech of Antony to Eros, IV, xiv, 72, was long ago suggested by Steevens (Reed's ed. of Dodsley, 1780, ii, 263).

North errs, following Amyot, Shakespeare errs, following North; that at no point does he supplement him; and that, in his ignorance or disregard of chronology, he makes additional mistakes of his own. The blunder of making Lartius speak of Cato (COR. I, v, 59) as a contemporary or predecessor, is one of these. The blunder about "the napless vesture of humility" (COR. II, i, 224) is another, made through following North, who took Amyot's "*robbe simple*" to mean "a poor gown." The Baconians and the critics who persist in assigning TITUS ANDRONICUS to Shakespeare have alike failed to realise that the writer of the "*Candidatus*" passage in that play knew the fact that public men seeking office in Rome wore a white toga, whereas the writer of CORIOLANUS knew of no such usage. To ascribe to him profound and exact knowledge of Roman history in the face of such facts as these is but to exhibit superficiality and inaccuracy.

(2) *Mr. G. G. Greenwood*

In the whole of this discussion we have a standing illustration of the vitiating force of a prepossession. It was an idolatrous prepossession that set scholars like Upton and Theobald in the eighteenth century upon crediting Shakespeare with high scholarship. Farmer appreciated Shakespeare as much as they did; but his habit of comparative scholarship and his inductive faculty made clear to him their error. Later idolaters and Baconians alike have visibly hated him for his pains. "Anti-Stratfordians" like my friend Mr. G. G. Greenwood, setting out with a primary ideal of a highly "cultured" mind as being alone capable of writing "Shakespeare," clutch desperately at every semblance of classical knowledge which the plays and poems present; and, fiercely intolerant of any semblance of too-ready belief on the "Stratfordian" side, are profuse of their "certainlys" and "undoubtedlys" over the merest shadows

of evidence for their own faith. Mr. Greenwood, I see, takes me to task[1] for representing him as claiming to prove Shakespeare's familiarity with Horace on the strength of two lines of a hackneyed quotation, when in point of fact he had *in another passage* extended the two lines to four. I cheerfully allow the correction, noting afresh the absurd exiguity of the case as thus stated. Had Mr. Greenwood come to the thesis of the scholarship of the plays in the temper in which he handles what he calls the "tradition" of the authorship, he would have laughed to scorn the notion that a writer's "scholarship" is to be proved by a few scraps of translated quotation, all of the most hackneyed order. He labours to persuade us that when Shakespeare wrote "Most sure, the goddess," he must[2] have remembered, in the original, Virgil's "O dea certe!" Well, supposing the poet had remembered the whole passage, where is the proof of "scholarship"? Supposing that, without blenching over Mr. Greenwood's amusingly violent conjunction of Miranda's "certainly a maid" with Venus's "Virginibus Tyriis mos est," we allow that Shakespeare may well have read that and more of Virgil at school, how much nearer are we, in the name of common sense, to proving "wide familiarity with the classics," the now modified form to which Mr. Greenwood reduces his former claim of "remarkable classical attainments"?[3] On a perfectly straightforward induction, we are not entitled even to claim that the poet had "O dea certe" in mind. Such lines as Chapman's:

> Without all question, 'twas a God, the Gods are easily known,
> Trans. of *Iliad*, xiii, 69;

[1] *The Vindicators of Shakespeare*, (*n.d.*), p. 133.

[2] "It can hardly be doubted," are his words, p. 96.

[3] "The proof" that the dramatist had "a large knowledge of Latin," he originally declared, "is so cogent that it cannot be disputed" (p. 102)—this after deriding every "certainly" and "doubtless" of the "Stratfordians." The claim is simply ridiculous; and the assertion as to "a very fair amount of Greek" is no better.

> These ears and these self eyes approved
> It was a Goddess,
>
> *Id.* xxiv, 209–10 ;
>
> Straight he [Achilles] knew her [Athênê] by her eyes, so terrible they were.
>
> *Id.* i, 204 ;
>
> Whose [Aphroditê's] virtue Helen felt and knew, by her so radiant eyes,
>
> *Id.* iii, 415,

should serve to remind us that, apart from direct translations, Elizabethan *belles lettres* were steeped in classical allusion of every kind, and that no poet could miss knowing many such passages, whatever may have been his schooling. Mr. Greenwood, without going to Farmer for himself, does not scruple to cite from Mr. Churton Collins—whose judgment he elsewhere derides—the charge that Farmer is silent "on almost all the classical parallels which are really worth considering." That charge was disingenuous in the highest degree ; and Mr. Greenwood's reproduction of it without investigation is a confession of critical insolvency. Farmer dealt with all parallels of any importance that had in his day been put forward ; and Mr. Churton Collins has but advanced equally untenable parallels, of which Farmer could have disposed at a glance. The argument (of Mr. Collins) on which Mr. Greenwood relies seems to be that Shakespeare was as likely to have gone to Virgil or Ovid as "to spell out mediæval homilies and archaic Scotch." This again is mere misrepresentation on Mr. Collins's part. Stanyhurst's Virgil is not mediæval homily or archaic Scotch ; and Farmer's point was that the phrase could have *currency* in English. But the essential thing is that the passages founded on are never such as a poet would "go to" a classic for, but passages and phrases such as were in the mouths of all men who affected literature. Neither Mr. Collins nor Mr. Greenwood has made the slightest attempt to meet Farmer's point, that Taylor, the water-poet, who avowed his failure to get through