

VARIOUS

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Содержание

MEMOIR OF THE LATE JOHN WILLIAM SMITH, OF THE INNER TEMPLE, BARRISTER-AT-LAW	4
BY SAMUEL WARREN, OF THE INNER TEMPLE, BARRISTER-AT-LAW	4
Конец ознакомительного фрагмента.	88

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**MEMOIR OF THE LATE JOHN
WILLIAM SMITH, OF THE INNER
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**BY SAMUEL WARREN,
OF THE INNER TEMPLE,
BARRISTER-AT-LAW**

*But the fair guerdon when we hope to find,
And think to burst out into sudden blaze,
Comes the blind Fury with the abhorred shears,
And slits the thin-spun life.*

Milton.—Lycidas.

The name of John William Smith, barrister-at-law, of the Inner Temple, now appears, possibly for the first time, before nineteen-twentieths of the readers of *Blackwood's Magazine*. It is that, however, of a remarkable and eminent man, just cut off in his prime, before he had completed his thirty-seventh year: having as yet lain little more than a twelvemonth in his grave, to which he had been borne by a few of his sorrowful and admiring friends, on the 24th of December, 1845. Another eminent member of the English bar, Sir William Follett, belonging to the same Inn of Court, and also cut off in the prime of life, while glittering in the zenith of his celebrity and success, had been buried only five months previously. I¹ endeavoured to give the readers of this Magazine, in January 1846, some account of the character of that distinguished person; and Mr. Smith, learning that I was engaged upon the task, with morbid anxiety repeatedly begged me to show him what I was writing, up to within a few weeks of his own decease: a request with which, for reasons which will become obvious to the reader of this sketch, I declined to comply. With Sir William Follett's name all the world is acquainted: yet I venture to think that the name of John William Smith has greater claims upon the attention of readers of biography. His character and career will, it is believed, be found permanently and intrinsically interesting,—at once affecting,

¹ This narrative was originally composed in the third person; but so much of it consists of my own personal intercourse with Mr. Smith, that the use of that circuitous form of expression became as irksome to the writer, as he thinks it would have proved tedious and irritating to the reader.

inspiring, and admonitory. He fell a martyr to intense study, just as that competent and severe body of judges, the English bench and bar, had recognised his eminent talents and acquirements, and the shining and substantial rewards of unremitting exertion were beginning to be showered upon him. He came to the bar almost totally unknown, and was destitute of any advantages of person, voice, or manner. His soul, however, was noble, his feelings were refined and exalted; and, when he departed from the scene of intense excitement and rivalry into which his lot had been cast, those who had enjoyed the best opportunities for forming a true judgment of him, knew not whether more to admire his moral excellence or his intellectual eminence, which shone the more brightly for the sensitive modesty which enshrouded them. Many have expressed surprise and regret that so interesting a character should fade from the public eye, without any attempt having been made by his friends to give a full account of his character and career. I was one of his very earliest friends; witnessed the whole of his professional career, shared his hopes and fears, and, with two or three others, attended upon him affectionately to the very last. During the year which has since elapsed, I have reflected much upon his character, and had many opportunities for ascertaining the respect with which his memory is cherished in the highest quarters. I shall endeavour, therefore, though with great misgivings as to my competency for the task, to present to the reader an impartial account of my gifted friend: no

one else, with one exception,² having, up to this time, undertaken the task.

John William Smith, the eldest of eight children, was of a highly respectable family: his father having died in 1835, Vice-treasurer and Paymaster-general of the Forces in Ireland. Both his parents were Irish—his mother having been a Miss Connor, the sister of a late Master in Chancery, in Ireland. They lived, however, in London, where the subject of this memoir was born, in Chapel Street, Belgrave Square, on the 23d January, 1809. From the earliest period at which note could be taken of their manifestation, he evinced the possession of superior mental endowments. No one is less disposed than the writer of this memoir, to set a high value upon precocious intellectual development. *Observatum fere est*, says Quintilian, in his passionate lamentation for the death of his gifted son, *celerius occidere festinatam maturitatem*.³ The maturity, however, of John William Smith, far more than realised his early promise, and renders doubly interesting any well-authenticated account, and such I have succeeded in obtaining, of his early childhood. When advanced not far from infancy, he appears to have been characterised by a kind of quaint thoughtfulness, quick observation, and a predilection for intellectual amusements. He was always eager to have poetry read to him, and soon exhibited

² See an eloquent but brief sketch, of W. Smith, in the *Law Magazine* for February 1846, by Mr. Phillimore, of the Oxford Circuit, one of his most accomplished friends.

³ Lib. vi. *proëm*.

proofs of that prodigious memory, by which he was all his life pre-eminently distinguished, and which has often made the ablest of his friends imagine that with him, *forgetting* was a thing impossible. Before he knew a single letter of the alphabet, which he learnt far earlier, moreover, than most children, he would take into his hand his little pictured story-book, which had been perhaps only once, or possibly twice, read over to him, and pretend to read aloud out of it: those overlooking him scarcely crediting the fact of his really being unable to tell one letter from the other; for he repeated the letterpress *verbatim*, from beginning to end. This feat has been repeatedly witnessed before he had reached his third year. To all the friends of Mr. Smith in after-life, this circumstance is easily credible: for the quickness of his memory was equalled by its tenacity, and both appeared to us almost unequalled. When three years old, he read with the greatest facility all such books as are usually put into the hands of children; and his delight was to *act*, in the evening, the fable which he had read in the morning—and a reader insatiate he even then appeared to be. Between his third and sixth year, he had read, *effectually*, many books of history, especially those of Greece, Rome, England, and France; acquiring with facility what he retained with the utmost fidelity. He seems to have been, at this time, conscious of possessing a strong memory, and pleased at testing it. When not five years old, he one day put the parts of a dissected map, consisting of a hundred pieces, into his father's pocket, and then called for

them again one by one, without having made a single mistake, till he had finished putting them together on the carpet. At this early period, also, he displayed another first-rate mental quality, namely, the power of abstraction—one by which he was eminently distinguished throughout his subsequent life. When a very young child, he was frequently observed exercising this rare power—lost to all around him, and evidently intent upon some one object, to the exclusion of all others. Thus, for instance, he would often be occupied with a play of Shakspeare, while sitting in the corner of the drawing-room, in which were many persons engaged in conversation, or otherwise doing what would have effectually interrupted one who was not similarly endowed with himself. One of his brothers often played at chess with him, with closed folding doors between them, the former moving the chess-men for both, and the latter calling out the moves, without ever making an erroneous one, and frequently winning the game. His partiality to poetry, from almost his infancy, has been already noticed: and it is to be added, that he was equally fond of reading and *writing* verses. One of his relatives has at this moment in her possession a "Poem" from his pen, in pencilled *printed* characters, before he had learned, though he learned very early, to write, entitled, "The Mariner's Return." Till very recently, also, the same lady possessed another curious relic of this precocious child,—namely, a prose story; the hero of which was a peasant boy, whom he took through almost all the countries of Europe, and through many vicissitudes, finally exalting him

to the post of Prime Minister to Henry VIII. The knowledge of geography and history displayed in this performance, is declared by those who have read it, to be truly wonderful. Shortly after he had reached his eighth year, he was sent to a school at Isleworth, kept by a Dr. Greenlaw, and remained there four years. I have heard him frequently describe his first arrival at the school, and several incidents attending it, in such a manner as showed him then to have had great shrewdness and keenness of observation. One, in particular, struck me at the time as illustrative of his stern sense of right, and habits of reflection, at that very early period. "I remember," said he, "that soon after I had got to school, a big boy called me aside, and told me very seriously that I must prepare for a terrible flogging on Saturday morning, and that however well I behaved, it would signify nothing, for it was an old custom at the school to flog a little boy on his first Saturday, before the whole school, by way of example, and to make him behave well. I was horribly frightened at this; but the first thing that struck me, and kept me awake a good while thinking of it, was, how very *unjust* a thing it was to do this; and I thought so much of *this*, that I do believe I was at length far more angry than frightened. Of course, when Saturday came, I found it had been all a joke only; but I always thought it a very disagreeable and improper joke." I have several times heard Mr. Smith mention this little circumstance, and I have above given many of his own expressions. He used to proceed to describe the reasonings which he had held in his own mind upon this subject,

all which, he said, he vividly recollected; and it was certainly both curious and interesting to hear how he puzzled himself in trying to find out "reasons why it might be right to flog him under these circumstances." Dr. Greenlaw was not slow in discovering the extraordinary abilities of the little new-comer, and used to describe them in glowing terms to his father; but would add that, much as he admired the child's talent and diligence, he entertained a still higher opinion of the little fellow's perfect modesty, his seeming unconsciousness of his mental superiority over his companions, his honesty and simplicity of character, and, above all, his unwavering and inflexible adherence to truth on even the most trifling occasions. Every living friend of his will testify that he was thus distinguished throughout life, exhibiting that

Compositum jus, fasque animi, sanctosque recessus
Mentis, et incoctum generoso pectus honesto,

which the stern moralist⁴ declared to afford the noblest qualification for approaching the presence of the gods.

Hæc cedo ut admoveam templis, et farre litabo.

During this period, namely, from his eighth to his twelfth year, he became passionately fond of writing verses: and I have now

⁴ Pers. Sat. ii. 73, 74.

before me, kindly forwarded by one of his relatives in Ireland, two small quarto MS. volumes, containing exclusively what he wrote during this period, extending to upwards of seventy or eighty pieces, some of considerable length, and in every kind of English verse. Their genuineness is unquestionable; and I shall quote from them in the state in which they were originally collected at the time, without the alteration of a single letter. Having completely satisfied myself on this point, and I hope the reader also, what will he think of the following evidence of the creative perception of humour professed by a child scarce thirteen years of age? I have transcribed it *verbatim*. It is prefixed to a satirical poem of some length, entitled "Practical Morality."

Preface *loquitur*—

"Though it may appear to thee, courteous reader, that I have in all ages been considered as a vehicle of fumbling apologies and trivial excuses, a sort of go-between employed by the writer to deprecate the anger of the peruser, in short, the literary servant of all-work, whether my duty be to expatiate on the merits, or apologise for the defects of my master, or (as it often is) to claim the pity and forbearance of the mobile, and set forth in humble terms the degradations he has submitted, and is still ready to submit to,—I say, reader, though a part so servile has been assigned to me, yet, should my natural claims and intrinsic merits be duly considered, different, far different would be my station. What! am I thus exalted in situation above my [*sic*] situated, (as I may say,) in the very van, exposed to

the sneer of every satirical reader and sententious critic? Am I placed in a post so dangerous, and are contempt and humiliation my only reward? O, mankind, where is your gratitude? Think, generous reader, on the services I have so often rendered you: think how often, when you were about to enter upon the stupendous folio, or the dull and massy quarto, four inches at least in thickness, think, O think, how often my timely, though unpromising appearance, has warned you not to encumber your brain with the incalculable load of lumber! With me, then, let the glorious work of reformation commence, restore me to the honour and esteem I so justly deserve. I, for my part, shall still continue to be a spy upon stupidity, and oft shall you receive the reward of your benevolence from my friendly and seasonable admonitions."

"Hezekiah Shortcut,

O tempora! O mores!"

The poem is in two cantos: the first of which thus opens,—

Long have I viewed the folly and the sin
That fill this wicked globe of ours, call'd earth,
And once a secret impulse felt within
My bosom, to convert it into mirth;
But then the voice of pity, softly sighing,
Hinted the subject was more fit for crying.

Democritus was once a Grecian sage—

A famous man, as every one must know—

But rather fond of sneering at the age,
And turning into laughter human wo;
Another sage, Heraclitus to wit,
Considered it more wise to weep for it.
I can't determine which of them was right,
Nor can I their respective merits see;
The subject, disputation may invite,
But that belongs to wiser men than me.
It has already been discuss'd by one,
A better judge by far (see Fenelon.)

Verse the twelfth touches upon a topic with which its writer was destined afterwards, for a short time, to be practically familiar.

How sweet a fee unto the youthful lawyer
Never before presented with a brief,
To whose distressing case some kind employer
Steps in, and brings his generous relief;
Thus giving him a chance to show *that* merit
So long kept down by the world's envious spirit.

Here is the little practical moralist's advice to the ladies!—

Ye ladies, list! and to my words attend,
They're for your good, as you shall quickly see.
Sit down by the fireside, your stockings mend,
And never mingle spirits with your tea.
When you retire at night, put out the candle,

Discard your lap-dogs, leave off talking scandal.

When card-tables are set, you must not play
For ought beyond the value of one shilling:
This is my firm decree, although you may,
As ladies mostly are, be very willing.
I bid you cease, for into debt 't will run ye,
Do you no good, but spend your husband's money.

Husbands are fools who let their wives do so,—
I scarce can pity when I see them ruin'd.
For when they squander all, they ought to know,
Destruction is a consequence pursuant.
When each has turn'd his home into a sad-house,
He then finds out that he deserves a mad-house.

I do denounce, in all the songs you sing,
The words, *sweet, lovely*, dear angelic charmer,
Flames, darts, sighs, wishes, hopes,—they only bring
Thoughts to a lady which perchance may harm her.
You therefore must consider as ironic
Every expression which is not Platonic.

The whole poem is written in a droll, satirical strain, and shows a great familiarity with the topics of ancient and modern literature. The rest of the volume consists of translations from

Anacreon, Horace, and other Greek and Latin poets, and many original pieces; one of which latter, entitled "The Prodigal Son," thus gravely and impressively opens,—

Far from his kindred, from his country's soil,
By want enfeebled, and oppress'd by toil,
Compelled with slow reluctance to demand
The niggard pity of a stranger's hand,
And forced, in silent anguish, to abide
The sneer of malice, the rebuke of pride:
A wretch oppress'd by sorrow's galling weight,
Deplored his ruined peace, his hapless fate.
His was such anguish as the guilty know,
For self-reproach was mingled with his wo.
He dared not fortune's cruelty bemoan—
The error, the offence, was all his own.

There are also scattered over the volume several epigrams, one of which is headed thus: "On a Lady who married her Brother-in-law."

After so many tedious winters past,
The lovely S—— has caught a swain at last—
A swain who twice has tried the marriage life,
And now resolves again to take a wife.
Behold! behold *the new-made* mother runs,
With ardour to embrace—*her nephew-sons!*

The second volume commences with a poem of considerable length, entitled, "Salamis," with a notice that "The foregoing poem was presented to his father, by John William Smith, January 23d, 1821, the day on which he completed his twelfth year." The following is "The Argument of Canto I:—

"Themistocles lying awake in the night, is surprised by the entrance of Aristides, who informs him that the Persian fleet had completely surrounded them. Themistocles tells him that this was effected by a device of his own, to prevent the Greeks from deserting the Straits, and sends him to Eurybiades, calls a council in the morning, in which it is resolved to attack the enemy, and the whole fleet move forward in order of battle.—Scene, the Grecian camp on the sea-shore of Salamis."

The first Canto thus opens—

Now darkness over all her veil had spread,
Save where the moon her feeble lustre shed,
When from the clouds emerging, her dim ray
Mock'd the effulgence of the lucid day.
Stretch'd on their beds, the Greeks in soft repose
Awhile forgot their harass'd country's woes.
Themistocles alone awake remain'd,
By his anxiety from sleep restrain'd;
Although the chief with labour was opprest,
His care for Greece withheld his wonted rest.
For three long hours, all had been still around,
At length he hears (or thinks he hears) a sound;

He starts, and sees a stately form advance,
Clad in bright arms, and with a shining lance,
And by the moon's faint beams, the chief descried
A Persian sabre glittering at his side.

Here follows the "Argument of Canto II—

"Mardonius is surprised by the noise of the Greeks advancing, and the hostile fleet appearing, the ships move forward to meet them.—Lycomedes takes the first galley, and consecrates the spoils to Apollo.—The acts of Eurybiades, Mardonius, and Themistocles.—Aristides and Lycomedes landing in the Isle of Psyttalia, destroy a number of Persians stationed there, at sight of which, part of the Persian fleet gives way.—Ariamenes endeavouring to rally them, is slain.—At his death the rest of the Persians fly. The Greeks pursue them to the Attic shore, and obtain a complete victory, which concludes the Poem."

The whole poem shows a mind thoroughly imbued with Grecian history, and the action is conceived and described with considerable spirit. There are a few lame verses, here and there, but scarcely a single puerile conceit; while a perusal of the entire contents of these records of a gifted child, is calculated to surprise, by the great extent of reading displayed by its writer, and the ease and precision with which he brings it to bear upon his subject.

In the spring of 1821 he entered Westminster School, taking his place on the fourth form, which secured him all exemption

from fagging. Here, again, his progress was that of a boy of first-rate abilities, great diligence, and unvarying good conduct. Two years afterwards, viz. in the spring of 1823, he gained a king's scholarship, without the assistance of a "*help*," a thing which it is believed was unprecedented. In the College, however, he could not escape *fagging*; but such was his independent spirit, that he refused to submit to it, and immediately resigned his hard-won scholarship, with all its prospects. His father was somewhat nonplussed by this occurrence; and presently sent him to a school at Blackheath, kept by the present rector of Woolwich, the Rev. Willain Greenlaw, a son of his former master, Dr. Greenlaw. The Blackheath school contained no fewer than seventy-two boys, many of them on the eve of quitting for the universities; but as soon as John William Smith made his appearance, he was not only recognised as being far superior to them all, but equally well read with the ushers; and he consequently read with Mr. Greenlaw himself, alone! being then, it will be recollected, little more than fourteen years of age! He wrote every species of Latin verse with the utmost facility—of which he gave, on one occasion, a proof not yet forgotten by his schoolfellows: for, one evening, shortly after going there, he wrote all the Latin verses for the entire school, from the highest to the lowest—in all metres, and on every variety of subject. This feat was lately communicated to me by one of his then schoolfellows; and I also recollect him once mentioning the subject to me himself; adding, if I recollect correctly, that there was not a

blunder found in any of the verses which he had written. During his vacations he visited France, and mastered the French and Italian languages, with both of which, up to the period of his death, he continued perfectly familiar, and very partial to the writers of both. About this time he began to cast about for a profession; and entertained the notion of either going out to India, in a military capacity, or entering Woolwich academy as a cadet. His father persuaded him to relinquish the former step, but assented to his adopting the latter; and he paid close attention to engineering. He has often expressed to me the delight he took in studying *fortification*; adding, that he had sometimes regretted having abandoned that line of life, for that he fancied he should have been successful in it. His father would have procured him an appointment in conformity with his wishes, had not his views concerning him been changed by his friend, the Right Honourable Sir George Fitzgerald Hill, then Vice-treasurer of Ireland, who gave his son an appointment in the Vice-treasurer's office at Dublin Castle. Sir George quickly detected the superior talents and acquirements of young Smith, and became much attached to him; evincing peculiar satisfaction in conversing with him, and listening to his quaint, exact, pithy answers to questions proposed to him. About this time he was smitten with the love of Lord Byron's poetry, which he devoured with avidity, and his own love of verse-writing revived. He became, indeed, very anxious to excel in poetry. He was soon tired of his official duties, and resigned his situation in favour of his brother, who

at this moment fills a responsible office in the same department in Dublin Castle.

In the year 1826, being then in his seventeenth year, Mr. Smith entered Trinity College, Dublin, where his whole career was, as might have been expected, one of easy triumph. He constantly carried off the highest classical premiums, and occasionally those in science, as well as—whenever he tried—for composition. In 1829, he gained a scholarship, and in the ensuing year obtained the highest honours in the power of Trinity College to bestow, namely, the gold medal for classics. He thought so little, however, of distinctions gained so easily, that he either forgot, or at all events neglected, even to apply for his gold medal till several years afterwards; when, happening to be in Dublin, and conversation turning upon the prize which he had obtained, he said, in a modest, casual kind of way, to a friend, "By the way, I never went after the medal; but I think, as I'm here, I'll go and see about it." This he did, and the medal was of course immediately delivered to its phlegmatic oblivious winner! He was a great favourite at college, for he bore his honours with perfect meekness and modesty, was very kind and obliging to all desiring his assistance, and displayed, on all occasions, that truthful simplicity and straightforwardness of character, which, as we have already seen, he had borne from his birth. He was much beloved, in short, by all his friends and relations; and one of the latter, his uncle, Mr. Connor, an Irish Master in Chancery, confidently predicted that "John

William would live to be an honour to his profession and friends." In 1829, he joined his family, who were settled in Versailles, and spent some time there. In the ensuing year, his father, who possessed a first-rate capacity for business, was appointed Vice-treasurer and Paymaster-general of the forces in Ireland, and was obliged to reside in Dublin, whither he accordingly soon afterwards repaired with his family. His son, John William, however, remained in London, having determined upon forthwith commencing his studies for the English bar: a step which his father and he had for some time before contemplated; as it appears, from the records of the Inner Temple, that he was entered as student for the bar on the 20th June, 1827, which was during his second year at Trinity College. The facility with which he not only got through the requisite studies, but obtained every honour for which he thought proper to compete, allowed of his devoting much of his attention at that time to the acquisition of legal knowledge. He procured a copy, therefore, of Blackstone; that, I believe, which had appeared a year or two before, edited by the present (then Sergeant,) Mr. Justice Coleridge,—the only edition of the Commentaries of which he approved, and which he used to the last,—and read it through several times with profound attention, as he has often told me; expressing himself as having been charmed by the purity and beauty of Blackstone's style, his remarkable power of explaining abstruse subjects, and his perspicuous arrangement. The next book which he read was, I believe, "Cruise's Digest of the Laws of England, respecting Real

Property," in seven volumes octavo, a standard work of great merit; which, while at college, he read, I think, twice over, and continued perfectly familiar with it for the rest of his life. He also read carefully through nearly the whole of Coke upon Littleton, which he told me he found very "troublesome," and that he had expended much valuable time and attention on some of the most difficult portions, which he very soon afterwards found to be utterly obsolete, particularly mentioning those concerning "homage," "fealty," "knight-service," "wardship," &c. The above may seem a great undertaking for vacant hours at college, but will not appear to any of Mr. Smith's friends to have been such to him, who read as rapidly, as he attended closely to, and tenaciously retained what he had read. It may here be mentioned, that in this particular, viz. reading law at college, Mr. Smith resembled Sir William Follett, who also devoted himself with ardour to the study of the law when at Cambridge, but did *not*, like Mr. Smith, also gain the highest college honours; for Sir William never competed, or at all events never obtained college honours of any kind. Mr. Smith commenced keeping terms at the beginning, I believe, of 1830; and it was at the mess-table of the Inner Temple Hall that I, who had also shortly before come up from Edinburgh University for the same purpose, first had the happiness and the honour of becoming acquainted with my late distinguished friend. He was then in about his twenty-first year. I distinctly recollect the first time of our meeting, which was at the aforesaid mess-table; and that his appearance struck

me as that of a bashful and awkward person dull and taciturn, with a formal precise way of speaking, and a slight abruptness of manner. If Lord Bacon's saying be correct, that a good face is a *letter of recommendation*—poor John William Smith may be said to have come without a character! How little did I dream of the bright jewel hid in so plain and frail a casket: how often have I felt ashamed of my own want of discernment: what a lesson has it been never again to contract any sort of prejudice against a man from personal appearance! It was not till I had known him for nearly a year, owing partly to our unfrequent meetings, and his absence, that I began to be sensible of his superior talents and acquirements. His personal appearance was, it must be candidly owned, certainly insignificant and unprepossessing. He was of slight make, a trifle under the middle height, his hair was rather light, and his complexion pale. He wore spectacles, being excessively near-sighted, and had a very slight cast in his eyes, which were somewhat full and prominent. The expression of his features, at all events when in repose, was neither intellectual nor engaging, but they improved when he was animated or excited in conversation. His forehead, however, was, though retreating, lofty, and I have heard it characterised as intellectual. At the time of which I am speaking, he used to wear a white hat, placed so far back on his head, that it gave him, to a stranger, almost a ludicrous aspect. His utterance was slow, his demeanour very solemn; and he would sit at dinner for a long time silent, till you would be surprised by his bursting into a short, sudden,

but very hearty laugh, when any thing had been said which tickled his fancy; for I found out before long that he had a great taste for the ludicrous, an exquisite perception of humour. When he shook hands with you, he placed his cold hand into yours, like a dead man's hand—even with his most intimate friends—instead of greeting you with a hearty cordial grasp or pressure. How long again this little circumstance misled me as to his supposed insensibility to the claims of friendship or affection! whereas the very reverse was the case; for he was a most firm and devoted friend, and of an exquisite delicacy and sensitiveness of feeling. He did not, at first, as the phrase is, *make way* with his companions, nor appear desirous of doing so. I recollect, on one occasion, that he and I remained the last at the dinner-table; and, though he sate opposite to me for some minutes, thoughtfully balancing his wine-glass in his hand, an empty decanter being between us, he spoke not a syllable; and I was watching him (his eyes being directed towards the floor) with an amused curiosity, on account of his apparent eccentricity, when he suddenly said, "Mr. Warren, will you take a walk with me up Regent Street, or any where else, as it is such a fine evening?" What passed through my mind, on being thus unexpectedly encountered, was, "Well—he's a curiosity, and seems to know no one—so I *will*;" and, having said as much, we rose. He walked down the hall, and we took off our gowns in the ante-room, and quitted the building, without his having uttered a syllable! I recollect feeling almost inclined to be

offended. We then walked about the town till nearly nine o'clock, and I think he talked a little about France, and we compared notes together concerning Dublin and Edinburgh Universities. I quitted him, musing upon his quaint manner, and his solemn precision of language: but nothing that had passed between us gave me the idea of his being a person of superior ability or acquirements. He was, indeed, a very shy and modest man. It was not, for instance, till after a seven years' intimacy, that I knew of the distinction which he had obtained at college; and on my asking him, one day, whether it was true that he had obtained the gold medal, he blushed, slightly moved his head aside, and, after a pause, said, in a tone rather even of displeasure than gratification, "Possibly I did!" and we dropped the subject. In the year 1830, he entered the chambers of Richard Grainger Blick, Esquire, one of the most eminent special pleaders in the Temple, and who has assured me, that he always considered Mr. John William Smith to be a remarkable man. Probably there never before entered the chambers of pleader or barrister, in the character of novice, a man of more formidable legal aptitude and acquirements. We have already seen the substantial and extensive character of his law-reading at college; but, between leaving it, and entering Mr. Blick's chambers, Mr. Smith read carefully over "from cover to cover"—such were his words to me—"Tidd's Practice," a standard book, in two closely printed, large octavo volumes, and also "Selwyn's Nisi Prius," in two similar volumes. He had not been long in chambers before he

found that "he had not a sufficient knowledge of pleading, to get any benefit from the business, which he saw;" wherefore he absented himself from chambers for some time, to enable him to read through the first volume of "Mr. Chitty's Treatise on Pleading;" and some time afterwards he again withdrew, for similar reasons, to read "Phillips on Evidence." Having obtained such an acquaintance with these two works, as to a person of inferior intellect or discipline might seem a complete mastery, he returned to chambers, able better to avail himself of the advantages afforded by Mr. Blick's extensive practice; very frequently surprising that gentleman by his mental vigour, and accurate and extensive legal knowledge. "I was very cunning," he has more than once said to me, "at chambers; for I soon saw how to go to work, better than the other pupils. They would be all for the 'heavy papers,' the great cases that came in, not caring for the shoal of small things that were continually appearing and disappearing. Now it seemed to me, that *these* constituted three-fourths of a lawyer's business, and that to be able to do *them*, was three-fourths of the battle: so I very quietly let my fine gentlemen take all the great papers, while I did nothing but these same despised common things, till at length I really began to feel that I was improving, and learning a good deal of law. But, as to the other sort of cases and papers, as soon as my fellow-pupils had done, puzzling their brains over them, and written the opinions, or drawn the pleadings, and Mr. Blick had revised them, and given them his *imprimatur*, I *then* read them over

very diligently, and with great profit: but you must remember that this was before the late revolution in pleading." All this he repeated to me one day, only a few months before his death.— He never studied under any other practitioner than Mr. Blick, with whom, moreover, he spent only one year: yet such was his close application, his wonderful memory, his clear, vigorous, and disciplined understanding, and the soundness and extent of his previously acquired law, that on quitting Mr. Blick, Mr. Smith was really an able pleader, and had laid the basis of an extended, profound, and scientific knowledge of the law. Even at that early period, I frequently heard his opinion deferentially asked by men far his seniors, and of considerable standing in business. On quitting Mr. Blick, Mr. Smith read a number of other law books, in his usual attentive and thorough manner, completely mastering both them and the "cases" contained in them, and of which, generally speaking, they were little else than digests or epitomes. He was a very keen and acute logician, and felt great satisfaction in balancing the *pros* and *cons* of the reported cases, and testing the soundness of the judges' decisions, and the relevancy and force of the arguments of council which had led to them. Among the books which he read about this time, he enumerated to me "Sanders on Uses and Trusts," (which, he said, he found to be a difficult book to master practically;) "Fearne on Contingent Remainders," which he represented as likely to prove interesting to *any* educated man of intellect, fond of exercising it, who would take the trouble to read it; Sir Edward Sugden's Treatises on

"Vendors and Purchasers of Real Estates," and on "Powers," and Williams' "Saunders;" while "Comyn's Digest" was ever lying before him, the subject of continual reference, and with which he soon acquired an invaluable familiarity. He also read several books on Equity with great attention, and often said, that no one, who really knew law, could fail to feel a deep interest in Equity, and the mode of its operating upon law. The "Code Napoleon," too, he read very carefully, and for many years. He had a copy of Justinian's Code, and Institutes, always lying on his mantel-piece, and which he was very fond of reading. We have frequently conversed together on the subject of the extensive obligations of our Common Law to the Roman Law; to which he used to refer, in the absence of the books, with great facility and accuracy. He was very fond of Plautus, and would quote almost an entire scene, as accurately, and with as natural a fluency and zest, as another would have shown in reading off any of the scenes in a popular English play; often accompanying his quotations with shrewd and ingenious critical comments. He was also very fond of the French Dramatists, particularly Moliere, from whom I have heard him quote entire scenes with wonderful accuracy. You might have imagined him reading from the book, as I have several times myself observed, and heard others remark: and all this he did in a perfectly natural and unobtrusive way, as if merely to relieve an over-charged mind, and give pleasure to those whom he credited with inclination and ability to appreciate the excellencies which he pointed out. His memory seemed,

indeed, equally tenacious of things important and unimportant; incapable, in short, of *forgetting* any thing. I have heard him quote long-forgotten but once popular and laughable trash, ballads, squibs, epigrams, &c., till at length he revived in the listener such a sort of recollection of them, as made him imagine that Mr. Smith must have recently committed them to memory for some special purpose, but for their appearing so really fresh and racy to him, and plainly suggested by the casual current of conversation. He was, about this time, and for years afterwards, a very frequent visiter at my house; and never was any one, independently of my personal regard for him, more welcome; for his conversation was always that of a ripe and varied scholar and fastidious *gentleman*. He was ever gay and animated as soon as he had recovered, which he quickly did, from the exhaustion of a long and severe day's work, and his fund of anecdote appeared inexhaustible. Never was any man farther removed from being that insufferable social nuisance, a professed talker. Display of any kind was quite foreign to his nature; and whenever he chanced to encounter a person cursed with that propensity, he would sit in silence for a whole evening: not in the silence of vexation or pique, but of a man left at leisure to pursue his own thoughts, or calmly amuse himself with the characteristics of the chatterer. If, while thus occupied, unexpectedly interrupted, or appealed to by the aforesaid chatterer, or any one else, he readily answered, though certainly with a somewhat frigid courtesy. It was impossible for any one, of the least powers of observation,

to fail of detecting in Mr. Smith, though beneath a reserve and formality not very easy to penetrate, a kind of scrupulous antique courtliness, suggesting to you a resuscitated gentleman of the school of Addison, particularly in his intercourse with ladies. He was caution personified,—never saying any thing that required retraction or modification: and though you might guess the contemptuous estimate which he had formed of some particular person's character or doings, he rarely permitted himself to express it. He would sometimes smile significantly at the recital, or witnessing, of some particular absurdity or weakness; but I think that no one ever heard him utter a hasty, harsh, or uncharitable judgment of any body. He seemed, in fact, equally chary of giving praise or blame. No man would laugh louder, or longer, on hearing, or being told, of some signal and ludicrous miscarriage of another; but he would *say* nothing, except on very rare occasions, and among his intimate friends—and even then, never any thing severe or violent. Tell him, however, of any thing really mean and unworthy, or let him have witnessed it, and no one could fail to see, calm and measured though Mr. Smith's *language* might be, the profound contempt, or the lively indignation with which he regarded the delinquent and his delinquency. I fear, however, that I am digressing.—He and I commenced our careers as special pleaders about the same time, viz. in 1831; and not many days passed without our being at each other's chambers, borrowing one another's books, or going out to walk together, or conversing on law or other matters. I always

listened to what he said on legal subjects, as to a master: he was so ready, so correct, so concise, so judicious, that his suggestions, upon any case which I mentioned to him, were very valuable; and they were given with a heartiness of good-nature that made them doubly welcome. He was delighted to assist me, or any other of his friends. We were a small circle, about that time, of some half a dozen; and I may take upon myself to say, that we all cheerfully recognised in him our superior—our *facile princeps*, from the first. Some of us set agoing a little weekly periodical, called "The Legal Examiner," to which he was a constant contributor—his papers being always characterised by point and precision, though the style was dry and stiff. It grieves me to say, that he met with no encouragement as a special pleader, consummately qualified as he was for success in that department, and scarcely ever to be found absent from his chambers; where he was at all hours to be found, modest, patient, though sometimes a little dejected,—yet

True as the dial to the sun,
Although it be not shone upon.

I question whether, during this two or three years' bitter and disheartening probation, he made more than thirty, or at least forty guineas; his annual certificate for leave thus to do—nothing, cost him, nevertheless, £12. Yet I never once heard him, nor I undertake to say, did any of his friends, express fretfulness or impatience at his disheartening lack of employment. He

manifested, on the contrary, a quiet fortitude that was touching to witness. I recollect him once, however, when we were conversing on the subject, saying rather pensively, "If one has not connexions, and cannot make them, it is next to impossible to get any business." The professional public possess conclusive and permanent evidence of the admirable use which he made of his time, during the first year or two of his essaying to practise as a pleader; for in July 1834, two months after having been called to the bar, he gave to the world a work which, as soon as it had become known, raised him to the very highest rank of legal writers. The more it was read or referred to the higher was the estimate formed of its writer's intellect and learning, alike by the bench and the bar; for he had most discreetly, yet boldly, chosen a subject of great difficulty and importance, properly treated by no work extant, and which gave him opportunity of supplying a long-acknowledged deficiency in professional literature. He undertook, in fact, to produce a comprehensive practical treatise, within an exceedingly moderate compass, on "Mercantile Law:" and he succeeded to admiration—did this neglected young man of scarce twenty-five years old—in producing, entirely unassisted, a work signally calculated to attain the proposed object; condensing into a very small space, and with almost unerring accuracy, a great amount of exceedingly difficult law, beautifully and perspicuously arranged, so as that even laymen might read as they ran, and receive guidance in the most perplexing exigencies of business, while the ablest lawyers, might

safely refer to the pages of the "Compendium" for a terse and true statement of the result of many conflicting decisions, and a luminous exposition of the *principles* which ought to govern the administration of commercial law. The calm, practised skill with which this young unknown jurist moved about in these regions of subtle intricacy—*inter apices juris*—excited the cordial admiration and respect of all competent judges. He was manifestly a master of his subject; and having quietly detected important but unoccupied ground, had possessed himself of it with skill and resolution:—and this he did within little more than two years after he had quitted the scene of his solitary year's pupilage. Within six years this book has passed through three large editions; and a fourth is, it is believed, in preparation, which will comprise a great number of its departed author's own additions and emendations, continued up to within two or three months of his decease. Not only in this country, but in the United States of America, is this valuable work deservedly held, at this moment, in the highest estimation, as practically the only book of its kind. A glance at the brief Preface will suffice to show to a competent judge, whether lay or professional, at once the real and peculiar difficulty of the undertaking, the author's exact and happy illustration of the sources of that difficulty, and the simplicity and accuracy of his style.

"The Mercantile Law is in one respect better adapted to compression than the Law of Real Property; inasmuch as the reasons upon which the former is based, can be

explained more shortly than those which support the latter. The reasons upon which our Law of Real Property is founded, are, generally speaking, historical; and part of history must therefore be recounted, in order to explain them clearly and philosophically; while the Mercantile Law is deduced from considerations of utility, the force of which the mind perceives as soon as they are pointed out to it. For instance, if a writer were desirous of explaining why a rent-service cannot be reserved in a conveyance, by a subject, of lands in fee-simple, he would be obliged to show the feudal relations that existed between lord and tenant, the nature of sub-infeudations, and how the lord was injured by them, in such his relation to his tenant, how the statute *quia emptores* was enacted to prevent this injury; in consequence of which statute a tenure, without which no rent-service exists, cannot be raised by a conveyance from one subject to another, in fee-simple. In like manner, the explanation of a recovery, of a fine, of a copyhold, of an estate in ancient demesne, of an use, of a trust, would require a process of historical deduction. But when the reader is told, that the drawer of a bill of exchange is discharged, if timely notice be not given him of its dishonour; because, without such notice, he might lose the assets he had placed to meet it in the drawee's hands; or, that if A hold himself out as B's partner, he will be liable as such, because he might else enable B to defraud persons who had trusted him upon the faith of the apparent partnership and joint responsibility: when these reasons, and such as these, are given, every man at once perceives their cogency,

and needs not to be told *how*, that he may know *why*, the law was settled on its present footing. The fitness of this subject for compression is, therefore, hardly questionable. The difficulty of compressing it is, however, extreme. The author who attempts to do so, must continually keep in view a triple object, must aspire at once to clearness, brevity, and accuracy; a combination so difficult, that its difficulty may, it is hoped, be fairly pleaded in excuse for some of the deficiencies and imperfections which the reader may discover in the following pages."

After a luminous and elegant introductory account of the rapid growth and development of mercantile law, the author thus announces the convenient and comprehensive plan of his work:

"This treatise will be divided into four books. The first, concerning Mercantile *Persons*; the second, Mercantile *Property*; the third, Mercantile *Contracts*; the fourth and last, Mercantile *Remedies*; a method which appears the simplest and most comprehensive; since it includes, under a few heads, the description of those by whose intervention trade is carried on; of that which they seek to acquire by so employing themselves; of the arrangements which they are in the habit of adopting, in order to do so effectually; and of the mode in which the proper execution of those arrangements is enforced."

A striking evidence of the value of this work, the soundness of his opinions, and the importance attached to them in the highest

judicial quarters, was afforded by the very first number of the Reports of the Court of Exchequer, published after his death, where (in *Tanner v. Scovell*, 14 *Meeson and Welshy*, 37,) the Lord Chief Baron, after time taken to consider an important question of mercantile law, delivered the judgment of the Court in expressed conformity with the doctrine which Mr. Smith has laid down in his "Mercantile Law," and in opposition to the opinion of the late very learned Mr. Justice Taunton!

To retrace our steps, however, for a moment: Mr. Smith at length despaired of getting business under the bar, and tired of sitting a prisoner at chambers, in vain expectation of it. His rooms and mine were directly opposite to each other, on the same floor; and rarely or never was a knock heard at his door, except that of some friend coming either to ask his able and willing assistance, or chat away a weary half hour. Towards the close of 1833, he announced to his friends that he contemplated trying his fortune at the bar, and was easily persuaded, with that view, to commence attendance at a professional debating society, called "The Forensic," which, confined to barristers and students for the bar, and established so long ago as 1815, has numbered among its members almost every lawyer of eminence who has appeared since that year, including Sir William Follett and Mr. J. W. Smith. He entered this society on the 29th January, 1834; and I well recollect his first essay at addressing it. It was upon the discussion of a legal question. He was evidently very nervous when he rose, for the colour quite deserted his cheek. His manner was cold,

dry, and formal, and sufficiently uninteresting, and uninviting. We were all, however, soon struck by the book-like precision of his language, the clearness and closeness of his reasoning, and the extent of his legal knowledge. He spoke for about ten minutes; and, having risen amidst a half-suppressed titter, sat down amidst earnest cries of "Hear, hear, hear!" He afterwards spoke pretty regularly, especially upon legal questions; and those who, in due course, were appointed beforehand to argue against him, felt it expedient to come particularly well prepared! Shortly before he was called to the bar, he said to me, with a timid, dejected air, "It is a bold step; but I really don't see what else is to be done. Why should I sit any longer perishing in chambers? Besides, my 'Mercantile Law' will be out in a month or two, and if it succeed, it may *possibly* give me a lift—so I shall try it." He was accordingly called to the bar on the 2d May, 1834, selecting the Oxford Circuit and the Hereford and Gloucester Sessions. "There are only two ways," I heard him say, (quoting the well-known dictum of a late able judge,) "of getting on at the bar, Pleading or Sessions. I have failed in the former, I shall now try the latter. *Flectere si nequeo superos, Acheronta movebo!*" I was, I confess, amongst those of his friends who were not sanguine as to his prospects of success at the bar, regarding him as unlikely to attract favourable notice in court practice. Shortly after he had attended at the Sessions, however, he began to obtain a little employment in petty cases there; and, contrary to expectation, became very successful in defending prisoners: his acuteness,

vigilance, ingenuity, and legal knowledge—particularly of the law of evidence—became more apparent in every succeeding case intrusted to him. In spite of the dry formality of his manner, he soon attracted the *understanding* of his hearers, exhibiting great caution and judgment in dealing with the evidence, his tenacious memory here standing him in great stead. His start at sessions, however, seemed likely to lead to nothing, on the civil side at the assizes—where his reception was sufficiently disheartening. He attended regularly, nevertheless, both assizes and sessions; during his stay in town labouring with indefatigable energy in the acquisition of law. In 1835, he composed a lucid little treatise on the Law of Practice, entitled, "An Elementary View of the Proceedings in an Action at Law," distinguished by simplicity, correctness, and condensation, and calculated to give students a perspicuous view of an extremely dry and troublesome subject. This also has become a standard book. In 1836, he wrote another little work—one upon Patent Law, explanatory, in a practical way, of a statute which had just before been passed, and had effected important alterations in that department of law. He told me that "he did not like to throw a chance away," and this "might possibly get him some briefs in Patent cases;" but I suspect that in this he was disappointed. In the same year he and I occupied our long vacation in preparing together a work entitled "Select Extracts from Blackstone's Commentaries, carefully adapted to the use of schools and young persons." We both took great pains with this book, and it has had a large sale:

but for some whimsical reason or other, he would not allow his name to appear, though particular in retaining a share in the copyright.

Neglected and discouraged though he was, he continued to prosecute his studies with patient energy, appearing to me scarcely ever to spend an idle moment. He attended very frequently the Courts at Westminster, and on returning to chambers would spend the rest of the day in reading the constantly-accumulating Reports, and noting their more important contents in his favourite text-books. He constantly sat up till a very late, or rather early hour in the morning, and would frequently, on awaking, lie reading in bed till noon, when he would rise and take a sparing breakfast. I recollect calling upon him one gloomy day in December, about the time of which I am writing, to ask him to accompany me home to dinner, as he generally did once or twice a-week. He suffered a martyrdom from tooth-ache; and on this occasion had passed a miserable night from that cause, not having slept at all, and his swollen face betokened the violence of the fit. He had, nevertheless, got up much earlier than usual, to oblige one of his friends, for whom he had promised to draw some very pressing and difficult pleadings, which he was finishing as I entered. When he had despatched his clerk with them, he requested me to sit down and take a cup of tea with him, as he was suffering, both from pain, and fatigue, and *ennui*. I never saw him in so desponding an humour. He promised to dine with me on the morrow, provided I would sit with him

for an hour "gossiping," for he said that he could not sleep, he could not sit still, he could not read or write. I complied with his request, and stayed with him a long time. In the course of conversation, I recollect him saying, that "He supposed he was not to get on in the law; that he could not fight against the want of a connexion." I reminded him that it was surely premature to hold such language, and that he must bide his time,—when he interrupted me by saying, shaking his head, "Ah, but while the grass grows the steed starves." Presently he said, rather suddenly, "Should you be surprised to hear of my entering the church?" "The church!" I echoed with surprise.—"What do you see so wonderful in the notion of my going into the church?" said he gravely. "Do you think me unfit for it?"—"Not at all; but what I wonder at is, that you should dream of quitting the bar."—"Why not, if I find that it will not afford me a living? Let me tell you, that I am very partial to the study of Divinity, and have read a good deal of it, much more than you would suppose. I think I should like composing sermons, though it is very possible that they might not be popular; and I suppose you will not deny that Divinity is a nobler study than law?" He said much more in the same strain, which led me to believe that the subject had for some time occupied his thoughts, and that he had begun seriously to contemplate quitting the bar—at all events, if another year should leave him as little likely to succeed in obtaining practice, as that which was on the eve of closing. Many of even his intimate friends were unaware of his partiality for Divinity, and the extent

to which he had studied it; for he was very reserved on such matters.

I once told him that I had read the whole, of "Pearson on the Creed;" at which, in his usual cold dry way, he replied, "So have I, and very carefully. I liked it much. And I'll tell you another book that I have read still more carefully, both in Latin and English—Mosheim's 'Ecclesiastical History.'" I have heard him say the same of Hooker's "Ecclesiastical Polity." We have often discussed the merits of Jeremy Taylor, Barrow, and South; the last of whom was a favourite of his. He had a surprising knowledge of the Old and New Testaments. One of his oldest and ablest friends, and whom he appointed one of his executors, recently alluded, in conversation with me, to this circumstance, adding, "Smith *read* the Bible as few but he could read it; and *remembered* it, as very few but he could remember it." I have occasionally myself had evidence of his exact knowledge of very recondite portions of the Old Testament; but, as already intimated, he was always cautious and sparing in scriptural allusions or quotations. Since writing the foregoing sentences, a learned friend has informed me, that Mr. Smith, about two years before his death, had entered into a prolonged and ardent discussion with him on the subject of the *Apostolical Succession*, insisting that no one who did not assent to that doctrine, was in reality, or could be conscientiously, a minister of the Church of England. Again and again, during a considerable interval of time, whenever they met, Mr. Smith

pertinaciously renewed the discussion,—his friend for some time doubting whether Mr. Smith had any other motive than to amuse himself with the matter as one of mere logical exercise, but being at length satisfied that he was sincerely expressing his own opinions. To a brother of this gentleman, Mr. Smith became closely attached, on discovering the extent and depth of his knowledge of divinity, a subject on which they conversed whenever they could, Mr. Smith exhibiting, on all such occasions, the utmost zest and energy. I have already intimated the extent of his acquaintance with general literature; to which it may be here added that he possessed a correct and very extensive knowledge of history, ancient and modern. He knew it, *and its true uses*; and was equally conversant with its minute details, and its general scope and bearing, as illustrative of the practical operation of political principles and doctrines. He always, in short, appeared to me to be a man, whose first anxiety in all matters was to obtain a thorough knowledge of details, of facts; and then experienced delight in contemplating and reflecting upon them with a view to the discovery or detection of some leading principle of action or conduct involved in them. Such grave matters, however, did not alone occupy him; for I never saw a more eager and indiscriminate reader of even the ephemeral trash loading the shelves of circulating libraries. Scarcely a novel, play, or magazine appeared, which he did not take up, and, whenever they happened to be mentioned, show as complete a knowledge of them as if they had been worthy of it. I have often

laughed at him on these accounts; he generally receiving my sallies with a sort of piqued silence, or simply saying, "It amuses me." I think that this circumstance is well accounted for by Mr. Phillimore—that Mr. Smith's over-tasked mind found light and easy narrative, of any kind, a relaxation.

Early in the year 1835 appeared a work on legal education, in which was enforced the advantage to the student and practitioner, of early mastering, as so many *nuclei* of future legal acquisitions, a few of the "*leading cases*" in the Law Reports, which suggested to Mr. Smith the idea of writing a book under the name of "Leading Cases." He was engaged upon it from about the middle of 1835 till the early part of 1837. There was no book of the kind extant. The idea was felicitous; but much learning and judgment were requisite to work it out practically. Mr. Smith proved himself, however, fully equal to the undertaking. Though in 1835 and 1836 he composed and published, as we have seen, two other minor professional works, he was all the while quietly elaborating this more important performance, the first volume of which (in large 8vo) he published in March 1837. His plan was, to select from the recognised Law Reports some of the chief Cases which had been decided in the Common Law Courts, and which were of such superior importance as to have become "Leading Cases," *i.e.* in his own words, "involving, and being usually cited to establish some point or principle of real practical importance." Each of these he made the basis of an elaborate disquisition, in which, to continue his own explanation, "in order

that the consequences of each 'Case' might be understood, and its authority estimated as easily as possible, Notes" were "subjoined, in which were collected subsequent decisions bearing on the points reported in the text, and in which doctrines having some obvious connexion with them," were "occasionally discussed," ... "without allowing them to digress so far from the subject matter of the text, as to distract the reader's mind from that to which they ought to be subsidiary." It is difficult to speak in terms too highly commendatory of this masterly performance—one quite of a judicial tone of investigation—and which, immediately upon its appearance, arrested the attention of all persons competent to form an opinion on the subject, as a sterling and permanent addition to the highest class of legal literature, and entitled its author to be regarded as really a first rate lawyer. Almost all the judges, and the most eminent members of the bar, wrote to him in terms of warm respect and approbation; and to this moment evince the same appreciation of the excellence of the work by quoting it, not more frequently in the arguments of counsel than in the most elaborate judgments delivered by the bench. It is indeed difficult to know which most to admire—the great extent and unerring accuracy of his law, or the clearness and precision of his reasoning, rendering simple and easy of apprehension the most obscure and perplexing subjects. The "Cases" were selected with great judgment out of the many thousands contained in the Reports; and whether he confirms, or questions, or illustrates the doctrine established by the case upon which he is annotating, he

exhibits the same modest freedom, masterly ease, accuracy, and subtlety of discrimination, distinctness of thought, and complete familiarity with the progress of legal decision. Every note, in short, is a model of legal analysis; and the style, also, is pure, simple, terse, and perspicuous. He dedicated this work to his former tutor Mr. Blick: and I recollect our having a long discussion upon the original terms of the dedication; which were these, "To Richard Granger Blick, Esq., this work is inscribed by his obliged friend and pupil." I suggested the insertion of the word "*former*," before "pupil:" without which, I said, it might appear that the work had been written by one still in *statu pupillari*. He was a man always difficult to convince of the impropriety of any thing on which he had once determined. He quitted my chamber unconvinced by what I had said: but the dedication afterwards appeared in accordance with my suggestion. I recollect being highly amused by the pertinacious ingenuity with which he defended his own view of the case. The fame of this work was not, however, confined to this country, but soon reached the United States of America, where it immediately met with the most flattering reception, and is at this moment accounted an established text-book, and quoted as an authority by their best writers and judges. I recollect Mr. Smith one day coming to me, and asking me, with a quaint mixture of mystery, pleasure, and embarrassment, if I would "be sure not to mention to any one what he was going to tell me:" and on my promising him that I would not, he showed me a letter which he had just

received from that eminent American jurist, Mr. Justice Story, himself one of the most elaborate and successful, legal writers of his age, and whose works are continually cited by both Bench and Bar in their country, with the utmost respect in this country, in which are contained the following.

"I consider your work among the most valuable additions to judicial literature which have appeared for many years. The 'Notes' are excellent, and set forth the leading principles of the various cases in the most satisfactory form, with an accuracy and nicety of discrimination equally honourable to yourself and to our common profession. I know not, indeed, if any work can be found which more perfectly accomplishes the purpose of the author.... I hope that your life may long be spared, so that you may be able to devote yourself to similar labours for the advancement of the learning and honour of the profession." Alas! both Mr. Justice Story and Mr. Smith, each a great ornament to his country, died within a few months of each other. When I congratulated my friend on this encomium, from so competent and eminent a judge, he replied modestly—"*Laudari à laudato viro* is certainly pleasing."

So great was the demand for this work, that Mr. Smith's publisher urged him to proceed as quickly as possible with the second volume, which he had, in his preface to the former one, announced his intention of doing, in the event of the first portion of his labours meeting with the approbation of the profession. He accordingly at once set to work upon the second volume;

and although he was beginning to have serious calls upon his time, owing principally to his having accepted the appointment, in November 1837, of Common Law Lecturer to the Law Institution, such were his energy and industry, that by the 12th of May, 1838, he had succeeded in bringing out the first part of the second volume, which was fully equal in execution to the first. While, however, he was receiving with his usual modesty the congratulations of his friends on this solid addition to his reputation, he received a sort of *checkmate*, which embarrassed and utterly confounded him; occasioning him infinitely greater annoyance and mortification than he ever experienced in his life. A highly respectable firm of law booksellers, the publishers of his "Compendium of Mercantile Law," and to whom he had also offered the publication of his "Leading Cases," which they had declined, without the slightest intimation of any objection to the principle of selecting the "Cases," which he had explained fully to them, suddenly took it into their heads, that in thus selecting some few cases from "Reports" published by them, as mere texts for his masterly legal discussions, he had been guilty of Piracy! and actually filed a bill in Equity against him and his publisher, to restrain them "from printing, selling, or publishing any copies of the first part of the second volume." I never saw Mr. Smith exhibit such intense vexation as that occasioned him by this proceeding: he felt at once his own honour impugned, and that he might have seriously compromised the character and interests of his publisher. Such, however, was

the confidence in the justice of his case felt by the latter, that he resolved to resist this attack upon his own rights and those of Mr. Smith to the very last; and he did so, at his own expense, and with triumphant success. The Vice-Chancellor of England, (Sir Launcelot Shadwell,) after an elaborate argument, refused to grant the desired injunction—expressing his very decided opinion "that on the substance of the case, and on the conduct of the plaintiffs, (the publishers in question,) they were not entitled to the injunction which they had asked." Against this decision the plaintiffs immediately appealed to the present Lord Chancellor, Lord Cottenham, who, after another very elaborate argument, and taking time to consider, delivered a luminous judgment confirming the decision of the Vice-Chancellor, triumphantly vindicating the propriety of both author and publisher's conduct, and supporting the right which Mr. Smith had thought proper to exercise; and his lordship dismissed the appeal with costs.⁵ Thus ended, what has always appeared to me a very absurd, and as the event proved, expensive experiment, on the part of the plaintiffs. Only one of them now carries on the business, and is a gentleman of such high respectability, and also liberality in his dealings with the profession, that I feel satisfied he had really very little part in this most unsatisfactory proceeding. Mr. Smith's right to continue his selections from the Reports, for the purpose of annotation, having been thus established,

⁵ The leading Counsel for the plaintiffs was the present Vice-Chancellor Knight Bruce; for the defendants the present Vice-Chancellor Wigram.

and the excellence and importance of his labours conspicuously made known (had that, indeed, been necessary) to the entire profession, he at once proceeded with, and in due time completed the remaining portion of the second volume; and for the sake of legal science, it is to be lamented that there this admirable work ended. Mr. Smith felt no exultation at the defeat of this most thoughtless and unjustifiable attack upon him, nor evinced any pleasure in the friendly congratulations showered upon him. His sensitive mind had, indeed, been thoroughly shocked by the imputation which had been sought to be fixed upon him; and the only feeling on the subject which he ever expressed to me, or appeared to entertain, was one of calm indignation. I must say that in this I think he was abundantly justified. He repeatedly told me that he should never write another book, for "that he had had quite enough of it." As it happened, he never did; nor do I think that he would ever have done so, even had his career not been cut short by death. Whenever works of solid interest and importance in general literature appeared, Mr. Smith was very eager to peruse them, and seldom failed in doing so. I recollect him one day borrowing from me the first volume of Mr. Hallam's, "Introduction to the Literature of Europe in the 15th, 16th, and 17th Centuries," which was published alone early in 1837. He read it with great interest, and reviewed it very ably in this Magazine—his only contribution to its pages, in the No. for May, 1837.

He was about the same time reading largely in the State

Trials, and frequently conversed with me upon their interesting character, wondering that they had so seldom been made really available for the purposes of amusing literature. He himself selected one of the trials as one possessed of peculiar capabilities, and intended to have completed it for this Magazine, but was prevented by his other labours. These lighter occupations, however, were soon interfered with by his appointment, as already intimated, to be Common Law Lecturer to the Law Institution in Chancery Lane, in November, 1837. This he owed entirely to his own merit, and the reputation which his writings had already gained him in the profession. I knew that fears were entertained by the directors of that important institution, lest his unpopular *manner* should stand in the way of his usefulness as a lecturer; but aware of his rare intellectual and legal qualifications, they wisely resolved to try an experiment, which completely succeeded. I recollect accompanying him, at his own request, to deliver his first lecture, at the close of 1837. He was somewhat fluttered when he made his appearance before his audience, but at once commenced reading with apparent calmness, a very able introductory lecture, which soon arrested attention, and caused the committee who sat before him to congratulate themselves on their selection. He held this appointment till March, 1843, during which time he delivered a great number of lectures to increasingly attentive auditories; and as he read over several portions of them to me, I am able to say that, in my humble judgment, they were of the highest value, for their

clear, close, and correct exposition of some of the most difficult branches of the law. He had a great talent for communicating elementary information; and even the most ignorant and stolid of his listeners could scarce avoid understanding his simple and lucid explanations of legal principles. One series of his lectures on "The Law of Contracts," has just (1846,) been published⁶ *verbatim* from his MSS. as they were delivered, and fully justifies the opinion here expressed. He never designed them for publication, but solely for delivery to the attorneys' and solicitors' clerks, for whom the lectureship was founded; yet it is doubtful whether there be any book extant in which the difficult and extensive subject of contracts is, and that within the space of ten short lectures, comparably treated. The most youthful student, with only moderate attention, can acquire from it, in a short time, correct general notions calculated to be of infinite service to him, while able practitioners will regard it as at once concise, accurate, and practical, and evincing a thorough mastery of the subject in all its branches. In the words of his editor, "The lectures embody the chief *principles* of that branch of the law, and will be found equal to any of the former productions of the author for that clear, concise, and comprehensive exposition of his subject, which has characterised his works, and ensured the vitality of his reputation; popularising a branch of law which peculiarly affects the ordinary business of life; divesting it of the

⁶ In one vol. 8vo, pp. 386, Benning & Co. Fleet Street, accompanied by Notes by Jelinger C. Symons, Esq. Barrister-at-Law.

superfluities with which it is often encumbered; educating the great maxims, and broad rules by which it is moulded, and unravelling the perplexity in which an occasional conflict of judgments had from time to time involved it." I am not aware that Mr. Symonds had any personal knowledge of Mr. Smith, so that the more valuable is his concluding eulogium,— "That the profession already ranks him as among the most gifted of its writers, and most learned of modern lawyers." As an example of the ease and precision with which he elucidated the most difficult subjects, and brought them to the level of youthful capacities, I select the following brief passage on a most practically important subject, that of the "consideration" essential to support a valid simple contract, according to the civil law and that of England.⁷ After explaining the doctrine of "*Nudum pactum*," he thus proceeds:—

"Now, with regard to the question,—*What does the law of England recognise as a consideration capable of supporting a simple contract?* the short practical rule" [after adverting to a well-known passage in Blackstone, for which he substitutes his own definition] "is, that *any benefit accruing to him who makes the promise, or any loss, trouble, or disadvantage undergone by, or charge imposed upon, him to who it is made, is a sufficient consideration in the eye of the law to sustain an assumpsit.* Thus, let us suppose that I promise to pay B £50 at Christmas. Now there must be a *consideration* to sustain this promise. It may be that B has lent me £50; here is a consideration by way of *benefit*

⁷ But not that of Scotland. Bell's Princip. Law of Scotland, p. 4, (4th Edition.)

or *advantage* to me. It may be that he has performed, or has agreed to perform, some laborious service for me; if so, here is a consideration by way of *inconvenience* to *him*, and of advantage to me at the same time. It may be that he is to labour for a third person at my request; here will be *inconvenience* to him, without advantage to *me*: or it may be that he has become surety for some one at my request; here is a *charge* imposed upon him: any of these will be a good consideration to sustain the promise on my part....

"Provided there be *some* benefit to the contractor, or *some* loss, trouble, inconvenience, or charge imposed upon the contractor, so as to constitute a *consideration*, the courts are not willing to enter into the question whether that consideration be adequate in value to the thing which is promised in exchange for it. Very gross inadequacy, indeed, would be an index of fraud, and might afford evidence of the existence of fraud; and fraud, as I have already stated to you, is a ground on which the performance of any contract may be resisted. But if there be no suggestion that the party promising has been defrauded, or deceived, the court will not hold the promise invalid upon the ground of mere *inadequacy*; for it is obvious, that to do so would be to exercise a sort of tyranny over the transactions of parties who have a right to fix their own value upon their own labour and exertions, but would be prevented from doing so were they subject to a legal scrutiny on each occasion, on the question whether the bargain had been such as a prudent man would have

entered into. Suppose, for instance, I think fit to give £1000, for a picture not worth £50: it is foolish on my part; but, if the owner do not take me in, as the phrase is, no *injury* is done. I *may* have my reasons. Possibly I may think that I am a better judge of painting than my neighbours, and that I have detected in the picture the touch of Raphael or Correggio. It would be hard to prevent me from buying it, and hard to prevent my neighbour from making the best of his property, provided he do not take me in by telling me a false story about it. Accordingly, in the absence of fraud, mere *inadequacy* of consideration is no ground for avoiding a contract."⁸

Those who are acquainted with the practical difficulties of this subject, will best appreciate the cautious accuracy, and yet elementary simplicity and clearness, which characterised his teaching: he being then, be it remembered, little more than twenty-eight years of age.

His writings having thus led to his being placed in a situation where he had ample opportunities for exhibiting legitimately to the profession his great legal acquirements and abilities, it was not long before he became sensible of making his way, but gradually, nevertheless, into business. He had given up practising at sessions some time before, and resolved thenceforth to address himself entirely to civil business in London, and at the Assizes. The late Mr. Robert Vaughan Richards, Q.C.,⁹ then one of the

⁸ Pp. 88-96.

⁹ To this gentleman he dedicated, in 1843, the third edition of his "Mercantile Law."

leaders of the Oxford Circuit, and himself an eminent lawyer and accomplished scholar, was one of the earliest to detect the superior qualifications of Mr. Smith, and lost no fair and legitimate opportunity of enabling him to exhibit his abilities, by naming him as an arbitrator, when the most important causes at the Assizes had been agreed to be so disposed of; and he invariably gave the highest satisfaction to both parties—the counsel before him, in arbitrations both in town and country, finding it necessary to conduct their cases as carefully as if they were before one of the astutest judges on the bench. Though many important causes were thus referred to him, and were attended by some of the most experienced members of the bar, I am not aware of any instance in which his decisions were afterwards reversed by, or even questioned before, the courts. When once he had obtained a fair "start" on his circuit, he quickly overcame the disadvantages of a person and manner which one *might* characterise more strongly than as unprepossessing. Few cases of great importance were tried, in which Mr. Smith was not early engaged; and the entire conduct of the cause, up to the hour of trial, confidently intrusted to his masterly management. Amongst many others may be mentioned the great will case of *Panton v. Williams*, and that of James Wood of Gloucester,

Within a very few months of each other, both of them died—Mr. Richards himself having, as he once told me, ruined his health by his intense and laborious prosecution of his profession. He had found it necessary to retire a year or two before his death. His brother, also, Mr. Griffith Richards, Q.C., one of the ablest members of the Chancery Bar, recently died under similar circumstances.

and other well-known cases. He was, without exception, one of the ablest *pleaders* with whom I ever came into contact: equally quick, sure, and long-headed in selecting his point of attack or defence with reference to the ultimate decision, skilfully escaping from difficulties, and throwing his opponent in the way of them, and of such, too, as not many would have had the sagacity to have foreseen, or thought of speculating upon. A recent volume of the Law Reports contains a case which, though his name does not appear in it, attests his appreciated superiority. It involved a legal point of much difficulty, and so troublesome in its facts as to have presented insuperable obstacles to two gentlemen successively, one under the bar, the other at the bar, and both eminent for their knowledge and experience. Their pleadings were, however, successfully demurred to; and then their client was induced to lay the case before Mr. Smith, who took quite a new view of the matter, in accordance with which he framed the pleadings, and when the case came on to be argued by the gentleman, (an eminent Queen's Counsel,) who has recently mentioned it to me, he succeeded, and without difficulty. "I never," said he, "saw a terribly bewildered case so completely disentangled—I never saw the real point so beautifully put forward: we won by doing little else than stating the course of the pleadings; the court holding that the point was almost too clear for argument." I could easily multiply such instances. Mr. Smith had a truly astonishing facility in mastering the most intricate state of facts; as rapidly acquiring a knowledge of them, as he accurately and tenaciously retained

even the slightest circumstances. He seldom used precedents, (often observing that "no man who understood his business needed them, except in very special occasions;") and, though a rapid draughtsman, it was rarely, indeed, that he laid himself open to attack in matters of even mere formal inaccuracy, while he was lynx-eyed enough to those of his opponents. When *he* was known to be the party who had demurred, his adversaries began seriously to think of *amending!* When his cases were ripe for argument *in banc*, he took extreme pains to provide himself with authorities on every point which he thought it in the least probable might be started against him by either the bench or the bar. I told him, on one of these occasions, that I thought "he need not give his enemy credit for such far-sighted astuteness."—"Oh," said he quickly, "never undervalue an opponent: besides, I like turning up law—I don't forget it, and, as Lord Coke says, it is sure to be useful at some time or another." In court, he was absorbed in his case, appearing to be sensible of the existence of nothing else but his opponent and the bench. He was very calm, quiet, and silent, rarely, if ever interrupting, and then always on a point proving to be of adequate importance. He did not take copious or minute notes on his brief, but never missed any thing of the least real significance or moment. When he rose to speak, his manner was formal and solemn, even to a degree of eccentricity calculated to provoke a smile from the hearers. His voice was rather loud and hard, his features were inflexible, his utterance was exceedingly deliberate, and his

language precise and elaborate. His motions were very slight, and, such as he had, ungraceful: for he would stand with his right arm a little raised, and the hand hanging down passively by his side for a long time together, except when a slight vertical motion appeared—he, the while, unconscious of the indication—to show that he was uttering what he considered very material. When a question was put to him by the judges, he always paused for a moment or two to consider how best he should answer it; and if it *could* be answered, an answer precise and pointed indeed he would give it. He afforded, in this instance, a contrast to the case of a gentleman then at the bar, about whom he has often laughed heartily with me. "Whenever," said he, "the judges put a question to ——, however subtle and dangerous it may be, and though he evidently cannot in the least degree perceive the drift of it, before the words are out of their mouths, he, as it were, thrusts them down again with a confident good-humoured volubility, a kind of jocular recklessness of law and logic, which often makes one wonder whether the judges are more inclined to be angry or amused; nay, I have once or twice seen one of them lean back and laugh outright, poor —— looking upon that as an evidence of his own success!" How different was the case with Mr. Smith, is known to every one who has heard him argue with the judges. Nothing consequently could be more flattering than the evident attention with which they listened to him, and most properly; for he never threw away a word, never wandered from the point, and showed on all occasions such a complete

mastery of his facts, and such an exact and extensive knowledge of the law applicable to them, as not only warranted but required the best attention of those whose duty it was to decide the case. His manner was very respectful to the bench, without a trace of servility; and to those associated with him, or opposed to him, he was uniformly courteous and considerate. When he had to follow his leader, or even two of them, he would frequently give quite another tone to the case, a new direction to the argument, and draw his opponents and the judges after him, unexpectedly, into the deeper waters of law. He was also distinguished by a most scrupulous and religious fidelity and accuracy of statement, whether of cases or facts, and documents, especially affidavits. The judges felt that they might rely upon every syllable that fell from him; that he was too accurate and cautious to be mistaken, too conscientious to suppress, garble, mislead, or deceive, with whatever safety or apparent advantage he might have done so. I have heard him say, that he who made rash and ill-considered statements in arguing in a court of justice, was not worthy of being there, and ought to be pitied or despised, according as the fault arose from timidity and inexperience, or confirmed carelessness or indifference, or fraudulent intention to deceive. It was in arguing before the court *in banc*, that Mr. Smith so much excelled; being equally lucid in stating and arranging his facts, logical in reasoning upon them, and ready in bringing to bear on them the most recondite doctrines of law. He was certainly not calculated to have ever made a figure at Nisi Prius; yet I recollect

one day that one of the present judges, then a Queen's Counsel, was talking to me in court as Mr. Smith entered, and said, "What think you? your friend Smith has been opposing me to-day in a writ of inquiry to assess damages in a crim. con. case." I laughed. "Ay, indeed,—I thought myself that if there was a man at the bar more unfit than another for such a case, it was Smith; but I do assure you that he conducted the defendant's case with so much tact and judgment, that he reduced my verdict by at least £500! He really spoke with a good deal of feeling and spirit, and when the Jury had got accustomed to him, they listened most attentively; and the result is what I tell you."

Following the course of his professional progress, in 1840 Mr. Smith was appointed a revising barrister for one of the counties on his circuit, by Mr. Baron Alderson, who was personally a stranger to him, and named him for the office solely on account of his eminent fitness for the post. He held it for several years, giving unmixed satisfaction to all parties, until precluded from further retaining it, in reference, I believe, to a rule of etiquette respecting seniority, prevailing at the bar of the Oxford circuit.

I recollect that, on one occasion, while he was waiting, apparently in vain, for the chance of professional employment, and not long before the occurrence of that moment of despondency already mentioned, when he contemplated quitting the profession, he and I were walking in the Temple Gardens, and he said, "Now, if I were to choose my future life at the bar, I should, of all things, like to have, and should be delighted

with, a first-rate pleading business; not made up of many petty things, but of a few very important cases,—of 'heavy business,' in short. I feel that I could get on very well with it, and that it is just the thing suited to me. It would exercise my mind, and also secure me a handsome income, and, before long, an independence. What I should do *then* I don't know." His wishes were amply gratified a few years afterwards, as the reader must have already seen. So rapidly, indeed, did the calls of private practice increase upon him, that he was forced, early in 1843, to resign his lectureship at the Law Institution, having, in fact, got fairly into the stream of his desired "first-rate pleading business" to an extent which heavily taxed both his physical and mental energies. Whatever was brought to him, he attended to thoroughly, never resting till he had completely exhausted the subject, and contemplated it from every point of view. Even at this time, however, it would be incredible to what an extent he obliged his friends at the bar, principally by preparing for them arguments, and sketching for them "opinions" on their cases, and these, too, generally of special difficulty and importance. Some of the most admirable arguments delivered by others of late, at the bar of the House of Lords, had been really prepared by Mr. Smith. In one instance, indeed, I recollect hearing the ablest living lawyer and advocate mention, that in a particular cause of great magnitude, not having found it possible even to open his ponderous brief before he was called upon to argue, he had time, before he rose, barely to glance over a very brief

"epitome" of the facts, and of the *real*, though unsuspected point in which the case ought to be decided, which had been prepared for his assistance by Mr. Smith. In confident reliance upon his accuracy in matters both of fact and law, the counsel in question boldly opened the case, implicitly adopting, and ably enforcing Mr. Smith's view of it, and succeeded in obtaining the judgment of the House. Mr. Smith never spoke, however, of these his subsidiary labours to others, nor liked ever to have any allusion made, to the subject. It was impossible that he could get through all this business without sitting up during most of the night; and I know that, for the last three or four years of his life, he was rarely in bed before two, and sometimes three, and even four o'clock, having to be, nevertheless, at Westminster or Guildhall as early as ten o'clock, or half-past nine, on the ensuing morning. While thus arduously engaged, he kept a constant eye upon the progress of the decisions of the various courts, as bearing upon his "Mercantile Law," and "Leading Cases," interleaved copies of which always lay on his table before him, and received almost daily MS. additions. Thus it was that he was able, in 1841 and 1843, to present new editions of his "Leading Cases," and "Mercantile Law," greatly enlarged and improved, and in many instances, especially in the "Leading Case," entirely remodelled. Nor was he, with all this, so absorbed as to forget literature; for, amidst his piles of opened law-books, you might often see a well-used copy of some classic English, French, Spanish, or Italian author, either prose or poetry, which he would read with

equal zest and attention, as his pencil-marks in such volumes even now attest. As for "Don Quixote", and "Gil Blas," I really think he knew them almost by heart, in the originals. He was also very fond of Tacitus, Cicero, and Demosthenes, from all of whom, as well as the other leading classics, but especially the two latter, he could quote to a surprising extent, and with signal accuracy—a fact well known to all his friends. Of this, indeed, Mr. Phillimore¹⁰ has given a striking instance, in his sketch of Mr. Smith in the "Law Magazine." After observing that "his memory was, indeed, astonishing, and the feats which he performed with it were incredible; that the writer had heard him repeat, successively, scene after scene from a French vaudeville,—the Record in an Action filling up the "&c.'s," and a passage from a Greek orator, without the least apparent difficulty or hesitation," Mr. Phillimore proceeds to say, that the passage in question "was one of the finest in the Greek language, being in the speech of Æschines, which the most celebrated effort of the genius of Demosthenes was required to answer; when, after adjuring the Athenians not to raise a trophy to their own loss and shame, nor awaken in the minds of their confederates the recollection of their misfortunes, he proceeds—'ἀλλ' ἐπειδὴ τοις σώμασιν οὐ παρεγένεσθε, ἀλλὰ τᾶις γε διανοίαις αποβλεψατ' αὐτῶν εἰς τὰς συμφορας,' &c., down to the words, 'ἐπισκῆπτοντας μηδενι τρόπῳ τὸν τῆς ἐλλάδους ἀλειπήριον στεφανοῦν,' the writer well remembering that Mr.

¹⁰ "Law Magazine," N.S. Vol. lxx. p. 183.

Smith insisted particularly on the extraordinary force and beauty of the word, 'ἐπισκῆπτοντας.'" I, also, have often heard him quote long passages from the Greek dramatists, particularly from "Aristophanes," really *impromptu*, and with as much facility and vivacity as if he had been reading English. I have already intimated that he read many of the new publications of the day. One of these was Mr. Macaulay's "Lays of Ancient Rome," with which he was much amused, saying that "some of them were very clever and spirited;" and, after reading them, he sat down one evening and wrote a humorous parody on them, which he showed me, entitled, "Lay of Gascoigne Justice," prefaced by an "Extract from a Manuscript of a Late Reporter," who says, "I had observed numerous traces, in the old reports and entries, of the use of *Rhythm* in the enunciation of legal doctrines; and, pursuing the investigation, I at length persuaded myself that, in the infancy of English law, the business of the court was transacted *in verse*, or, at least, rhythm, sometimes without, but on grand and solemn occasions with, the aid of music; a practice which seems to have been introduced by the ecclesiastical advocates." After a humorous argument in support of this notion, he concludes: "The following attempt to restore certain of these *Lays of Ancient Law* is conceived, as the original lays themselves probably were, partly in bad English, partly in Dog-Latin." Then follows the "Lay of Gascoigne Justice, Chanted by Cooke and Coke, Serjeants, and Plowden, Apprentice in the Hall of Serjeants' Inn, a.d., 15 —." The subject of the Lay was a certain highway exploit of

Prince Harry, Poins, and Peto. Poins gets into trouble, being brought incontinently before Gascoigne Justice, "presiding at the Bailey." The concluding verses contain a just satire on certain gross defects in the administration of criminal justice, which have been only very recently remedied.

"When Poins he spied, ho, ho! he cried,
The caitiff hither bring!
We'll have a quick deliverance,
Betwixt him and the King:

And sooth he said, for justice sped
In those days at a rate
Which *now* 'twere vain to seek to gain,
In matters small or great.

* * * *

For sundry wise precautions,
The sages of the law
Discreetly framed, whereby they aimed
To keep the rogues in awe.

For lest some sturdy criminal

False witnesses should bring—
His witnesses were not allowed
To swear to any thing.

And lest his oily advocate
The court should overreach,
His advocate was not allowed
The privilege of speech.

Yet such was the humanity
And wisdom of the law!
That if in his indictment there
Appeared to be a flaw—

The court assigned him counsellors,
To argue on the doubt,
Provided he himself had first
Contrived to point it out.

Yet lest their mildness should perchance
Be craftily abused,
To show him the indictment they
Most sturdily refused.

But still that he might understand
The nature of the charge,
The same was in the Latin tongue
Read out to him at large.

'Twas thus the law kept rogues at awe,
Gave honest men protection,
And justly famed, by all was named,
Of '*wisdom the perfection!*'

But *now* the case is different,
The rogues are getting bold—
It was not so, some time ago,
In those good days of old!"

It may be gathered from what has gone before, that Mr. Smith's mind was one of equal *activity* and strength. His physical energies might flag, but never those of his mind. He was always ready to pass from protracted and intense professional study and exertion, to other kinds of mental exercise—"from gay to grave, from lively to severe"—either reading general literature, or amusing himself with slight affairs such as the foregoing; or, as soon as a little leisure had recruited his spirits, entering with infinite zest into superior conversation on almost any topic that could be started. He was for a long time shy and distant to strangers; but was quite a different person at the tables, and in

the company, of his old friends and companions. There certainly never sate at *my* table a man who, when in the humour, could supply for hours together such genuine fun and amusement as Mr. Smith. Our little children were always very glad to see him, for he was patient and gentle with them, and contrived really to entertain them. Towards ladies, his manner was always most fastidiously delicate and courteous. There was, if I may so speak, a smack of days gone by—a kind of antique and rather quaint gracefulness of demeanour and address, which I used frequently to contemplate with lively interest and curiosity. When he returned from dining out, to his chambers, he would light his candles, and, instead of going to bed, sit up till a very late hour; for not only had he much to get through, but was a bad sleeper. A few years before his death, he had become a member of the Garrick Club, which was ever after his favourite resort, and was also frequented by several other members of the bar. He was delighted to take a friend or two to dinner with him, and would entertain them most hospitably, and with increasing frequency, as his means became rapidly more ample. He was also fond of the theatres, taking special delight in comedies and farces, however broad, and even pantomimes. With what solemn drollery he would afterwards dwell on the feats of Clown and Pantaloon! I am here, however, speaking of several years ago; for latterly he said, "It was a very hard thing to find any thing to laugh at in a pantomime, however much one tried!"

During the years 1842, 1843, and 1844, his practice continued

steadily increasing, and that, too, in the highest and most lucrative class of business—not only before special juries at Nisi Prius, and the Courts in Banc and in Error in the Exchequer Chamber, but in the Privy Council and the House of Lords. Before the last tribunal, in particular, he appeared as one of the counsel in the O'Connell case, on behalf of Mr. O'Connell and his companions. His time was now incessantly occupied, by day and night; his slight intervals of relaxation necessarily becoming fewer and fewer. His evenings, indeed, were almost always occupied with arbitrations, consultations, or preparing those pleadings and writing those opinions which his constant attendance in the Courts prevented his *then* disposing of. His friends saw with pain how grievously he was over-tasking his strength, and earnestly importuned him to give himself more intervals of relaxation—but in vain. For nearly two years before his death, his haggard countenance evidenced the direful havoc which he was making of a constitution never of the strongest. Sir William Follett and he were both sitting at the bar of the House of Lords, on one of the latest days of the hearing of Mr. O'Connell's case, each within a yard or two of me. Two death-doomed beings they looked, each, alas! having similarly provoked and accelerated his fate. On the same afternoon that Sir William Follett leaned heavily and feebly on a friend's arm as he with difficulty retired from the bar, I went home in a cab with Mr. Smith, who sate by me silent and exhausted, and coughing convulsively. I repeatedly conjured him to pause, and give his shattered health a chance of recovery, by

retiring for a few months, or even for a year or two, from the excitement and wasting anxieties and exertions of business; but he never would listen to me, nor to any of his friends. "It is all very well," he said to me several times, "to talk of retiring *for a while*; but what is to become of one's business and connexion in the mean time? You know it will have melted away for ever." He had, however, been persuaded to consult a physician of experienced skill in cases of consumption; who, after having once or twice seen him, sent a private message to the friend who had prevailed on Mr. Smith to call upon him; and on that friend's attending the physician, he pronounced the case to be utterly hopeless; that it might be a matter of months, even; but he ought to be prepared for the worst, and apprised of his situation. His friend requested the physician to undertake that duty, assuring him of his patient's great strength of mind and character: but he declined. Mr. Smith spent the long vacation of 1844 with his brothers and sisters in Ireland. They were shocked at his appearance, and affectionately implored him not to return to England, or attempt to resume his professional duties; but in vain. While staying in Ireland, he regretted the fast flight of time, evidently clinging to the society of his brothers and sisters, to the latter of whom he was most devotedly attached; but bleak, bitter, blighting November saw him again established at the Temple, and fairly over head and ears in the business of the commencing term. He attended the courts as usual; went out in the evenings to arbitrations and consultations as of old; dined also at the Garrick as before, and sat up as late

at nights as ever. We all sighed at this deplorable infatuation; but what could we do? He was a man of inflexible will, and a peculiar idiosyncrasy. Remonstrance and entreaty, from the first useless, at length evidently became only irritating. Not a judge on the bench, nor a member of the bar, but regretted to see him persist in attending the courts; where he sat and stood, indeed, a piteous spectacle. He resolved on going the Spring Circuit in 1845, being retained in some of the heaviest cases tried there. Shortly before this, the friend already referred to resolved to perform the painful duty of telling him, that in his physician's opinion there was not a ray of hope for his recovery; a communication which he received with perfect calmness and fortitude. To his brother's entreaties, about the month of June, that he would either go abroad, accompanied by one of his brothers or sisters, or allow the latter to come and live with him, in a house a little removed from town, he steadily turned a deaf ear. He evidently knew that it was useless; and spoke of his desperate state as calmly as he would have done in referring to the case of a mere stranger. It is believed that his sole reason for refusing to permit his sister to come over, was his fond and tender regard for her—a reluctance to permit her to witness him waste away, injuring in vain her own health and spirits. About this time, he said to his brother very quietly, but sadly, that "he feared his sisters would soon have to bear a severe shock!" He sat in his chambers, which were within only a few yards' distance from the Temple Church, on the day of Sir William Follett's funeral. He heard the tolling of

the bell, and from his window¹¹ he could have seen much of that solemn ceremonial. What must have been his feelings? This was on the 4th July; and five days afterwards, (viz. on the 9th,) poor Mr. Smith appeared, I believe for the last time in the Court of Exchequer, during the post-terminal sittings in Trinity vacation, to argue a demurrer! I was present during part of the time. What a dismal object he looked, while addressing the Court! I think we drove up to the Temple together. He had argued the case of *Bradburne v. Botfield*, (reported in 14 Meeson and Welsby, 558,) the last time, I believe, that his name appears in the Reports. It was a very nice question, as to whether certain covenants in a lease were joint or several: his argument was successful, and the Court gave judgment in his favour. The next day he said to me, speaking of this occasion, "The judges must have thought me talking great nonsense: I was so weak, that it was with very great difficulty I could keep from dropping down, for my legs trembled under me all the time violently, and now and then I seemed to lose sight of the judges." Yet his argument was distinguished by his usual accuracy, clearness, and force of reasoning. Nobody could prevail upon him to abstain from going the summer circuit. He went accordingly, and unless I am mistaken, held several heavy briefs. When the northern circuit had closed, I joined my family at Hastings; and found that poor Mr. Smith was staying alone at the Victoria Hotel, St. Leonards. I called upon him immediately

¹¹ His chambers were No. 2, Mitre Court Buildings, to which he had removed from No. 12, King's Bench Walk, about two years before.

after my arrival. His appearance was truly afflicting to behold. Consumption had fixed her talons still deeper in his vitals. He sat in an easy chair, from which he could not rise without great effort; and he expressed himself as delighted that I, and another of his oldest friends, happened to have established ourselves so near him. He was quite alone—no friend or relative with him; several briefs, &c. lay on his table, together with the most recent numbers of the Reports, several law-books, and works on general literature. A Bible also lay in the room, with several papers placed within the leaves. Nothing could exceed the attention paid him by the landlady and her daughter, and the servants; but he gave them very little trouble. His cough was much aggravated, as were the wasting night-sweats; and he could walk only a few steps without assistance. Soon after having got to Hastings, I was summoned away to attend a court-martial at Leeds, which kept me there for upwards of a fortnight. On my return, Mr. Smith expressed a lively anxiety to hear from me a detailed account of "how the military managed law." He seemed never tired of hearing of those "curious proceedings," as he styled them. I spent nearly two hours a day with him during the remainder of my stay, accompanying him in long drives whenever the weather permitted. Weak though his body was, his mind was as active and strong as ever. I saw several as heavy "sets" of papers, from time to time, forwarded by his clerk from London, according to Mr. Smith's orders, as I had ever seen even in his chambers. When I implored him to send them back, and take a real holiday, he

answered simply, "No; they *must* be attended to,"—and he did so: though I saw him once unable from weakness to lift a brief from his knees to the table. I never beheld so calm and patient a sufferer. He never repined at the fate which had befallen him, nor uttered a word showing impatience or irritability. When we drove out together, he generally said little or nothing the whole time, lest his cough should be aggravated, but was very anxious to be talked to. Once he suddenly asked me, when we were driving out, "Whether I really ever intended to permit him to see the sketch of Follett, which I was preparing." I parried the question, by asking him, "Whether he thought Sir William Follett a great lawyer."—"Certainly," said he, "if there *be* such a character as a great lawyer. What thing of importance that only a great lawyer could do, did not Follett do? He *necessarily* knew an immensity of law; and his tact was a thing quite wonderful. I was a great admirer of Follett.... I once heard him say, by the way, that either he had applied for the place of a police magistrate, or would have accepted it, if it had been offered, soon after he had come to the bar; so that it is quite a mistake to suppose that he was all at once so successful.... And I can tell you another little fact about Follett: though perhaps no man took so few notes on his brief, during a cause: this was not always so; for, when he first came to the bar, he took most full and elaborate notes of every case, and prepared his arguments with extreme care. I have seen proofs of this." Shortly before his leaving town, he purchased a copy of Thirlwall's (the Bishop of St. David's) History of Greece, in eight

volumes, "to read over at the sea-side;" and he did so: telling me that "he liked it much,—that it had told him many things which he had not known before." This copy his brother presented to me after Mr. Smith's death, and I value it greatly. One morning I found him much exhausted; but soon after I had taken my seat, he said, "You can oblige me by something, if you will do it for me. I recollect that there is generally lying on your table, at chambers, 'Bell's Principles of the Law of Scotland.' Now I am very anxious to read the book, as I expect to be in one, if not two, Scotch appeal cases, in the House of Lords, next session!—Will you do me this favour?" Of course I immediately procured the book to be forwarded to him, and it afforded him uncommon pleasure for many days. He read it entirely through with deep attention, as his numerous pencil marks on the margin attest, as well as several notes on the fly-leaf, of leading points of difference between our law and that of Scotland. At page 35, §76, the text runs thus:—"Tacit acceptance may be inferred from silence, when the refusal is so put as to require rejection, if the party do not mean to assent; as when a merchant writes to another, that he is against a certain day, to send him a certain commodity, at a certain price, unless he shall previously forbid." Opposite to this, Mr. Smith has written in pencil, "*Surely one man cannot throw the duty of refusal on another, [in] that way?*" In the course of a little discussion which we had on this subject, I said, "Suppose the parties have had previously similar transactions?"—"Ah," he answered, "that might make a difference, and evidence a *contract*

to the effect stated; but as nakedly enunciated in the text, I think It cannot be the law of Scotland, or law any where." He made many interesting and valuable remarks from time to time on Scotch law, and expressed a high opinion of the work in question, referring to every portion of it as readily as though it had been his familiar text-book for years. I often found him reading the numbers of the Queen's Bench, Common Pleas, and Exchequer Reports; and he once said, "I have a good many arrears to get through, in this way, before the beginning of term!" One day I saw a prodigious pile of law papers lying on his table, which had just arrived from London. "Why, what are these, my dear Smith?" said I earnestly—for he lay on the sofa in a state of miserable exhaustion. After some minutes' pause, he replied, "It is a very troublesome case. I have to reply or demur to some very harassing pleas of ——."—"But why not postpone them till near the end of October?" "When I am not fatigued, papers amuse me, and occupy my attention." I offered to him my services. "No, thank you—it would fatigue me more to explain the previous state of matters, with which I am familiar, than to draw the pleadings"—and he did it himself. On another occasion, I saw him sitting in his easy chair, deadly pale. When I had placed myself beside him, he said in a faint tone, but calmly and deliberately, "This morning a very serious thing has happened to me," and he mentioned a new and very alarming feature in his complaint, which, alas! fully justified his observation; and during the day he allowed me to request Dr. Duke, who was attending

a patient in the hotel, to see him. He did—and on quitting him, told me that of course the case was hopeless; that his friends should be sent for, and he would not answer for his life for a few weeks, or even days. Two or three days afterwards, Dr. Duke saw him again, and had left him only half-an-hour when I called. He was writing a letter to an old friend (one of his executors,) and his face wore an expression of peculiar solemnity. Laying down his pen, and leaning back in his chair, he gently shook my hand, and, in an affectionate manner, said, "Warren, I have just had a startling communication made me by Dr. Duke; he has told me plainly that I cannot live much longer,—that recovery is utterly out of the question,—and that I am nearer death than I suppose." After a pause, I said, "He has been faithful, then, my dear Smith. It was his duty; and I trust he did it in a prudent manner."—"Perfectly," he replied. Profound gloom was in his features, but he was perfectly calm. Presently he said, covering his face with his attenuated hand, "I have none to thank but myself; I have killed myself by going the last circuit, but I could not resist some tempting briefs which awaited me! I now regret that I did not allow my sister to come over, months ago, and go with her to the South of France; but of course wishing *now* is useless." Again I entreated him to allow her to be sent for. "My dear Warren," said he very decisively, "you and B. have often asked me to do so. I beg you to do so no more. I have private reasons for declining to follow your advice." His voice slightly faltered. His "private reasons" have already been adverted to—

they were, his tender love for one whom he would not shock by showing himself to her in the rapid progress of decay! From that day I never saw the semblance of a smile upon his face, nor any appearance of emotion, but only of solemn thoughtfulness. A few days afterwards I said to him, "Well, if it be the will of God that you should never return to your profession, it is certainly consolatory for you to reflect how great a reputation you justly enjoy at the bar, and in how short a time you have gained it. Your name will live." He made no answer for some minutes, but shook his head, and then said, "I have done nothing worthy of being remembered for; but you are very kind for saying so." Even after this, the mail every now and then brought him fresh "papers" from town; and Miss ——, the daughter of the landlady, and who attended him with the utmost solicitude, one evening burst into tears, as she showed me a fresh packet; adding, "It is really heart-breaking to have to take them in to him: he is so weak that he feels a difficulty in even opening them!" It was so, indeed! The two old friends whom he had named as executors, came down to St. Leonards two or three times, and spent several days with him. As the time for our family's return to town approached, he evidently regarded it with uneasiness, and almost daily said, "Must you *really* go by the 15th?... And —— is also going before that: then I shall be left quite alone, and shall certainly feel dull." A friend of mine, a lady, who resides near St. Leonards, having requested me to introduce her to him, in order that when we were gone she might come and see him, I asked him if he would allow

me to do so? "Indeed," said he, faintly, and with a slight flush, "I should not only feel it a compliment, but extremely kind." The lady in question accordingly drove down very kindly almost daily, bringing him grapes and flowers, which he said he felt to be a very delicate attention: and so anxious was he to evince his sense of her courtesy, that he insisted on driving, when very feeble, on a bleak day, to leave a card at the lady's residence, nearly three miles off, with his own hand. When I took my leave of him, he seemed, I thought, a little moved; but said calmly, "If the weather breaks up, I shall return to the Temple: and it is possible that I may take lodgings in another part of the town; but to court I *must* go, at whatever inconvenience—for I have cases there which I must personally attend to!"

Towards the close of October he followed us to London, alone, and was sadly fatigued and exhausted by his journey. He went at once to his chambers; which he never, with one exception, quitted till his death; lying stretched in his dressing-gown upon the sofa, a large table near him being covered with briefs, cases, and pleadings, which he attended to almost as regularly as if he had been in perfect health. Yet he found it difficult to sit up, his hand trembled when holding even a small book, and his cough was fearfully increased in frequency and violence, and he could get little or no sleep at nights. The reader may imagine the concern and astonishment with which I heard, that about a fortnight after his return, he had actually gone to dine at the Garrick Club! Sitting at his table there, as a friend who saw him

told me, "more like a corpse than a living being; in short, I almost thought it must be his ghost!" He left his rooms, however, no more; having his dinner sent in, till within the last few days of his life, from a neighbouring tavern. He had several consultations held at his chambers, in cases where new trials were to be moved for; his leaders, (one of whom was Mr. Sergeant Talfourd,) considerably waving etiquette, and coming to their dying junior's chambers. They were, as may be supposed, most reluctant to transact business with one in his state, but he insisted upon it. He earnestly requested me not to mention at Westminster, or elsewhere, how ill I thought him; "for if you do, my clients will send me no business, and then I shall have nothing to amuse my mind with." Towards the end of the term, he observed to me one morning,— "See how very kind my clients are to me! I suspect they have heard that I cannot go to court, so they send me a great number of pleas, demurrers, and motion papers, which I have merely to sign, and get half a guinea: I think it so considerate!" About the last day of the term, I happened myself to be his opponent, in one of those minor matters of form, a motion for judgment as in case of a nonsuit, on account of my client's not having gone to trial at the preceding assizes. Mr. Smith was lying in a state of great exhaustion on the sofa; but mentioned the "rule." I told him that I had brought my brief with me,— "A peremptory undertaking, I suppose," said he, languidly, "to try at the next assizes?"—"Yes, and I will sign my own papers, and yours too, to save you the trouble,—or your clerk shall?"—"No,

thank you," said he, and with difficulty raised himself. "Will you oblige me by giving me a pen?" I did so, and with a trembling hand he wrote his name on the briefs, saying, in a melancholy tone as he wrote, "It is the last time I shall sign my name with yours. Even if you *perform* your undertaking, *I* shall not be at the trial." About a week afterwards I found him finishing the last sheet of a huge mass of short-hand writer's notes of an important case in which he was concerned, and he was grievously exhausted. It was in vain to remonstrate with him! An early and devoted friend of his, and I, called upon him daily two or three times, and sat with him as long as our engagements would permit us. We found his mind always vigorous; and though he could converse little, from weakness, and its irritating his cough, his language was as exact and significant as ever, and he liked to hear others talk, especially about what was going on at Westminster. I was sitting silently beside him one afternoon, only a fortnight before his death, when a friend came in, and, after we had sat some time together, asked me a question which had just arisen in his practice. "Don't you think," said he, "that, under these circumstances, we may read the word '*forthwith*,' in this act of parliament, to mean, 'as soon as reasonably may be?'" Our poor friend, who had not spoken before, and lay apparently asleep, instantly raised his head, and with some quickness observed, "Ah! if you could only read an act of parliament *in any way you liked*, what fine things you could do!" The reader is not, however, to suppose that Mr. Smith's mind was exclusively occupied with

business, and legal topics. On the contrary, I am certain that he both read and thought much, and anxiously, on religious subjects. I saw the Bible constantly open, and also one or two religious books; in particular, Mr. Wilberforce's "Practical Christianity" lay on his table and on his sofa. He seemed, however, to feel no disposition to *converse* on such topics, with any one. If any one attempted to lead conversation in that direction, he would either be silent, or in a significant manner change the subject. He had a favourite copy of Dante lying often near him, and it may be interesting to state, that he has left, underscored in pencil, the two following verses in the third canto, (*Del Purgatorio*,) expressive of faith in the great mysteries of Christianity,—

"Matto è chi spera che nostra ragione,
Possa trascorrer la 'nfinita via,
Che tiene una sustanzia in tre persone.

State contente, umana gente, al quia:
Che si potuto aveste veder tutto,
Mestier non era partorir Maria."

It may not be necessary to say it, but I am persuaded that he was a firm believer in the truths of Christianity, and a conscientious member of the Church of England. One day, within about a fortnight of his death, he said, "There is a work which I have often heard you speak of, and which, it does so

happen, I never read, though I have often wished to do so; I mean Paley's *Horæ Paulinæ*. I may say almost that I know his *Evidences* off by heart. Now, will you do me the favour of procuring me a copy of the other book, in as large type as you can, and as soon as you can, for," he added with a slight sigh, after a pause, "I have not much time to lose?" I immediately procured him the book in question; and about three days afterwards he said to me, "I have read the *Horæ Paulinæ*; it is a book of extraordinary merit; I very much wonder that I never read it before." I asked him if he had read "Butler's Analogy." "Oh yes, of course, several times, and know it well," he replied, rather quickly. Life was visibly ebbing fast away during the first week in December. He grew weaker and weaker almost hourly, and scarcely ever rose from his sofa, where he always lay in his dressing-gown, except to go to his bed-room, which adjoined and opened into his sitting-room. He would even then allow no one to be in his chamber with him during the night! not even his attentive and attached laundress, or his clerk! I once very strongly urged upon him to allow the former to sleep in the chambers. "Either she leaves my chambers at her usual hour," said he, peremptorily, "or I do." We felt it, however, impossible to allow this; and, without his being aware of it, his clerk and laundress by turns continued to spend the night in one of the adjoining rooms. It was well that such was the case, for he began to get delirious during the nights. About ten days before his death, a great and marked change came very suddenly over him: his eyes assumed a strange glazed

appearance, and his voice was altogether altered. His mind, however, continued calm and collected as ever. He moaned continually, though gently, assuring us, however, repeatedly that he felt no pain, "but an exhaustion that is quite inconceivable by *you*." Not many days before his end, he gave us a signal proof of the integrity of his reasoning faculties. Two of his friends, I and another, were sitting with him, and he told us, as he often latterly had, that he heard strange voices in the room. He asked the one who sat next him if there were not strangers at that moment in the room speaking? When assured that there were not, he said very earnestly, "Will you, however, oblige me by looking immediately under the sofa, and tell me whether there is really no one there?" His friend looked, and solemnly assured him that there was no one there. "Now," said he, with some difficulty, after a pause, and suddenly looking at us, "how extraordinary this is! Of course, after what you say, I am bound to believe you, and the voices I hear are consequently imaginary: yet I hear them uttering *articulate sounds*; they are human voices; they speak to me intelligibly. What can make that impression upon the organ of hearing—upon the tympanum? How is it done? There must be some strange disorder in the organs. I can't understand it, nor the state of my own faculties!" Then he relapsed into the state of drowsy, moaning, half-unconsciousness, in which he spent the last fortnight of his life. For a few days previously, no more briefs or papers were taken in by the clerk: but one, a case for an opinion, which had been brought about a week before,

Mr. Smith immediately read over with a view of answering it. In consequence of a communication from the physician, we at once summoned Mr. Smith's two brothers, the one from Dublin Castle, and the other (an officer on board the Devastation Steam Frigate) from Portsmouth. Both of them came as quickly as possible, and remained to the last in affectionate attendance upon their afflicted brother. About three days before his death, he was asked if he wished to receive the sacrament. "Yes," he immediately replied, "I was about to ask for it, but feared I was too ill to go through with it. I request it may now be administered to me as soon as can be, for I am sensible that I have no time to lose; *and I beg that the rubric may be strictly complied with in all respects.*" This he said specially with reference to the prescribed number ("three, or two at the least") of communicants beside himself. The Rev. Mr. Harding, father of one of his intimate friends, being near at hand, immediately attended, and administered that sacred and awful rite: Lieutenant Smith, I, and another, partaking of the sacrament with our dying friend. He was in full possession of his faculties. He could not rise from the sofa, but made a great effort to incline towards the clergyman, lying with his hands clasped upon his breast. When the name of our Saviour was mentioned, he inclined his head with profound reverence of manner. It was, indeed, a very solemn and affecting scene, such as will never be effaced from my memory. When it was over, Mr. Smith gently grasped the hand of Mr. Harding, and faintly thanked him for his kindness in so promptly attending. He

was unable, at night, to walk to his bed; to which he was assisted by his brother and a friend. The dark curtain was now rapidly descending between him and this life. He never rose again from bed; but lay therein the same moaning yet comparatively tranquil state in which he had been during the week. On the morning of the day of his death, I went early to sit beside him, alone; gazing at his poor emaciated countenance, with inexpressible feelings. Shortly after I left, his oldest friend took my place; and, after a while, to his great surprise, Mr. Smith, on recognising him, asked if a particular "case,"—"Exparte ——" was not still in chambers? On being answered in the affirmative, he requested his friend to get pen, ink, and paper, and he would dictate the opinion! His friend, though conceiving him to be wandering and delirious, complied with his request; on which Mr. Smith slightly elevated himself in bed, and, to the amazement of his friend, in a perfectly calm and collected manner, but with great difficulty of utterance, dictated not only an appropriate, but a correct and able opinion on a case of considerable difficulty! When he had concluded, with the words, "the case is practically remediless," he requested that what had been written might be read over. It was done, and he said, on its being concluded, "There is only one alteration necessary—strike out the words '*on the case*'

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