

Her Majesty's Judges.

By E.



HER MAJESTY'S Judges! The theme is certainly awe-inspiring and not altogether unambitious. It is, further, one which a junior barrister is particularly qualified to deal with, for what more thorough and impartial critic could be found than the victim of much judicial indigestion, the unresponsive subject of much judicial wit! And, what is even more important, the ordinary junior knows next to nothing of the judges in their social avocations and domestic retirement, and consequently is better able to paint them in their appropriate heroic colours than one who has heard them converse about the ordinary details of stupid, everyday life; talked to them of ailments real and imaginary, and watched them dancing "kitchen Lancers" and otherwise disporting themselves as mere human beings.

I myself am the last person who should attempt to write of these sublime entities, for have I not the melancholy privilege of the friendship of more than one of their number, and did I not on one occasion assist a very learned judge to concoct a certain unwholesome stimulating beverage—yes, on the very evening of the day on which I had heard him sentence a criminal to death? It will be readily apparent that no ideals could sustain the shock of such an anti-climax as that, and I fear that to me there is no very striking difference between A, the blood-and-thunder judge of Saturday, and A, the individual who absents himself from church in order to go over his wife's dressmaking bills on the Sunday. Alas! both personalities make about an equal impression on my unromantic mind! And again, I labour under other disadvantages in the matter of my subject, some of which I will set forth below.

In the first place, I have always been kindly treated by the judges whom I have patronized; secondly, I have never suggested that the entire Bench were in a conspiracy to prevent my attaining to the Woolsack, no judge, to my shame be it said, having consistently evinced a spiteful interest in my ultimate downfall; in short, my professional experience has been totally dissimilar to that of the large majority of my brethren. And now, having faithfully confessed my inability to properly cope with my subject, and thereby I hope having discounted the merciless attacks of my friends,

let me commence my work by the imposition of a necessary limitation.

My subject does *not* include in its scope the comparatively harmless county court judge. Exigencies of space have made his proscription necessary, but even if I had the whole magazine to myself for twelve months, I very much doubt whether I should deal with him.

For, melancholy though the fact must necessarily be, the public are not interested—except spasmodically—in him. Every county court judge is—well, a county court judge, and that's about all. There's nothing heroic about him—not even when he is wielding the weapons of the Debtors' Act—and, unlike Metropolitan Police Magistrates, his powers of doing mischief are so absurdly curtailed by the Legislature! He is like the lily of the field: if he is a fine specimen somebody may admire him, but it is only pityingly and because he is not in the judicial hot-house; if he is a bad plant, no one notices him, and so I will leave him undiscussed, and deal with as many of the higher judges as I can.

Of course the Lord Chancellor comes first, and of him it is not too much to say that he is one of the most popular of our judges. At the Bar, he was noted, among other things, for his unfailing kindness to his juniors and his skill in "opening" a case he had not read. As leader of the South Wales Circuit, despite the fact that he smoked not at all, drank little and seldom, and was never heard to utter or smile at an equivocal expression, he was an immense favourite, and "the circuit" even now teems with stories of his ability and doings.

Many years ago I listened to my first case in a public court. The scene was the ancient town of Haverfordwest, and the case was the trial of Doctor Alder for the murder of a brother officer. Lord Halsbury "led" for the defence, and young as I was then, his brilliant advocacy made a deep and lasting impression on me. A forensic orator of the very highest order, a platform speaker of more than ordinary merit, a judge whose achievements have surpassed the most ambitious dreams of his friends, and silenced his political enemies; an honourable and keen party fighter, Lord Halsbury is well worthy of his great reputation.

Naturally enough, endless anecdotes, some

true, some destitute of any other basis than the honour of their relatives, are told about him, but there is one which has hitherto escaped the *raconteur*, and as it illustrates the readiness and resource which characterize the Chancellor, I will give it here.

Little Haven is a remote fishing village in Pembrokeshire. It possesses, in addition to a lovely coast line and a picturesque site, two public buildings: one a hostelry of dingy aspect and mediæval structure, known as the Castle Hotel; the other a diminutive police-station, in whose cell, it used to be rumoured, the solitary village constable was customarily locked by his wife, when he had displayed too great anxiety in enforcing the licensing regulations of the district. In the Castle Hotel Mr. Hardinge Giffard—as Lord Halsbury then was—once a year held his Revision Court. During the progress of business on one of these occasions it was found necessary to call in the constable to maintain order, and the constable duly came, saw, and ejected a fisherman. Order was thereby restored. The rest of the proceedings, barring a friendly oath or two, passed off quietly enough. In the evening Mr. Giffard closed his court, strolled about the sands, dined, I presume—for fashions haven't changed greatly during the last fifty years in Pembrokeshire—on the regulation lack of everything but mackerel and bacon, and, in due course, went to bed.

In the morning he was told that the constable wished to see him, and he directed that the officer should be shown up. This was done, and the constable informed the

horrified barrister that he had kept the prisoner on bread and water since the preceding morning, and was desirous of being further instructed in the matter.

"The prisoner?"

"Yes, my lord; you gave him into custody at 12.15 on the morning of yesterday. His wife hopes you won't send him to penal servitude this time, my lord, though even she admits he deserves it."

Mr. Giffard had grasped the position. If he blinked an eyebrow, the constable would notice it. The air was full of damages, and newspaper articles on the liberty of the subject. The constable had made the mistake; still, juries were stubborn things. He thought over the position as calmly as in the circumstances was humanly possible, and quickly arrived at a conclusion. He would see it out. He had made up his mind, and sent for the prisoner.

The man was brought in handcuffed. Mr. Giffard ordered



From a Photo. by]

LORD HALSBURY.

[Elliott & Fry.]

the handcuffs to be removed, accepted the prisoner's apology, read him a severe lecture on the enormity of his crime, and slipping a sovereign into his hand told him to go and lead a better and nobler life. What he said to the constable history does not relate, but it should be remembered that the Lord Chancellor has never been known to swear. Now, this story was told me by a leading member of the Bar, and unless a long course of forensic advocacy has imperceptibly impaired his moral faculties, I should be inclined to consider him credible. Still, I vouch for no

man's accuracy, and there is a good deal of latent improbability in every story.

A well-known lady litigant once told me that Lord Esher was "a perfect darling," and there is probably no woman who would dispute the appropriateness of the epithet. Strikingly handsome, resolute, and kind-hearted, the Master of the Rolls would have been an ideal hero had he lived in the age of Romance; and, as it is, in this dull, State-ridden epoch, he lends a charm and refining grace to even such a dry-as-dust place as the Court of Appeal.

He is not a favourite judge with "silks" and veteran juniors, for although every capable man at the Bar would admit that, as a commercial lawyer, he is unrivalled, and, moreover, is both sharp and endowed with common-sense in an exceptional degree, still, in palliation of his virtues, they would urge that he is not sufficiently considerate to them. Well, as to that, Lord Esher is certainly a little severe at times, but it is only

to those who ought to know better, and I have never heard him administer an undeserved rebuke. I remember him once saying to a certain "silk":—

"Mr. —, yesterday the same muddle as you are now making was made by another counsel, but there was this difference between you: he was young, and you—! Go on."

To young barristers he is ever kind, and has helped many a one out of serious difficulties. He makes endless jokes himself, but he never minds the laugh being

turned against him; in fact, on these occasions he leads the laughter himself.

A little time back he told a lady litigant that her case had been sent to be tried by a certain learned judge without a jury, adding: "He is a capital lawyer, you know, and will try your case very nicely."

But she demurred, and in the course of her application for a jury said:—

"Oh, yes, my lord, Lord Justice— is all very well as to law; but,

my lord—and in this respect I am also in a difficulty in your lordship's court— my case requires so much common-sense."

Lord Esher was so delighted with this that he persuaded the Court to dismiss the lady's application *without costs*.

Mr. Justice Cave is the originator of the celebrated phrase, "That won't do, you know," and when he is not as near dozing as a judge can possibly be, is a very capable judge, possessing that agglomeration of qualities which justifies one in applying to him the attribute of "strong." A little severe on criminals, he is a

great authority on bankruptcy and all branches of the common law. He is certainly no respecter of persons, and conducts the business of his court—taking his ease there as occasion prompts—with absolute impartiality and great ability.

Recently, a much bepuffed and self-conscious Q.C. was addressing the Divisional Court of which this learned judge was a member.

It was after luncheon, and the said Q.C. was arguing closely and vehemently. About an hour had passed, when it chanced



From a Photo. by

LORD ESHER.

[Window & Grove.

that Mr. Justice Cave looked up, and asked:—

“What did the prisoner say?”

“My lord,” the ruffled Q.C. complained, “I was arguing that an admission—”

“Exactly,” said the judge. “It is not available against the other prisoner,” and, with a sigh, he beautifully toyed with sleep, leaving his colleague to trace the connection between county court costs and a joint indictment. And in this connection I will give another slender anecdote.

It is recorded of a certain judge that, on a certain occasion, both he and another learned judge who sat with him slept, or appeared to sleep, throughout the entire afternoon, only awaking at the conclusion of the arguments to adjourn the case for further consideration and re-argument.

This story is absolutely true, and as I happen to know the counsel who argued—and his opponent—I shouldn't in the least degree have marvelled had the learned judges really gone to sleep. Indeed, it would have been wonderful had they

been able to resist the soporific influence of his oratorical display! But, apart from that, the facts of this case are peculiar, and suggest something very like occultism. Let me narrate them for the benefit of the few scientists the Bar possesses. Immediately after luncheon counsel rose to argue an absolutely untenable point. Indeed, before coming into court he had admitted to his opponent his disinclination to say anything at all, except for the purpose of withdrawing his appeal. *Pro hac vice*, I will assume that the judges were—as usual

—punctual, and came into court at 2 o'clock. The subsequent proceedings were as follows: At 2.10 the judges told the counsel they were irrevocably against him; at 2.15 they pointed out, with more *fortiter in re* than *suaviter in modo*, that he was wasting the time of the Court; at 2.20 the opposing counsel rose to remonstrate with his “friend,” and object to the scope of the argument being even further enlarged. The Bench merely nodded—feebly and hesitatingly. Counsel continued his argument; at 2.30 the judges appeared to be asleep. Counsel continued his argument after a fiery conflict with his solicitor on the difference between High Court and County Court costs, and by degrees worked himself into a state of eloquent frenzy. Briefly alluding to such topics as the inefficacy of Bar Councils, and the appointment of Assize Commissioners, he roamed at will over current light literature, suggested improvements in law-reporting, and the regulations of Freemasonry; and with biting scorn directed attention to certain prevalent economic fallacies. Then he glanced at the

constitution of the House of Lords, criticised the Law List, which he described as an “outrage on æstheticism,” and was about to deal with lady litigants, when four o'clock struck, and he sat down. At the same minute—indeed, I ought to say, second—the judges *seemed to awake*, and, as I have already said, adjourned the case for re-argument! I have since then talked of hypnotism to that learned counsel, and he has admitted taking an interest in these subjects. This, perhaps, partially solves the difficulty!



From a Photo. by

MR. JUSTICE CAVE.

[Bassano.]

Mr. Justice Vaughan Williams, who has taken the place of Mr. Justice Cave in the Bankruptcy Court, is a very great judge. Absolutely fearless in the performance of the troublesome duties his position in the Bankruptcy Court entails; just, and well versed in legal principles, he is thoroughly at home in every department of law. He is perhaps too lenient with criminals, but that seems to me to be his only fault—if, indeed, it can be reckoned a fault. Among the other striking characteristics which distinguish the

learned judge is his love of unconventionality. He has an absolute contempt for fine clothes, despises such symbols of namby-pambyism as gloves and umbrellas, and altogether dresses in a very unobtrusive fashion. And these views and habits are responsible for a true, if somewhat remarkable, story. Some short time ago, Mr. Justice Vaughan Williams was going the Western Circuit. At a certain assize town, the sheriff, who was determined to do things well and without regard to the vulgar detail of expense, was waiting at the station to meet the judge. Accompanying him were

the other necessary officials and a large retinue of policemen and those survivals of archaic stupidity, "Javelin Men." The train came in, its usual hour late, and the sheriff anxiously scanned the carriages to discover the judge. He looked here, there, and everywhere, and at last his discriminating eye fixed on the august personage. Hat in hand, he approached a fur-coated commercial traveller and introduced himself. The commercial traveller was highly pleased with the preparations which had been made in his honour, and when he had given a footman some directions as to his baggage, samples,

etc., went off with the sheriff in his state carriage.

Now, at this point, two accounts conflict. One says that the guard discovered the mistake, and drove away the intruder with everything terrible short of kicks. Another has it that the traveller was taken to the judge's lodgings, where the real judge, who had chartered a cab and driven in the train of the pseudo-judicial procession, politely expressed his fear that there had been some error! Which account is true, I will not

decide. And really, if the story is a good one, what does it matter?

One of the very smartest things that have ever emanated from the judicial mouth is ascribed to this judge. It is concerned with a certain barrister whose forensic methods are rather above than below the capabilities of his vocabulary. The occasion was a "judge's dinner," and the conversation veered round to the subject of the barrister in question. The point most vehemently agitated was whether or no he understood "Welsh"; and, after a somewhat lengthy discussion, it was agreed that "Welsh" was not

one of his intellectual acquisitions. During the progress of the argument (!) the judge sat silent, but when the final resolution was arrived at, he lifted his eyebrows, and half interrogatively, said:—

"Ah! Then Mr.— speaks *no* language that I understand."

And here I must get in an anecdote which, it must be clearly understood, does not expressly refer to any particular judge. A certain solicitor in a country town happening to recognise in the assize judge an old school friend—at least, so he said—invited him to dine at his house on the



MR. JUSTICE VAUGHAN WILLIAMS.
From a Photo. by Russell & Sons.

following Sunday. The judge in question, being both good-natured and kind-hearted, consented to come, and asked the hour.

"One o'clock, my lord; if you please," and away the solicitor went to spread the delightful news. Sunday came: a hot, dusty, midsummer day; and the judge and his marshal strolled along the mile or two of road which led to the solicitor's house. Arrived there, they were received by the host, attired not in the regulation dress of humdrum society, but in evening clothes and dancing pumps. A frilled shirt and black tie of extraordinary dimensions, in combination with a flaring button-hole, added dignity to his picturesque appearance, and his hands were tightly encased in six-button white kid gloves. On going into the drawing-room, the astonished guests were introduced to the hostess and half-a-dozen daughters, all of whom wore ball dresses square-cut without shoulder-straps, and were decked out with jewels in great quantity, and of any and every reasonably conceivable quality. This was surprising enough, and disconcerting, too, to one who knew the Parable of the Wedding Garment; but the farce only became tragedy when the bedizened and bedecked hostess accompanied the judge on an afternoon drive, and called on at least a dozen of her friends, to all of whom she presented her guest. "She would have been overdressed even for a Belgravian ball," the judge afterwards remarked, and from that day, it is rumoured, he has refused to even look on a fashion-plate or to glance at a ladies' newspaper. These facts I commend to the notice of the numerous men at the Bar who aspire to literary fame and are afflicted with dramatic tendencies.

"What did the prisoner say?"

"The prisoner

said, my lord," said the constable, "God grant I sha'n't come before 'Awkins, for if I do, he'll bring my hairs down in sorrow to the grave." And this represents the popular opinion of Mr. Justice—or, as he prefers to be called, Sir Henry—Hawkins.

It is an erroneous opinion, for this judge is most merciful to prisoners, and rarely errs on the side of severity. Although I am certain no thoroughly guilty persons have ever "got off" before him, I should think a large number of the merely legally guilty have been by his efforts acquitted. If counsel for the defence allows him to do the case himself, he will in a proper case defend, and do it well too. He does not unduly study the convenience or feelings of members of the Bar when an opportunity for smart repartee presents itself, and yet it would be impossible to say that he is unpopular.

"If that is done, my lord," said a very junior barrister to him one day, "I shall be satisfied."

"And do you imagine that I care whether you are or not?" Sir Henry asked, deliberately, enjoying the effect of his retort on the people in court.

It is well known that as a criminal lawyer he is almost unrivalled, principles and details of the law being alike completely within his intellectual grasp.

At the Bar, his skill in cross-examining was little short of wonderful, and in every respect he was an admirable advocate. Since he has attained the honour of the Judicial Bench he has become much attached to horse-racing, and it is but seldom that professional duties prevent him witnessing the summer solstice at Epsom on the Derby Day.

The appended story, even if untrue—and I do not say it is not—is characteristic of this learned judge. A year or so ago, Sir Henry was due to dine with a local



MR. JUSTICE HAWKINS.

From a Photo. by Medrington's, Ltd., Liverpool.

magnate somewhere near Chester. It was the commission day of the assizes, and a large party had been invited to meet him, including the bishop of the diocese. Now, it happened that Sir Henry arrived at the house nearly an hour late, and it also happened that one of the party had earlier in the day seen the learned judge quit the London train at Chester; therefore it was generally agreed that the Chester Cup—which was being run for that day—was not altogether unconnected with the lateness of arrival of the distinguished guest.

"Do you know what won the Cup?" the host asked the judge, by way of imparting a free and easy humour into the hunger-stricken assembly.

Sir Henry looked surprised. "The Chester Cup! Ah! yes. I saw a number of people in a field near the railway, and I heard the newspaper boys call out, 'Winner of the Cup,' so I concluded that this *was* the Cup day."

"And you didn't buy a paper?" the bishop maliciously put in.

The judge assumed the air of bland condescension which he wears when sentencing a man to death, and said: "No; I thought it was unnecessary to buy one. I had been told I should have the privilege of meeting your lordship to-night."

And yet another story may be told about Sir Henry. In days long past, there was a certain expert valuer who was much in request in what are known as compensation cases—that is, such cases as arise when a railway company proposes to take over certain land, and it is necessary to fix the amount of money the company shall give the landowner to compensate him for the loss of his land. We will call him by the useful and compendious name of "Jones."

In a certain compensation case involving over £100,000, Mr. Jones was retained by the railway company to give evidence as to the value of the land in question. For the other side, the then Mr. Hawkins, Q.C., appeared as counsel. He called before the jury local valuers and small farmers, who bore out the case of his client, fixing the damages at a very high figure, and the company in their turn put in the box Mr. "Jones," who depreciated the value of the land in the course of a lengthy examination. Afterwards, Mr. Hawkins rose to cross-examine him shortly, and asked him whether he did not plough fifty acres or so, keep a few cows and sheep, and do a little general farming. To all of this Mr. Jones answered in the affirmative, and then, to

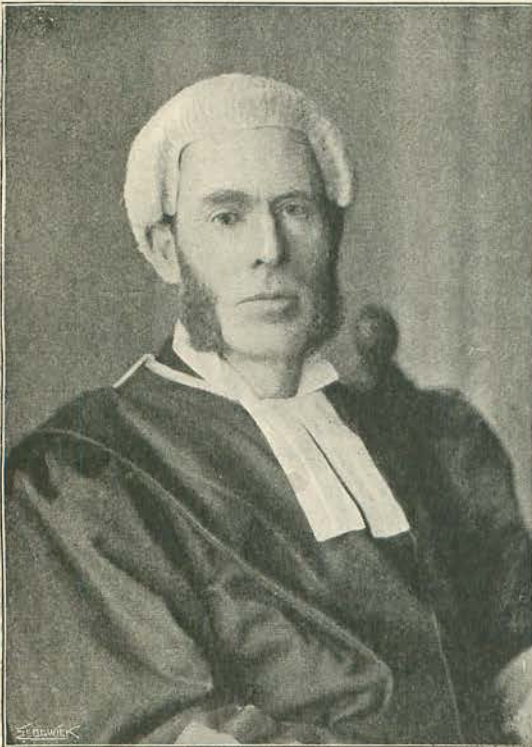
the manifest surprise of everyone, Mr. Hawkins sat down, not having even incidentally referred to the evidence of the great expert at all. At the conclusion of the company's case, Mr. Hawkins addressed the jury, and asked them to rely on the local valuers, and to throw aside the evidence of Mr. Jones.

"Mr. Jones! Who is Mr. Jones?" he asked. "An amateur farmer who keeps a cow or two, and a dozen odd sheep. Forsooth! What does he know about land? Is he the sort of man, gentlemen, you will oppose to these valuers I have put into the box—men whom you know, and with whose abilities in such matters you are thoroughly well acquainted? Who is he that he should oppose his opinion to that of Mr. Smith, whose reputation in this locality as a valuer is deservedly high? Mr. Jones keeps a few sheep, we are told. Well and good! But is that any reason why you should throw overboard the estimate of Mr. Brown, who has spent a lifetime in the district and knows the value of every blade of grass in your fields? Gentlemen, the issue is in your hands and not in those of any stranger, no matter how amiable he be, or how enthusiastically devoted to the pursuits of the small farmer."

It is hardly necessary to state that a heavy verdict was given against the company, and that Mr. "Jones" ever afterwards nourished a keen hatred for the counsel who had beaten him at his own game. This may not be true—it really doesn't matter whether it is or not, as far as the purposes of illustration go—but it certainly was told me by a credible person.

Mr. Justice Henn Collins is an eminent authority in law, but it is open to doubt whether his intellectual refinement does not assert itself too thoroughly in criminal trials. In a manslaughter case tried some little time ago at a certain assize town, the question was whether the deceased had died from the effects of the blows certain police-officers had dealt him, or had been killed by the injudicious treatment of the prison medical officer. The learned judge in question was understood to ask the jury whether they thought there was "a link missing in the chain of causality which connected the prisoners and the deceased." Now, an assize jury is highly intelligent, but after all, it is common jurors who try manslaughter cases, and not savants.

In civil causes there is no more satisfactory judge than Mr. Justice Henn Collins,



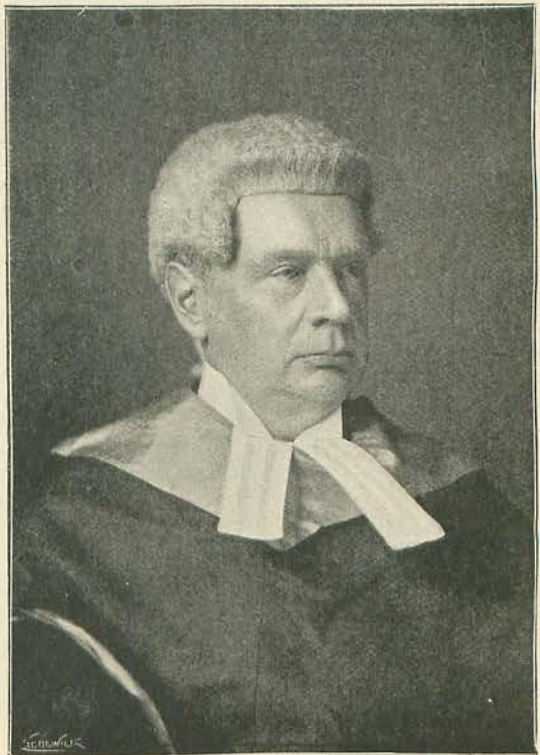
From a Photo. by MR. JUSTICE COLLINS. [Russell & Sons.

and rare indeed are the occasions when his decisions are over-ruled by superior Courts. He spends much of his time in London in the Railway Commission Court, but the wisdom of relegating so good a lawyer to such a court is certainly open to question!

On the whole, taking one thing with another, I am inclined to think that one of our best judges is Mr. Justice Lawrance. As a criminal judge he is eminently fair; generally refrains from attempting to influence the jury one way or the other; apportions his sentences adequately, and does not treat the counsel for the defence as a personal foe. At *Nisi Prius*, too, he is good; he takes a broad view of the case before him, and looks at the facts in the light of a man of the world and not as an expert in criminal pathology. Further, he is one of the very few judges on the Bench who can and do occasionally say "a good thing"; and what is more, I have never known him to make merry at the expense of a nervous junior to whom a jest might mean starvation. This fact partially accounts for his popularity

among members of the Bar. It was the fashion at one time to say that he knew no law—and the people who said it were for the most part office boys, or barristers who, beyond "devil-ing" in county courts, had never done a case—but now things are different, and Mr. Justice Lawrance is by the profession accounted a very capable judge.

The funniest scene I have ever witnessed in an assize court occurred when this learned judge was presiding. A habitual criminal of the most dangerous type had addressed the jury in his own defence, and at the conclusion of his speech announced that he had a witness to call—one, John Kelly. The man was called over and over again, but without success, and the judge told the prisoner that his witness had not answered, and there appeared no reasonable probability of his turning up. The prisoner muttered something about expense, and asked if he might address the jury again. But just at this moment a great commotion was heard outside, and the door opened, and there entered two constables who were literally drag-



From a Photo. by MR. JUSTICE LAWRENCE. [Elliott & Fry.

ging a man into the witness-box. The man, who seemed half-dazed, and looked as though he were on the verge of an attack of St. Vitus' dance, said his name was John Kelly, and he was duly sworn.

"Here's your witness," said the judge; "ask him any questions you wish."

The prisoner stared at the witness, his eyes blazed with fury, and throwing off his coat, he screamed:—

"Who's 'e? What's 'e 'ere for? — 'im!"

Why the man should have become so enraged, I do not know, for the constables had only made a mistake and insisted on a juror-in-waiting with a similar name to the person called tendering himself as a witness. But he *was* enraged, and even after he had been sentenced to a long term of penal servitude, he left the dock bitterly complaining of the conduct of the constables, saying:—

"It ain't fair, I sez; why, they knowed all 'long as my witness was down at the Moor on a seven 'stretch' for 'smashing.'"

There is one reform which Mr. Justice Lawrance has introduced which is extremely popular. It is no less than the abolition of the dinner which once or twice during a circuit the judges formerly gave—and now as a rule give—to the Bar. Now, of all nuisances, both to Bench and Bar, the "judge's dinner" cannot well be beaten. The judges, I believe, hate it, and it is not too much to say that it invariably is a period of depression and gloom to the barristers who, out of mere respect to their hosts, attend the dreary function. Instead of this ghostly gathering, Mr. Justice Lawrance asks half-a-dozen or so of the leading barristers on the particular circuit to dine with him privately, and such a dinner is pleasant to everyone concerned.

The other kind of official dinner may have been all very well in the days when a few men, all of whom were personally known to the judge, comprised the circuit; but now that every circuit is overgrown, the reason and the reasonableness of the thing are gone. The men whom the judges would like to see do not attend the official dinner, because they do not feel inclined to put their work aside in order to participate in an empty compliment, and the men whom the judges hardly know by sight thrust themselves into front places.

On the other hand, the private dinner is not only infinitely better, from a gastronomical point of view, but an invitation implies a real compliment. If Mr. Justice Lawrance will only adhere to his precedent, other judges will follow it, and Bench and Bar will be the happier.

If the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice has a fault—and in these days of competition it is dangerous to assert that any judge is not perfect, besides being ungracious—it lies in the kindness with which he habitually treats the barristers who practise before him. Not that I for a moment deprecate judicial kindness, but in the circumstances it is slightly deplorable. And for this reason: the members of the Divorce and Admiralty Bar never were unduly sprightly, and there is reason to fear that the forbearance of the learned President will superinduce a morbidly atrophic condition.

I at once admit that every divorce man is gloomy; and that he should be is but natural after all, for one might as reasonably expect an undertaker to continually rejoice as look for merriment in the morgue of the law. But,



From a Photo. by

SIR FRANCIS JEUNE.

[Elliott & Fry.]

unfortunately, coma has given signs of its near approach, and there are but too good grounds for believing that soon it will clutch its intended victims—among whom I number many friends. I earnestly hope these gloomy forebodings may not be realized; but at present the outlook is black, and threatens a blighted future to Divorce Court practitioners.

Now, is it fair to blame Sir Francis Jeune for this state of things? Is it right to expect him to rouse into something like activity barristers, in comparison with whom the lotus-eaters were so many extraordinary manifestations of the principle of physical and intellectual Energy? I do not think that it is. The learned President is so kind and considerate that I do not think he could bustle up his barristers and so save them from inanimation and consequent vital extinction, and thus the only thing to do is to bemoan the fact: that kindness is killing slowly and attractively the gentle members of the Divorce and Admiralty Bar. And they are so very gentle and timid, are these members!

Not long ago, I met one of the most prominent of the sect, pacing the Law Courts, with halting step and folded arms, apparently in a very flustered condition. Struck by the peculiarity of his demeanour, I asked him what was the matter. For answer he tugged violently at his gown, and said, in tones so sublimely pathetic that it roused a Law Courts' messenger from his usual torpor to a state bordering on animation: "My dear fellow, what I have gone through this morning, you can never know."

I expressed my sorrow, and suggested he should "tell me all." He hesitated, wavered, and then dismally unburdened himself.

"Lopes is taking 'common juries' to-day; I have been before him, and *twice*—you may not believe it, but on my honour it is true—*twice* he interrupted me. I feared he might break in a third time, so I have left the case to my junior, and am going home."

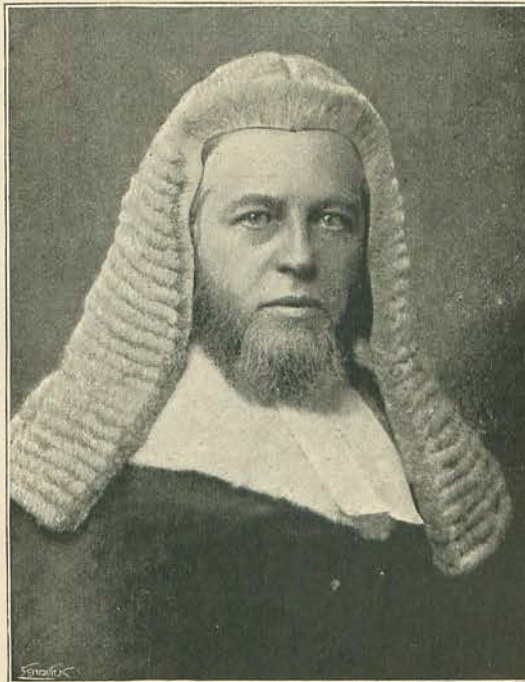
He refused all consolation, and shortly afterwards I saw his clerk put the vexed soul into a cab and send him home.

Now, Lord Justice Lopes is himself a very pleasant judge to appear before, and—but the moral is obvious. But I would here sound a note of warning, lest anyone should imagine that Mr. Justice Jeune is a weak judge. For, as a matter of fact, although kind and considerate, he is particularly "strong," and I have never known or heard of anyone treating him indifferently. As the President of his Division he does his work admirably, and it would be difficult to conceive how anyone could discharge the duties appertaining to that position more thoroughly or with greater tact than he displays.

One of our most deeply-read lawyers, he is a painstaking and conscientious judge, who allows nothing to stand in the way of an equitable and just performance of his frequently very delicate duties. Socially, there is not a nicer man living. Popular at the Bar, and popular on the Bench, he is one of those judges whom added honour has in no way spoiled.

Many judges live a sort of dual existence, one personality being the judge, and the other the ordinary humdrum man. But happily in this case there is no duality,

there being no difference as far as demeanour is concerned between Mr. Justice Jeune the President of the Probate, Divorce, and Admiralty Division, and Sir Francis Jeune the man of the world. And one is tempted to piously pray that all the other judges were even as the "President" is.



From a Photo. by

MR. JUSTICE LOPES.

[Bussano.]

Mr. Justice Grantham once casually remarked that all Welshmen are liars; but that is probably the only discourteous thing he has ever said—and even then he merely made the slight mistake of particularizing where generalization was appropriate.

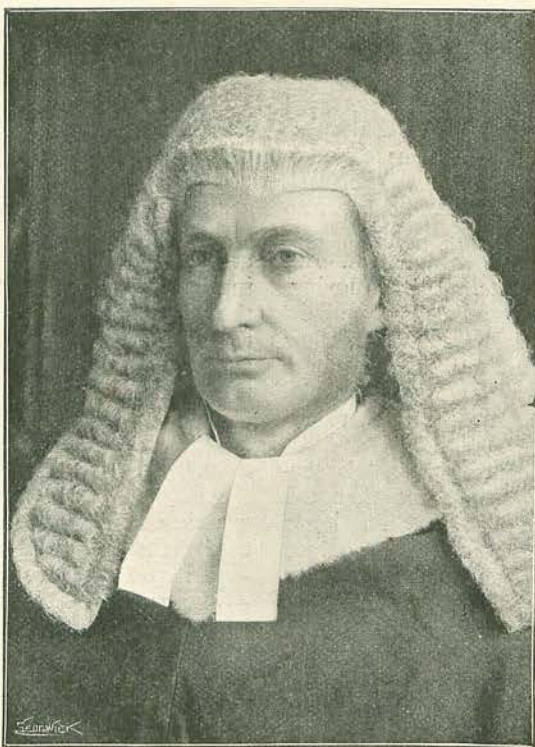
Still, the Welsh people and the customary "others" were angered, and failed to see that, by demonstrating their annoyance, they were essentially and formally making patent their lack of philosophy. Now, it seems to me very clear that every man is born into this world a potential liar, and further, that the man who has not at some time or other wilfully created a false impression, *i.e.*, lied, belongs to a species which may have existed about

the date of the making of "Le Contrat Social," but which has, long ere this, been improved off the face of this earth. In our own times everybody, from the girl who says "Engaged," to avoid dancing with a man she dislikes, to the expert witness who invariably discerns the truth on the side of the party who has paid him a retaining fee, habitually says and does the thing that is not. I don't attack the habit, neither do I, on the other hand, aver that it is defensible on the ground that it alone makes life tolerable. I merely state the fact of the universality of the practice.

As to the Law Courts, it is honourable in certain circumstances to lie in the Divorce Court: in the Admiralty or Chancery Courts, deponents cheerfully and in accordance with immemorial custom swear to the existence of *facts* which are solely based

on the word of a solicitor. In other courts, imperfect recollection and a desire to tone down the angularities of a case

are responsible for a great deal of sin. Everywhere, wilful inaccuracy is to be found in costly profusion. This being the case, the Welsh were badly advised in crying out. If they had been wise, they would have muttered a *tu quoque*, and turned aside to contemplate the general inappropriateness of human methods! As it was, they went into the merits of the case—and then there was chaos! Welshmen love disputation, and therefore the judge did, perhaps, after all, do them no inconsiderable good when he inveighed against them.



From a Photo. by MR. JUSTICE GRANTHAM. [Russell & Sons.]

Mr. Justice Grantham is a good all-round sportsman, and rides uncommonly good horses to the Law Courts of a morning. In that respect he is unlike the majority of his professional brethren and barristers, whose steeds irresistibly remind one of a certain society in connection with which the term "knacker" is sometimes used.

He is an extremely popular judge, and deservedly so, for he is invariably kind to the veriest junior who appears before him, and is thoroughly independent. Possessed of a large fund of common-sense, and endowed with those qualities which comprise a man of the world, he makes a capital criminal judge, and contrives to do practical justice between man and man. There is nothing petty or mean about Mr. Justice Grantham, and if his decisions are sometimes upset, is not that the fate of every judge?

(To be continued.)

Her Majesty's Judges.

II.

By E.



WHEN I announced my intention of writing these "Notes" to a somewhat eminent member of the Bar, he emphatically advised me not to make the attempt, and when I asked him "Why?" he replied that all the good stories about the judges were either unprintable or else so old as to partake of the nature of that pest of civilization—the "chestnut." At the time, I perceived there was some reason in what he said, but subsequent reflection showed me that "notes" are not necessarily "anecdotes," and herewith I begin the second instalment of these slightly discursive remarks.

And yet another difficulty beset me, which may be stated thus:—

I had asked one learned judge to give me his autograph, and the request had been granted. Some time after he asked me to dinner, and to dinner I went, and it was then that he warned me against the consequences of infringing the State regulations as to libel. I assured him that my native respect for those before whom my daily bread was earned would not allow me to be libellous. And then he smiled, sadly it might have been, and answered:—

"I see; and so your descriptions will be more or less fanciful?"

There was humour in the dictum, but it stated a difficulty that had to be avoided somehow. I think I have succeeded in avoiding it, but still I am not sure. The candid man is generally dubbed hypocrite, and the sneak a straightforward man of business; so I have made no profession, but have dealt with my subjects freely, and, if unjustly, I am sorry for it. That

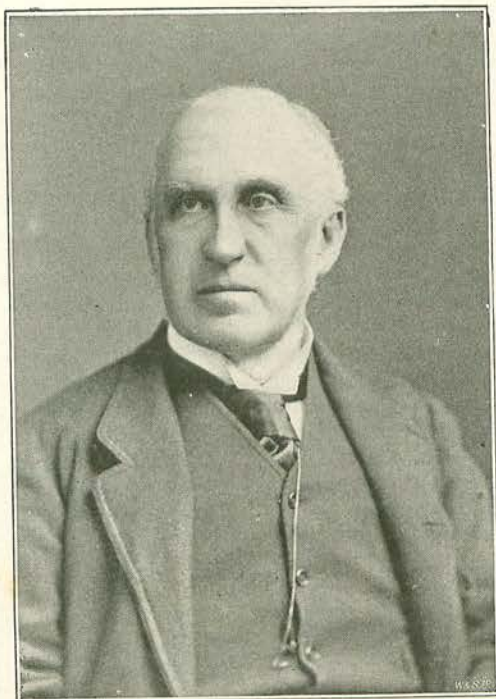
is all, in the circumstances, I can say, and that is surely sufficient.

One word more in explanation of any mistakes I may have inadvertently committed. At the outset I resolved to tell no antique anecdotes, and this fact must go a long way to account for the paucity of anecdotes in these pages. There is nothing so irritating to me as a twice-told jest, and actuated by the modest egoism that pervades each one of us, I naturally think my views are everyone's opinions—and so to continue on my appropriate path!

Probably in the whole history of the English Bar there never has been a greater advocate than Lord Russell of Killowen, Lord Chief Justice of England, whose only possible rival is the present Lord Chancellor. Far and away the best commercial lawyer of our time, his skill in conducting "Short Delivery" and "Charter Party" cases, *et hoc genus omne*, was only rivalled by his ability in defending prisoners, and the acumen and sound sense he brought to bear on so-called

"sensational" cases.

In these "notes" it is my province to air opinions only, otherwise I should have been tempted to deal with the fascinating career of the subject of these remarks. It would have been pleasant to trace the rise of the local junior of the northern circuit to his present lofty position, to discuss the great oratorical effort he made on behalf of Carey's murderer—O'Donnell; and analyze the speech he made before the Parnell Commission—a speech which one of the Commissioners declared surpassed in pathos and solemnity anything he had ever imagined.



LORD RUSSELL OF KILLOWEN.
(Lord Chief Justice of England.)
From a Photo. by Russell & Sons.

But it cannot be : space has its exigencies, and they are necessarily intractable. As a judge, Lord Russell of Killowen has proved a disagreeable surprise to those who assert that the same man cannot be both a good speaker and a good lawyer.

This old-world superstition, derived from the recesses of Chancery prejudice, is dying hard, but it took a Halsbury and a Russell to strike the death-blow. That it is dying at all is satisfactory, and it is to be hoped its complete dissolution is near at hand.

Now, I can understand many stupidities and appreciate follies innumerable, but I cannot, for the life of me, see why a barrister who cannot properly give utterance to his thoughts should be assumed to be a great lawyer, and why, *e converso*, a great lawyer should be deemed incapable of making a good speech. But because I fail to grasp the reason, it does not follow that there are not very many legal people who not only grasp it, but make it the basis of their conduct.

Over and over again have I witnessed the agonized struggles of a barrister desirous of making a single statement to the Court, and when he has sunk worn out and unsuccessful to his seat, I have heard barristers and solicitors, with an approving nod, say : "Not much of a speaker, but a capital lawyer." On the other hand, I have heard brilliant advocates described as "only fit to address juries," and I have also had the pleasure of seeing Lord Russell in his judicial chair bowl over some of his former stuttering critics.

But as I have already said, the superstition is dying, hard it is true, but nevertheless dying, and it will long predecease the equally ridiculous theory that no man can be good-hearted unless he behaves himself like an ill-tempered savage.

Some day or other, after middle-age cares have departed, I may write of "Some Distorted Views," but until then I fear I can do little but wonder—wonder at the curiosities of human thought. When he was at the Bar, the present Lord Chief Justice was said to be—well, let me say, rather severe to his brother barristers, but this was far from being the case.

He very properly held his own, and let certain Queen's Counsel and ancient "juniors" know that he was not a man to be trifled with, but to the inexperienced and youthful he was invariably kind. This example it were well if many I could name, had I the inclination, would follow ; but,

unfortunately, a gross subservience to those who sit in high places, and an intolerant rudeness to the lowly, are the characteristics more often developed in the ordinary "man of standing." The reproofs which Sir Charles used to administer to the discourteous are, indeed, sadly missed, and more than one Queen's Counsel is in dire need of a corrective snub. As he was at the Bar, so he is on the Bench.

Fittingly precise in his methods, he makes an admirable President of the "Chief's" Court, and as a Divisional Judge consistently shows how thoroughly well up he is in the rules of practice and other legal *minutiae*. I have never been before him in a criminal court, but I understand he deals firmly yet sensibly with criminals, and this is just what I should have expected. "A great lawyer, a great advocate, a citizen of the world, masterful to a degree, and withal chivalrous," is an accurate description of Lord Russell of Killowen.

If Mr. Justice Day is not sufficiently designated by the phrase *Suaviter in modo*, that of *Fortiter in re* is a commendable mode of expressing his most salient characteristics.

And this contention, I imagine, the misguided Lancashire gentlemen who adopted "garrotting" as a means of earning a dishonest livelihood, and were tried before our judge, would heartily support. At the time when Mr. Justice Day arrived in Liverpool to commence his famous series of assizes, lawlessness of the most terrible character had attained an almost incredible pitch, and "robbery with violence" was the terror of all respectable citizens, and the darling of the criminal class in that town. As a result of the fostering care of the Recorder, with his absurd light sentence system, the streets of Liverpool were flooded with habitual miscreants who, while endeavouring to keep within the scope of offences triable by the Recorder, were by the spirit of success egged on to the commission of the most horrible crimes. Law-abiding citizens were almost panic-stricken ; in broad daylight the most brutal offences against the person were committed ; the police were rendered powerless by the system in vogue at the sessions ; when Mr. Justice Day arrived to try prisoners—and to stay.

And then the change began : the cowardly ruffians who were brought before him speedily awoke to the difference between the Judge of Assize and the Recorder on whose bosom they had wept tears of hypocritical baseness.

Their day had gone : no longer could they beat, wound, and rob people with impunity, and be treated as poor, erring children, who, in ignorance, had turned down the wrong road, and should be lovingly restored to the right path.

In one year the reign of terror was at an end, and all credit is due to Mr. Justice Day for having effected this desirable consummation. His methods were entirely admirable. In the first place, he sent the habitual criminals to long terms of imprisonment, and so broke up the gangs which had so long infested Liverpool and converted its streets into a seething caldron of crime. Then, he unsparingly used the "cat"; and although this species of torture should be only resorted to when it is absolutely necessary, in this case it was necessary that it should be used without fear and without flinching.

Luckily for society, Mr. Justice Day disregarded the shrieks of those who, in their hysterical ignorance, rave about the dignity of manhood, and as a result "robbery with violence" is no longer the pet method of obtaining money with the Liverpool criminals. What this judge did for Liverpool, the judges at the Old Bailey are doing for London; and the work of stamping out this most detestable of all crimes is nearly accomplished.

But *generally*, Mr. Justice Day is blamed for giving too heavy sentences, and I am bound to admit that there is a good deal of reason in the complaint. On occasions punishment should be severe, but an indiscriminate severity is radically bad. It seems

to me that, able judge as he is, he does not practically grasp the essential distinction between crimes against the person and those against property, and this is a fault which he shares with the large majority of the judges.

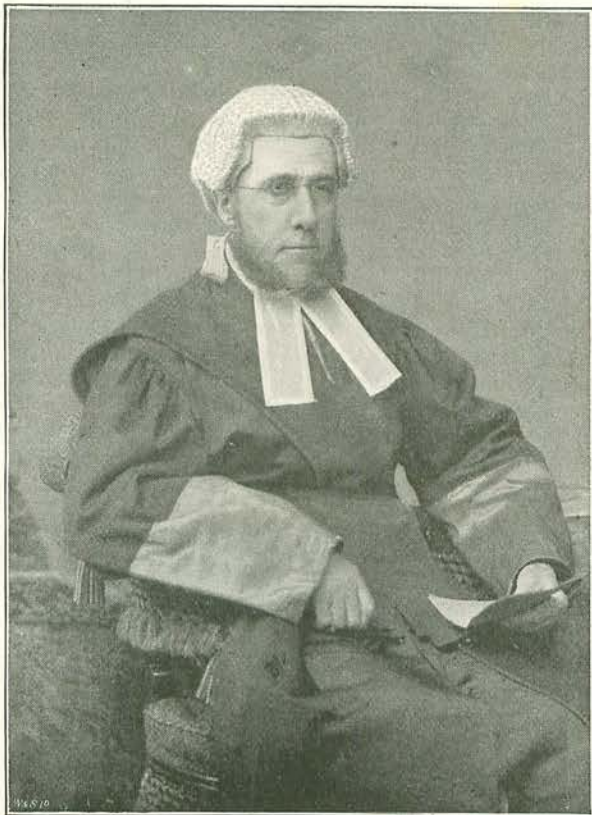
True, I have been told on reliable authority that the severe sentences he announces in public are materially reduced by him in private, but on this matter I cannot speak with any certainty. Anyhow, every judge should remember that it is his duty to award only just enough punishment to deter the criminal and other intending offenders from future wrong-doing.

In civil cases, or as they are technically termed "causes," Mr. Justice Day is distinguished by a flow of humour which, if disconcerting at times, is generally welcome.

Unlike many of his brethren, he makes good jokes, and one laughs, not out of compliment, but because one cannot help it.

He has been known to do his assize travelling on horseback, and I suppose in the near future we may expect to see the bicycle utilized for this purpose. The time cannot be far distant when we shall read of Mr. Justice Blank and his marshal entering an assize town on their bicycles. If ever that does happen, then, indeed, will it be apparent that the age of dignity has gone.

When Mr. Justice Wright was at the Bar, he used to smoke a pipe at "consultations," and now that he is on the Bench, and has no such vanities as consultations to trouble him, he smokes big cigars out of doors, and,



MR. JUSTICE DAY.

From a Photo. by Whitlock, Birmingham.

mayhap, the humble, or more nerve-shaking, pipe at home.

No human being was ever more completely destitute of what is so inaptly termed "side" than this most erudite judge, and it would hardly surprise any of his friends to learn that he had been seen smoking a "clay" in Bond Street.

When he was appointed a High Court Judge he protested—at least, so it was said—against the ludicrous customary rule which generally compels Her Majesty's judges to be knighted, and only yielded to the infliction of a "Sir" after a prolonged struggle, which reminded one of the story of the unwarlike individual who was *compelled* to become a *Volunteer*.

But, really, it is too absurd that in order to dispense justice to Her Majesty's subjects a distinguished barrister must descend to the level of those who have deserved honourable distinction by serving as sheriff of the City of London or acting the highly intellectual part of mayor of a small provincial town. It may be that my mind is not capable of appreciating the subtle niceties of the position, but whether that is so or not, I remain fixed in my opinion.

Some time ago, in the Jubilee year, a certain mayor of a very archaic yet unimportant town was disappointed at not being knighted. It was indeed a great blow to him; he had felt quite sure that the honour—which was so liberally dispensed at that time—would be his, and he had even invited tenders for the banquet which he intended that the corporation should give him when he became "Sir" something or other. His wife

also felt the blow, became very ill, and visited her wrath on the wretched mayor, whom she declared she would not live with in the future. One day, after she had partially recovered from her illness, I met her, and she immediately began to pour forth her troubles.

"You see, if it was *anything*, which it wasn't, I wouldn't have minded; but, there,—had only to ask and he would have got it. But not he, he wouldn't even spend a stamp for an application; he's *that* mean." I endeavoured to soothe her, but she would have none of it.

"Don't tell me," she said, "it isn't that I want—to be a knight; if they had offered it, he shouldn't have taken the common thing; but they might have passed the compliment of asking him, mightn't they? To be kept out of a thing anybody can have for the asking!" she concluded, angrily, and departed without a good-bye.

Now, the moral of this story is obvious, and explains the irritation I feel when I reflect that Her Majesty's judges have the honour(?) forced

upon them. Mr. Justice Wright was wise in protesting, although the issue was unsuccessful, and I trust in the future that other barristers who are raised to the Bench will follow his good example, and that such a measure of success will attend their efforts as attended those of the late Mr. Justice Denman. But I find I have run a little off the line of my subject, and must return to it. In his knowledge of practice and the technique of the law Mr. Justice Wright has no rival, and it is a real intellectual pleasure to argue a point before him in the Divi-



MR. JUSTICE WRIGHT.
From a Photo. by Whitlock, Birmingham.

sional Court. I have heard one or two barristers complain that he is too quick; but can that be termed a fault in these days when the law's delay is a universal grievance? For my own part, I don't see how a judge can be too quick, since even injustice speedily dealt out is preferable, in the interests of the community, to tardy justice; and this learned judge is both rapid and just. If one were to criticise such an excellent judge as he, one might say that in the generality of cases he takes a too merciful view of a prisoner's misdoings. In other words, he inclines rather to the defence than to the prosecution.

I am far from saying that this is a fault at all, for I know to what ghastly extremes some judges go in the other direction, and any sane man must admit that punishment in so far as it is anything more than deterrent is bad and unjustifiable.

Further, the influence of such judges as Mr. Justice Wright is all for the best, and the habit of awarding long terms of penal servitude for trifling offences is rapidly going out, except, of course, at the Middlesex Sessions and other places where silly amateurs and legal failures disport themselves.

At *Nisi Prius* also, Mr. Justice Wright is more than merely satisfactory, and there is no doubt that this consummate lawyer will attain a very high position in our judiciary. The appointment of the Radical "Treasury Devil" by a Conservative Government was in itself a singularly effective tribute to Lord Halsbury. There never was a better appointment, and never was one more gracefully made.

Mr. Justice Mathew is the president of the tribunal which, to the gratification of both lawyer and layman, has succeeded admirably, under the name of the "Commercial Court."

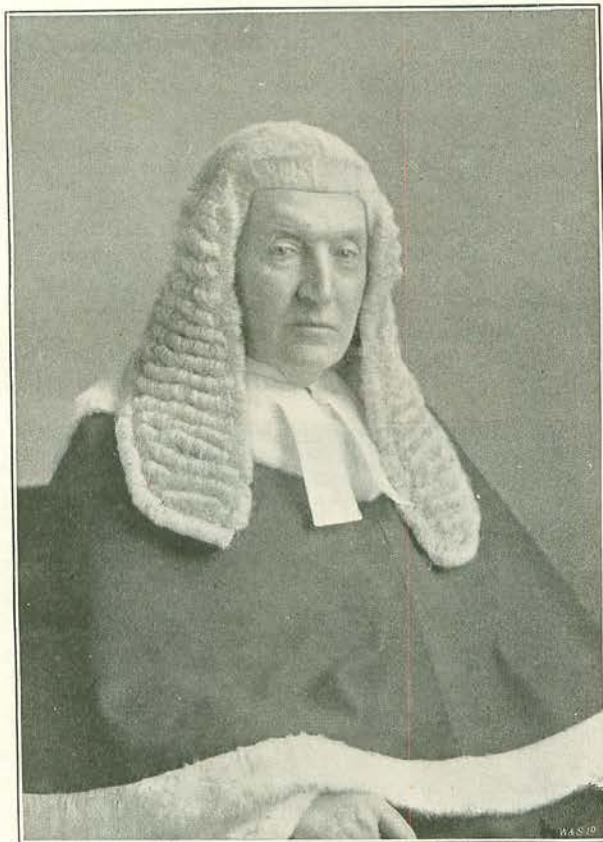
A clever lawyer, possessed of a detailed knowledge of the law affecting mercantile transactions, endowed with a keen sense of humour, and an unlimited capacity for putting down the impertinent, this judge is reckoned both "jovial" and "strong"—and "strong," it should be explained, in legal phraseology, stands for the antithesis of "irresolute" and "wavering."

Probably no higher compliment could be paid by a member of the Bar to a judge than to say he is "strong." For there is nothing so unpleasant as a judge who either does not know his own mind, or, knowing it, flits through a variety of modes before announcing it.

But to return to our subject: Mr. Justice Mathew is, as I have already suggested, an eminently satisfactory judge, and it is but rarely that the Court of Appeal interferes with his decisions. It has been said—by those whom criticism could

scarcely affect—that in the Commercial Court he habitually disregards the ordinary rules of evidence, but this is not so.

True, he allows a little more latitude to an examining counsel than is generally done, but that is the extent of his innovation, and his judgments are based upon facts sufficiently powerful to withstand the assaults of No. 1 Court of Appeal. It might be well, however, if he were not to restrict the operations of his Court by practically treating only charter



MR. JUSTICE MATHEW.
From a Photo. by Elliott & Fry.

party and insurance cases as its appropriate subjects; but that is a moot point, on which I am not going to adjudicate. The Commercial Court is an assured success, and already the Arbitration Clause—much dreaded of lawyers—is gradually disappearing from documents recording contracts.

As a criminal judge I have not had any experience of him, as he has not "gone" my circuit since I joined the Bar; but I have heard men wax eloquent about his doings, and I am quite content to adopt the view of those who, by reason of greater experience, are even better qualified than I am to form a critical estimate.

Among other honorary positions, Mr. Justice Mathew filled till lately that of vice-chairman of the Council of Legal Education, and in that capacity he took part in promoting a series of important reforms, some of which have already turned out well. But with regard to the eventual success of at least one of these reforms, I am decidedly sceptical.

For I myself doubt the wisdom of admitting the public to hear the Council's lecturers, and I think that reform should be re-reformed, and the public rigidly excluded from the doubtful benefits attendance at the lectures might produce.

I say "doubtful," because the truth that a little learning is a dangerous thing is nowhere better illustrated than in the domain of law.

Indeed, in these days of over-population, over-competition, and consequent trade depression, the Bar owes a great deal to the popular law-books, the study of which hurries thousands of people into the courts.

If it were not for the mistakes that these said books produce in the lay mind, the formation of

another Embankment would be necessary to provide the means of livelihood for a multitude of no-work-to-do counsel. As a member of the Bar, I am deeply grateful for those books and other litigious influences; still, the interests of the Bar cannot, and should not, be preferred to those of the public. However, there are one or two clever men—one learned judge in their number—on the Council, and there must be some reason for this particular reform, only what that reason is does not plainly appear.

Still, it is useless to criticise unless the critic is in possession of all the facts—and, therefore, I will say no more on the subject—at present.

Mr. Justice Mathew is an Irishman and a Home Ruler, but if this Government overlooks that fact and appoints him to the post, when vacant, which he was marked out for when a Liberal Administration ruled the roost, I dare be sworn that the appointment would be as popular with lawyers as it would be well merited.

Other judges have used an eyeglass, but, as far as my personal experience goes, Mr.

Justice Romer is the only judge who has personally identified himself with that strangely attractive piece of opacity. It is not impossible, metaphysicians tell us in their peculiar jargon, to conceive a limit to space. It is not impossible mentally to anticipate an era of nothingness—but I firmly and finally believe that it would be impossible for the most refined idealist or the profoundest devotee of speculative occultism (unless he be a photographer) to conceive Mr. Justice Romer *without his eyeglass*, and the reason of it is that it has



MR. JUSTICE ROMER.
From a Photo. by Russell & Sons.

become an integral portion of his own individuality. Now, whether it is the fault of the eyeglass or of his own great ability, this learned judge has made for himself a reputation second to none in the Chancery Division, and while Common Law men cheerfully admit his claims to professional distinction, Chancery men positively rave with enthusiasm when they speak of—I beg pardon, but it must be said—"Bob" Romer; and this fact is sufficiently significant of the virtue of our judge.

As a rule, Chancery counsel are denoted by a straggling beard, baggy trousers, and a stutter. They know nothing of the more material pleasures of life. They regard a joke as a piece of unmeaning vulgarity, and always use a five-syllable word—when they know one. Unlike the "Divorce" man, they are neither gentle nor self-effacing, but on the contrary are generally combative and particularly assertive.

They suspect the wearer of a silk hat that is not brushed the wrong way; they gorge themselves on luncheons of ham sandwiches and milk and soda-water; and, if they became heathens, would probably worship a sawdust doll, or something equally unromantic and offensively respectable.

They are an uninteresting race, who generally belong to a musical society, and frequently attach themselves to a "Social Evenings' Mission." A few have taken to fishing, and at least one has been known to play golf.

Now, in the main, Chancery men trouble me but little. If I go into their courts they are icy—*i.e.*, becomingly—civil. If I meet them "out," we nod to each other. They are a thing apart from the Common Law Bar, a society unto themselves.

In fact, I have always regarded them as forming a species of forensic lotus-eater—men who, having attended in court during one "motion" day, have tasted of the drowsy pleasures of *ennui*, and abandoned themselves to its irresistible influence.

Yes, the Chancery Bar are indeed children of Dust and Dulness! Their characters will bear an analytical examination, but their moral strength cannot support the weight of an oath; and yet, despite all this, I have known a Chancery man to evince distinct signs of the possession of an interest in something outside himself; indeed, I have even seen his eye dart forth fire, and his beard tremble vividly when he has been discussing his revered late "leader!"

"I tell you," a certain one—whom I had ever looked upon as of the extra selfish brand,

and whose violence considerably startled me—once thundered, "the best judge on the Bench is Romer"; and, with a bang on the table, "He is the *only* judge!" I was afraid to argue, and if I had done so, I should only have taken exception to the universality of his statement; but the flashing eye of my antiquated companion brought home to me and the affrighted waitresses in that pleasing summer resort, the Law Courts' Tea Room, the conviction that the Chancery Bar would do great things in praise and support of their judge. I pursued the subject no farther, but I afterwards pondered how much a judge is worth who is so highly thought of by the men who practise before him. But, speaking apart from the Chancery Bar and its attendant circumstances, it is undoubted that, as a clear, hard-headed, able judge, Mr. Justice Romer is not excelled by anyone on the Bench. He is both clever and practical, and highly popular withal.

And here I may mention one grievous fault of the Chancery Bar.

It is undoubted that it introduced the fashion of beards and other outrageous devices in hair, and this in the teeth of the excellent tradition that barristers should be clean shaven.

But while blaming the Chancery men, I do not forget that the Common Law men followed their lead, and now such abominations as moustaches and Cavalier beards are to be seen daily in the Queen's Bench Division and Criminal Courts. If a counsel appears in court in a light coat or a gaudy waistcoat, the Court refuses to "see" him until he has changed it for a garment of a more sombre hue.

Why should it not extend the principle to the case of what are journalistically termed "hirsute appendages"?

Why, indeed? Unless it be that some of the judges themselves are offenders in this respect.

There is nothing more incongruous than a combination of wig and moustache, and it is to be hoped that the rising generation will redress the errors of their immediate forebears, and adopt the habits which by long—though recently interrupted—usage have been decreed as a tradition of the Bar.

Mr. Justice Wills is, among other things, an active member of the Alpine Club, and such is his vigour that it would not surprise me to hear that he had established a "record" in the bicycle world. Certainly he is uncommonly

hale, and affords a splendid object-lesson to the youth who delight to be called "gilded," but whose appropriate epithet is the comprehensive "asinine."

One watches him at work with admiring wonder. He is so fresh, so—may I be pardoned for saying it!—cherubic, so altogether unlike the lantern-jawed, plaster-of-paris toy bogey who popularly passes as *the* type of a man of the law! And yet, in spite of these physical characteristics, Mr. Justice Wills is a highly satisfactory judge, whose one fault consists in his inability to practically distinguish between law and morality.

There are one or two other judges who also labour under this difficulty, and it is sad it should be so.

In ascertaining the amount of punishment necessary in the interests of the community—and that should be the sole consideration—judges should not act vindictively, and should not regard the scope of the law as properly punitive. It is the duty of a judge to administer the law; it is not his duty to air his own particular views of what should be the law. Deterrence of crime, and not the vindication of a moral principle, is the true end of the criminal law.

But judges are apt to forget this fact, and to wield their tremendous powers for the purpose of inflicting pain on the offender merely because he has offended. They would, if tackled, probably deny this allegation; but deny they never so strenuously, it is true, lamentably true. But this apart: Mr. Justice Wills is a strong and a good judge, and is also courteous; a long list of virtues to atone for one failing!

Lord Justice Lopes, whose portrait appeared in last month's issue, has latterly taken to sit in a specially constituted Divorce Court, from which vantage point he cracks jokes and hurries up the gentlemen who habitually concern themselves with matrimonial causes. He is a very shrewd and pleasant judge,

whose usual place is in the Court of Appeal; but so great is his success in the Divorce Court, that it seems a pity he does not sit more regularly to try its appropriate cases. In the Court of Appeal he asks many questions, and delivers lengthy judgments which invariably contain much good sense. I have never known this learned judge to say an unkind thing, and I have never heard that his consideration has been abused.



MR. JUSTICE WILLS.
From a Photo. by Elliott & Fry.

(To be continued.)

Her Majesty's Judges.

III.

By E.



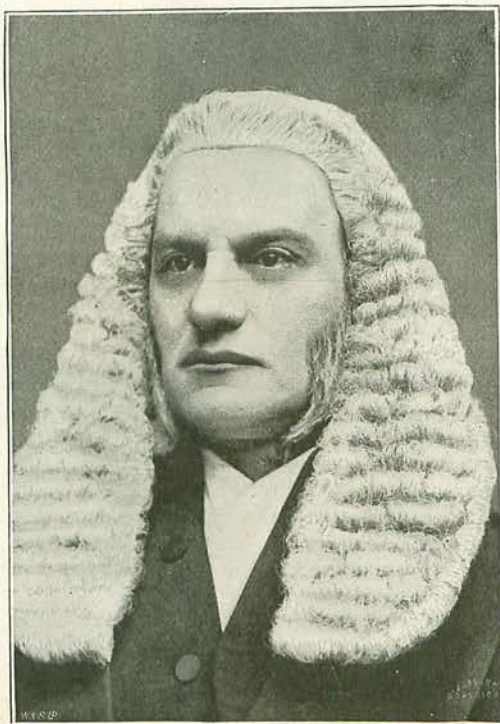
HE ex-Lord Chancellor is my next judge. Now, Lord Herschell gave great offence to his party by refusing to place every Radical nominee in the Commission of the Peace, and steadfastly ignoring the preferential claims of the sons of toil to exercise judicial functions. While Radical members of Parliament argued that the best and, indeed, only way to reduce the silly J.P. institution to harmless inactivity was to vulgarize it, Lord Herschell persisted in his attempt to free his high office from all party taint, and maintained a resolute resistance to the claims of his political friends.

Into the merits of the controversy I have no desire to enter; I merely record the fact of its existence. Again, many of his judicial appointments did not find favour with the Bar, and one learned High Court judge was raised to his elevated position amid the execrations of that part of the Bar which is actively political and quiescently Liberal. Indeed, I have heard certain "influential" — this stock word expresses a great deal — politicians declare that Lord Herschell was responsible for the Radical rout at the last election, but as I have heard other equally "influential" personages with even increased enthusiasm ascribe the defeat to Sir William Harcourt's temperance zeal, Mr. Labouchere's personal dislike of Lord Rosebery, the conduct of one Sir Visto in winning a certain race at

Epsom, the resignation of Doctor Macgregor, the disaffection of Welsh Nonconformists, and the speeches of Sir Ellis Ashmead-Bartlett, I attach absolutely no importance to the opinions of those who take a decided stand on the great J.P. question. Further, Lord Herschell, *quâ* politician, is without my prescribed limits.

In his capacity of Lord Chancellor, I understand that he presided with dignity and firmness over the deliberations of those whom Birth or Beer has marked out as being fit to

form part of the Legislative machine of this country. As a law reformer, he is indefatigable, and he assuredly is a very capable judge. His judgment in the Vagliano case is itself a monument to his thoroughness and clearness of mental vision, and the reports teem with instances of his judicial perspicacity and ability. Reserved in manner, and not given to excessive jocosity, Lord Herschell has never been known to turn his back on a friend.



LORD HERSCHELL.
From a Photo. by Bassano.

Lord Davey, who, after a brief and unexciting term of office in the Court of Appeal, now reposes in the House of Lords, is reputed to have made, during his last years at the Bar, a larger income than has ever fallen to the lot of any barrister within the range of tradition. And herein repute is apparently not far wrong, for Sir Horace Davey's practice was as remunerative as it was large. How many guineas he made, or how many cigars he smoked in any one week, no one



From a Photo. by]

LORD DAVEY.

[Russell & Sons.

who has not studied the present Lord of Appeal's fee-book and his account with his tobacconist can tell, but, in all probability, the proper adjective to use in this connection would be "incredible."

Chancery barristers—who are, in the main, a bit prosy and not given to romancing—even now speak in awe-stricken tones of their former colleague's smoking prowess and the huge fees so frequently marked on his brief. And this I assume to be true, since, for my own part, I invariably believe a Chancery man. He hasn't imagination enough to lie.

The least successful rôle that Lord Davey ever undertook was that of Parliamentary candidate, in which he was not very far removed from a failure. However, he undoubtedly created a great impression in one Welsh constituency, and it is on record that one of his supporters in a farewell speech declared that "to look on Sir Horace was to love him." Such an exuberance of adulation was, however, rare, and Sir Horace did not, in general, repeat on political platforms the triumphs he won in the Law Courts.

I have had little experience of him as a judge, but in the Court of Appeal his

judgments were characterized by the conciseness and clearness which distinguished his arguments at the Bar; and in the House of Lords professional opinion speaks very highly of him. I don't suppose a Chancery barrister ever attained such a high position as at the termination of his career as a barrister Lord Davey could claim for himself.

Lord Justice A. L. Smith completes with the Master of the Rolls and Lord Justice Kay the Bench of No. 1 Court of Appeal, and a wonderfully constituted Court it is: Lord Esher cracks the jokes, Lord Justice Kay delivers considered judgments, and Lord Justice Smith, who seldom takes any part in the customary war of jest and repartee, makes things clear in an irreducible minimum of words. By not a few good authorities this Lord Justice of Appeal is held the best of all our judges, but the propriety of that opinion it is unnecessary for me to discuss.

Some years ago, when I was on my first circuit, I remember the case of a certain secretary of a benefit society



LORD JUSTICE SMITH.

From a Photo. by Russell & Sons.

coming before Lord Justice Smith. The man pleaded guilty to a series of exceptionally cruel frauds, and put up a barrister to appeal for mercy. This was done in a speech that was both long and eloquent, and in its course the economic advantages of co-operative thrift were touched upon; the love of a woman for her husband was dealt with in a pathetic manner; the usual effect of long sentences on a convict's family; the irresponsibility of youth; the evils of drink; the ghastly position of a penniless outcast, and other cheerful topics were spoken about; a brilliant peroration winding up an oratorical flight on the quality of mercy.

The prisoner sobbed, the usual feminine scream occurred, and the clerk of the arraigns called on the prisoner to say why judgment should not be passed upon him. He made no reply, and the judgment was as follows:—

"Prisoner at the Bar, you have pleaded guilty to this charge, and you must do seven years."

A more suitable anti-climax was never devised by the wit of man, and it proved a most excellent commentary on the baseless fabric of the speech *ad misericordiam*.

If all judges would follow Lord Justice Smith's example, an assize criminal court would be a tolerable place. But, alas! most judges make long speeches, and continually interject remarks.

A certain judge, who shall be nameless, was, not so very long ago, passing sentence on a wretched man who had killed his wife in circumstances showing extreme provocation. The jury strongly recommended him to mercy, and the judge stated he would consider the recommendation in awarding the punishment. In passing sentence he made a long and involved address, in the course of which he expressed his agreement with the jury's presentment, and favourably

noticed all the points of the defence. Then, having glanced at the previous honourable career of the criminal, when everyone in court expected that six months' hard labour would about fit the case, he woke up from his benignity, and slowly and deliberately concluded:—

"But my painful duty, and it is *very* painful, leaves me no alternative to the sentence I am about to pass upon you, and that sentence is that you be imprisoned and kept in penal servitude for the term of twenty years."

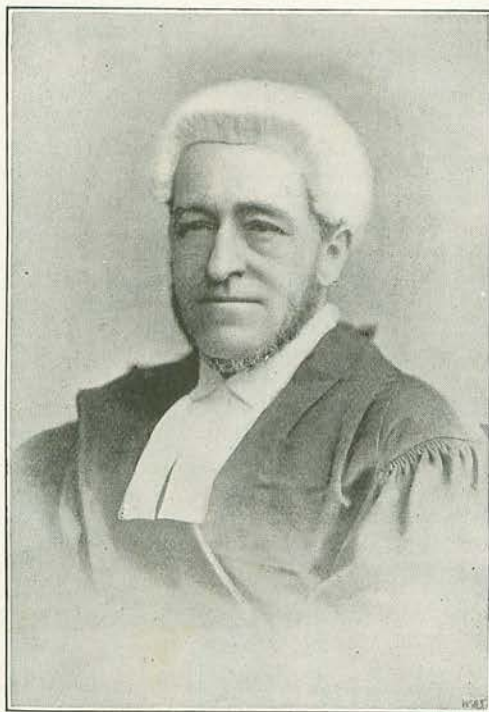
This is but one instance of a common fault. I do not for a moment mean to say that the judge in question intended to torture the prisoner; in all probability he merely meant to explain the severity of his sentence, but he undoubtedly forgot that his duty is to administer the law and not to inculcate the principles of morality.

In murder trials, again, I have heard judges lecture the convict and read long sermons about penitence and prayer. But it does no good at all: it may gratify the lazy loungers who throng our criminal courts, but it does not edify the officials or the Bar; and as for the prisoner, in what frame of mind is he to hear the story of his own brutality and profit therefrom? A few explanatory words may be needed, but the fewer the better for all concerned.

The judge who in former days was known as "Arthur Charles," and is the greatest living authority on ecclesiastical law, is a very sound judge.

Better in a Divisional Court than at the rough-and-tumble work of assizes, he is ludicrously out of place at the Old Bailey, and is just a little too cautious for Nisi Prius. Still, many competent men speak very highly of his abilities, and in this case I shall be content to adopt their views.

Latterly, Mr. Justice



MR. JUSTICE CHARLES.
From a Photo, by Whitlock, Birmingham.

Charles has been very unwell, but I trust—and in this expression, I feel sure, everyone connected with the Bar will join—that he will speedily be restored to health, and be able to return to the duties which he has hitherto so ably discharged.

Some years ago, in a certain assize town, a dismal joke was perpetrated on a worthy, if slightly dull, member of the Bar, and it happened in this wise. One or two of the more lively circuit spirits foresaw the possibility of a laugh at the expense of the aforesaid member, and handed him a dummy brief—which they had made up—subscribing the name of the solicitor to the Treasury, and containing instructions to apply for the postponement of the trial of *R. v. Jones*. It is on record that the “member” sat up half the night studying the conflicting statements and confused facts in his brief, and the next morning, in a terribly nervous condition, he applied to the judge for leave to make an application.

“Certainly,” said the judge—I think it was the late Mr. Justice Lush—“what is your application?”

“My lord,” the “member” began “the prisoner, Jones, has been committed to take his trial for wilful murder, and I am instructed to ask your lordship not to take the case these assizes on this ground: Mr. ‘Mark,’ the great expert in insanity, is at present out of England, and the Treasury particularly desire his attendance at the trial. I am also instructed to ask for the costs of this application.”

There was a burst of laughter from the uninitiated, and the judge blandly asked:—

“What is the

number of the case in the calendar, Mr.—?”

The “member” rose to the occasion:—

“My lord, the case is not in the calendar. The prisoner was committed only yesterday.”

“Very extraordinary,” the judge muttered; “and the Treasury instructed you yesterday, you say?”

“Yes, my lord.”

“Is your solicitor here?”

“No, my lord; he is ill.”

At this point history relates that the judge smiled pityingly, and asked:—

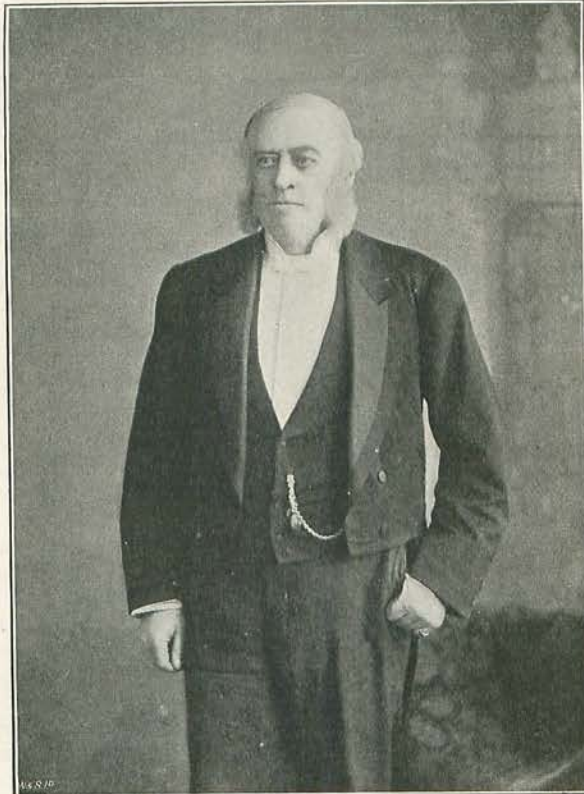
“Do you ask for costs against the prisoner?”

“These are my instructions, my lord.”

And then somebody whispered to him to sit down, and the judge, who had seen through the whole farce, kindly let the application drop, and went on with the business of the Court.

Now, I shudder to think what would have been the consequences had such a judge as Lord Morris been in the place of Mr. Justice Lush when the momentous application was made.

The course that fine type of an Irishman, shrewd, witty, and bubbling over with good nature, would have taken is easy to conjecture. His sense of humour would have caused him to discover the perpetrators of the joke, and forthwith commit them to prison for contempt of Court; and then what would have happened it is delicious to contemplate. The leading juniors of the circuit in prison, work must have been at a standstill; and we can imagine the irony of a situation in which a prisoner



W.S. 10

From a Photo. by

LORD MORRIS.

[Barraud's, Ltd.]

had to plead for a postponement of his trial, on the ground that his counsel was in prison!

What possibilities the joke fully developed is capable of it is difficult to summarize, but Lord Morris would probably have discovered them had he been the judge.

Would that he had been!

Nowadays Lord Morris is a Lord of Appeal, and is as popular as a member of the appellate court of the Lords as he is in the lobby of the House of Commons. Never at a loss for a joke, a storehouse of amusing anecdotes, he is one of our most popular judges.

I remember once hearing one of the hyper-aesthetic youths who decorate the ranks of the Bar exclaim, on seeing Mr. Baron Pollock enter a court, "By Jove, what a dear old thing he is—don't you think so?"

In all probability the reply I made was not calculated to please my informant, for I hate both effeminate ways and mincing language, but there can be no earthly doubt that this judge is on very good terms with the Bar.

Ourseniorpuiſne judge, he has been no less than twenty-three years on the Bench, during which lengthened period he has borne himself with dignity and well and truly discharged his duties. Latterly he has been trying election petitions, and in that uncongenial task has experienced the ill lot of all election petition judges.

For not only has he been misstated in court by the scarcely dignified mangling of factitious counsel, but out of court newspapers have misrepresented him, and anonymous correspondents have attacked him. Indeed, to such an extent have they gone, that on one occasion the learned Baron

declared *ex cathedra* that he didn't "care a dump" for anonymous letters.

The election petitions have a great deal to answer for, and perhaps this phrase constitutes not the least of their responsibilities.

Mr. Justice Gainsford Bruce is a judge who stands high in the opinion of Admiralty men. Nor indeed is his reputation confined to that sphere of forensic labour. Of a somewhat melancholy appearance, he is never so effective as when sentencing a man to death, and he would make an even more sensational ending to a "horrible murder" trial were he to speak louder and give the prisoner the benefit of the commiserative sentences he employs at such a time. A man who is standing between two warders, with the prospect of speedily meeting another

eminent official of the Home Office, surely should be allowed to participate in the pleasure of a scene in which he is the central figure. But few judges give him the opportunity, and here I think I may enter my emphatic protest against the "mumbling" fashion which has apparently of late years commended itself to our judges. Why, in the name of all that is reasonable, don't some of our judges speak out? If what they have to say is worth hearing, one would like to hear it, and should hear it. If it is not worth hearing, then why do they speak at all?



MR. BARON POLLOCK.
From a Photo. by Russell & Sons.

Indistinctness doesn't lend the charm of dignity to a judicial personality, and imperfect articulation is not—except perhaps in the Chancery Courts—a mark of exceptional worth.

When one hears Lord Esher, one is tempted to possibly ejaculate: *O! si sic omnes!*



MR. JUSTICE BRUCE.
From a Photo. by Elliott & Fry.

Mr. Justice Gorell Barnes is the youngest of the judges, and the second judge in the Probate, Divorce, and Admiralty Division. He is really a very capable judge, but should look to it that he doesn't become generally inaudible.

Oh! if only the judges would each and every of them take to heart and practise the elementary advice of the voice producer, and speak so that the person farthest off in the building could hear, what a blessing it would be! It is not a matter of wonderment that law reporters are such a solemn, unhappy-looking body of men, when they have to follow the gentle murmurings of a judge, and send in a verbatim report of his judgment. But I mustn't let my pen run away with me on this subject. Besides, I feel

strongly on it, and that is a good ground for abstaining from urging of it. One word, however, in conclusion. Mr. Justice Barnes's judgments are worthy of the fullest report, and, in extenuation of his low speaking, let me say nine-tenths of the judges suffer from the same complaint.

Mr. Justice Kennedy is, at present, much too careful, too scrupulous, and altogether too conscientious.

The late Lord Justice Bowen defined the three judicial stages, which he said every judge traversed, as follows: The first—I believe I am summarizing correctly—in which the judge is always afraid he is not doing right; the second, in which he is sure he is always right; and the third, in which he doesn't care whether he is right or not.

Now, Mr. Justice Kennedy is in the first stage, and as no judge can ever be entirely satisfactory unless he is in the second stage, it is to be hoped our learned judge will soon enter that blissful state.

As I have before remarked during the progress of these notes, speedy administration of some sort of justice is better than the tardy administration of the exact law. And besides, in the waste of life, accuracy is a very unreal blessing!

Although counsel and solicitors make the most trifling application a matter of vital importance, it matters little, if anything, in the long run whether an interrogatory is properly allowed or improperly excluded, or whether a pleading is rightly struck out or not. And then again, what rubbish it is to say that it is better that a hundred guilty persons should be acquitted than that one who is innocent should be convicted. It is exactly the other way about. Most "innocent" people should, if they had their deserts, be in gaol, and every guilty person out of gaol renders individual security less substantial.

For my part, I detest those parrot cries which startle the thinker at every turn. To



MR. JUSTICE BARNES.
From a Photo. by Barrouds, Ltd.

take another example, which doesn't concern my subject in the least, and therefore, according to present-time fashion, is doubly appropriate. The so-called truism "Every man is held innocent by the law until he is proved guilty" is as absurd as truisms generally are. The converse, here again, is the truth, the true position of affairs being that if a man in the dock cannot satisfactorily explain his presence there, he must be sent to prison.

Well, to return: Mr. Justice Kennedy thinks too much of the intrinsic merit of every party's case, and takes too much trouble in endeavouring to hold the balance of justice fairly. But this he will grow out of. Every day he improves on the past, and in time I have no doubt that he will make an excellent judge. As it is, he is an uncommonly good lawyer, and has been specially praised by the Court of Appeal. But at



MR. JUSTICE KENNEDY.
From a Photo. by Whitlock, Birmingham.

present he lacks the dash which spells success.

Let me give an example of how things should be done. Some little time ago, I applied for judgment under Order XIV., s. I. My application was granted, and the other side appealed. The appeal came on for hearing before a certain judge.

The other side produced a huge affidavit, and without a moment's hesitation the said learned judge, saying he couldn't wade through the whole affidavit, discharged the order and gave the defendants unconditional leave to defend. It was an unwarrantable exercise of the

judicial prerogative, and yet we were satisfied. "Doesn't keep you hanging about all day," my solicitor genially remarked, and the lay client ruffled his brow and said: "Knows his business, doesn't he? Sharp's a needle." I was a bit overcome, but even I was gratified. I *knew* the judge was wrong.