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[Prerogative Will-Office.]

CI.—DOCTORS' COMMONS.

Among those mysterious places which one constantly hears of, without being able very clearly to understand, is that known by the scarcely less mysterious appellation of Doctors' Commons. We are aware that it is a locality which has a great deal to do with wills, and something with matrimony—that husbands, for instance, go there to get rid of unfaithful wives—wives of unfaithful or cruel husbands; and that, we believe, is about the extent of the general information on the subject. Many, no doubt, like ourselves, have thrown a passing glance into that well-known gateway in the south-western corner of St. Paul's Churchyard, with a vague sentiment of curiosity and expectation, and have added as little as we have to their slender stock of information by so doing: the most noticeable feature being the board affixed to the wall by the "Lodge," calling on strangers to "stop," and warning them against the blandishments of certain porters; whilst, as an amusing commentary, one of the said offenders is sure to come up to you with a delightful air of unconscious innocence to repeat the offence. But the desire to serve their fellow-creatures is evidently a passion with the porters of Doctors' Commons: there is nothing they are not prepared to do for you, even if it be to offer to relieve your failing sight by reading aloud the very warning in question. Well, we have no cause to answer or to institute, so are in no

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danger of being seduced into employing our volunteer guide's favourite proctor: but he shall lead us through these comparatively unknown regions. The word Lodge naturally makes us look for the edifice of which it is an appendage, and as we pass through the gateway a stately house, on the right of the small open square, presents itself, enclosed within lofty walls: but that, it appears, is the Dean of St. Paul's house. As we step into Carter Lane, we are reminded of the palace formerly standing here, called the Royal Wardrobe, and to which the widow of the Black Prince, the once "Fair Maid of Kent," was brought after the frightful scene in the Tower, in 1381, when the followers of Wat Tyler broke into it, murdered the chief men they found there, and treated her so rudely that she fell senseless; and here in the evening of the same day her son King Richard joined her. From Carter Lane a narrow passage leads us into Knight Rider Street, deriving its name from the circumstance, as our guide informs us, with a smile and a look which seem to express his wonder at his own learning, that the train of mounted knights used to pass through this street in the olden time on their way from the Tower to the tournaments in Smithfield. That fact having been duly impressed, he next points out to us the famous Heralds' College on Bennett's Hill; and, lastly, the inscription over a plain-looking building opposite, "the Prerogative Will Office"—one of the most interesting and important features of Doctors' Commons. Persons are passing rapidly in and out the narrow court, their bustle alone disturbing the marked quiet of the neighbourhood. At the end of the court we ascend a few steps and open a door, when the scene exhibited in the engraving at the head of this paper is before us. At first all seems hurry and confusion, or at least as if every one had a great deal of work to do, in a very insufficient space of time. Rapidly from the top to the bottom of the page run the fingers of the solicitors' clerks, as they turn over leaf after leaf of the bulky volumes they are examining at the desks in the centre, long practice having taught them to discover at a glance the object of their search; rapidly move to and fro those who are fetching from the shelves or carrying back to them the said volumes; rapidly glide the pens of the numerous copyists who are transcribing or making extracts from wills in all those little boxes along the sides of the room. But as we begin to look a little more closely into the densely packed occupants of the central space, we see persons whose air and manners exhibit a striking difference to those around them: there is no misunderstanding that they are neither solicitors nor solicitors' clerks acting for others, but parties whose own interests may be materially affected by the result of their search. Even that weather-beaten sailor just come in, whose face one would think proof against sensibility of any kind, reveals the anxiety of its owner. He has just returned probably from some long voyage, and one can fancy him to have come hither to see whether the relative, who, the newspapers have informed him, is dead, has left him, as he expected, the means of settling down quietly at home at Deptford, or Greenwich, or some other sailor's paradise. He steps up to the box here on our right hand, just by the entrance, pays his shilling, and gets a ticket, with a direction to the calendar where he is to search for the name of the deceased. He must surely be spelling every name in that page he has last turned over; aye, there it is; and he now hurries off, as directed, with the calendar, to the person pointed out to him as the clerk of searches. A

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volume from one of the shelves is immediately laid before him, the place is found, and there lies the object of his hopes and fears—the eventful will. Line by line you can see his face grow darker and darker—a grim smile at last appears—he has not been forgotten—there is a ring perhaps—or five-pounds to buy one, or some such trifle: the book is hastily closed; and the sailor hurries back to his old privations and dangers, deprived of all that had so long helped him to pass through them with patience, if not cheerfulness. Here again is a picture of another kind: a lady, dressed in a style of the showiest extravagance, whose business is evidently of a more important kind than a mere search—an executrix probably—is just leaving the office, when at the door she is met by another lady, with so low a curtesy, and with such an expression of malice in the countenance, as at once tells the story confirmed by their respective appearances. The successful and the unsuccessful have met. The former, however, hurries away, or we should have a scene from nature, that Fielding or Molière might have been pleased to witness.

When we consider the immense amount of business transacted in this Court, we need not wonder at the bustle that prevails in a place of such limited dimensions. As the law at present stands, if a person die possessed of property lying entirely within the diocese where he died, probate or proof of the will is made or administration taken out before the Bishop or Ordinary of that diocese; but if there were goods and chattels only to the amount of 5*l.** (in legal parlance, *bona notabilia*) within any other diocese, and which is generally the case, then the jurisdiction lies in the Prerogative Court of the Archbishop of the province, that is, either at York or at Doctors' Commons—the latter, we need hardly say, being the Court of the Archbishop of Canterbury. The two Prerogative Courts therefore engross the great proportion of the business of this kind through the country; for although the Ecclesiastical Courts have no power over the bequests of or succession to unmixed real property, if such were left, cases of that nature seldom or never occur. And, as between the two provinces, not only is that of Canterbury much more important and extensive, but since the introduction of the funding system, and the extensive diffusion of such property, nearly all wills of importance belonging even to the province of York are also proved in Doctor's Commons, on account of the rule of the Bank of England to acknowledge no probates of wills but from thence. To this cause, among others, may be attributed the striking fact that the business of this Court between the three years ending with 1789, and the three years ending with 1829, had been doubled. The number of wills proved in the latter period was about 6500, the number of administrations granted (that is, where no will had been left) about 3500; since then, we believe, the business has not materially increased. Of the vast number of persons affected, or at least interested in this business, we see, not only from the crowded room before us, but from the statement given in the Report of the Select Committee on the Admiralty and other Courts of Doctors' Commons in 1833, where it appears that in one year (1829) the number of searches amounted to nearly 30,000. In the same year extracts were taken from wills in 6414 cases. Should any of our readers wonder how this latter estimate is obtained, or why it should be necessary to employ the office clerks in so many

* Except in the Diocese of London, where the amount is 10*l.*

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instances, if that be the explanation given, let him amuse himself by stepping into the office, and call for one of the great treasures of the place—nay, the greatest—Shakspere's will. As he gazes with reverential eyes on the writing that bequeathed the poet's property to his offspring, traced by the same fingers that from boyhood upwards had seldom touched paper but to bequeath wealth beyond all price to posterity,—as he pauses over even the most indifferent words, hoping to find some latent meaning, or turns with a feeling of heartfelt congratulation to the passage respecting Shakspere's wife, till of late so inexplicable, if not painful—now, through the recent discovery, so clear and satisfactory*—he will very likely feel an inclination to copy some remarkable phrase or sentence. But as he unwittingly takes out a pencil for that purpose, in the very sight of one of the officers passing at the time, who shall paint the horror that overspreads the countenance of the latter! A pencil in the hands of a stranger in the Prerogative Court!—it is well for the offender that Prerogative has grown comparatively mild and amiable of late centuries, or at least that its claws have been very closely pared, which comes to the same thing, for else there is no saying what might not be the consequence. In sober truth, there is something very ludicrous in the excessive jealousy shown in this matter. Sir W. Betham complained that they would not, even for genealogical purposes, allow a person to make a memorandum or list of wills from the *index*, much less from the office *copies* of wills; and, in consequence, one naturally wonders how much of this is proper and necessary for the safety of the documents, to prevent their being tampered with, and how much of it is produced by the contemplation of the profits made from the enforced employment of those busy gentlemen in the boxes. In other points the management of the office is admirable. Wills, of whatever date, are always to be found at half an hour's notice—generally a very few minutes suffice. They are kept (those only excepted which have come in recently, and have not passed through the preliminary processes of engrossing, registering, and calendaring,) in a fire-proof room called the Strong Room. The original wills begin with the date of 1483, the copies from 1383. The latter are on parchment, strongly bound with brass clasps, and so numerous as to fill with dingy-looking volumes every nook and corner of the public room, and also partially to occupy a room above stairs. We must add to this notice of the Office, that in country cases, when it is inconvenient for parties to come to London to be sworn, commissions are issued. The number of such commissions issued in one year (1832) was 4580, besides 300 special commissions for particular cases, such as of limited administrations, special probates of trust property, and the wills of married women.

But what, it may be and no doubt often is asked, is the meaning of the connection between the Church and wills,—the Archbishop of Canterbury and the goodly estate left by the retired cheesemonger who died last week? The answer is a somewhat startling one. Dr. Nicholl, in his recent speech in the House of Commons, referring to the testamentary causes, says, "These came under such jurisdiction at a period when the bishops and other clergy claimed the property of intestates to be applied to pious uses, without even being required to pay their debts. In the course of time this claim had been considerably limited, and

* See 'Pictorial Shakspere;' note on Postscript to 'Twelfth Night.'

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the clergy were obliged to pay the debts of the intestate out of his property before any of it could be applied to pious uses. Subsequent restrictions had, however, required that the property of the intestate should be given to his widow and children; and afterwards it was enacted, that where such relations did not exist, the property should go to the next of kin, and, failing these, should go to the Crown." So that, instead of being surprised that so much of our property should pass into the jurisdiction of the Church, we have reason rather to be thankful in many cases that it ever comes out again. As the ecclesiastical jurisdiction in testamentary causes is not an isolated feature of Doctors' Commons, but, on the contrary, both in its origin and history, intimately connected with the other Courts we are about to mention, and as so much of that jurisdiction is at this very moment passing away by the consent of the heads of the Church itself, we must enter a little more closely into the matter. All readers of history are familiar with the endeavours made by the priesthood in every country of Europe, after the complete establishment of Christianity, to obtain authority in temporal as well as in spiritual affairs; endeavours which were nowhere more characterised by greater pertinacity and boldness than in England, because nowhere more energetically resisted; and, though defeated in their grand object of reducing our sovereigns to a state of vassalage to the Pope, even if they could not get the sovereign power itself vested in ecclesiastics, as they did in some of the states of the great German confederation, yet, short of that, their influence could hardly have been much greater than it was in this country for some centuries. And it could not well be otherwise. Being the only large class of persons that could be deemed an instructed one, during the middle ages, power naturally flowed into their hands, and though used no doubt in the main more for the benefit of the people than it could have been if vested elsewhere, was, it is equally doubtless, perverted to their own selfish gratifications. Hence their enormous wealth, hence their countless privileges, by which they were enabled to avoid all the duties of citizenship, and obtain a thousand advantages which just citizenship cannot bestow; hence their castles and hosts of retainers; hence their full-blown pride and ambition. But the most striking evidence of their power, and, we must add, of their comparative fitness for power, is the existence among us to this hour of the canon law, which is simply a collection of the ordinances, decrees, decretal epistles, and bulls issued by the Popes or the councils of the Roman Catholic Church, and the general tendency of which was to establish the supremacy of the spiritual over the merely temporal authority. A new system of law thus sprung up by the side of the Civil or Roman law, with which it became gradually connected. The earliest English Ecclesiastical Courts appear to have been established by the Conqueror William, and at the same time the Bishops were forbidden thenceforth to sit, as they had been accustomed, in the civil courts of the country, with laymen. By the time of Henry II. we read of the Courts of the Archbishop, Bishop, and Archdeacon. It was a critical period in the history of the Church. The struggle for supremacy began in the reign of William, and was for a great length of time hotly continued. To a certain extent the Ecclesiastics were successful. They established the partial authority of the canon law in their own courts, and they managed to introduce the civil law into the ordinary tribunals. But that was all. As regards their chief object, spiritual supremacy, they failed.

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Their canon law was received, it is true, and became an important part of English jurisprudence, but received in the spirit of a "people" who had "taken it at their free liberty, by their own consent to be used among them, and not as laws of any foreign prince, potentate, or prelate,"* and who, therefore, took considerable liberties with it in so doing. Not only, for example, have the kings and barons of our earlier history steadily opposed all its doctrines of non-resistance and passive obedience, but the most eminent lawyers at all times exhibited so little deference for its authority, that it gradually sank, with the civil law, into the position described by Blackstone, who observes, "that all the strength that either the papal or imperial laws have obtained in this realm, is only because they have been admitted and received by immemorial usage and custom, in some particular cases, and some particular courts; and then they form a branch of the *leges non scriptæ* (unwritten laws), or customary laws; or else because they are, in some other cases, introduced by consent of parliament, and then they owe their validity to the *leges scriptæ*, or statute law." To the former class essentially belong the courts of Doctors' Commons, and all the numerous minor ecclesiastical courts through the country—which are at once the chief remains of the civil and canon laws among us, and of the mighty temporal power formerly exercised by the church.

The chief courts of Doctors' Commons are—the Court of Arches, which is the supreme ecclesiastical court of the whole province; the Prerogative Court, where all contentions arising out of testamentary causes are tried; the Consistory Court of the Bishop of London, which only differs from the other consistory courts throughout the country in its importance as including the metropolis in its sphere of operations; and the Court of Admiralty, which seems, at the first glance, oddly enough situated among such neighbours. All these hold their sittings in the Common Hall of the College, towards which we now direct our steps. We have not far to go. Some fifty yards or so up the street, we pass through an unpretending-looking gateway, and find ourselves in a square, surrounded on three sides with good old handsome houses, each door bearing the name of 'Dr.' —— some one, names mostly familiar to the public in connection with the reports of trials in Doctors' Commons; whilst in front is the entrance to the Hall, which projects into the square from the left, forming a portion of its fourth side. Without any architectural pretension, this is a handsome and exceedingly comfortable court. The dark polished wainscot reaching so high up the walls, whilst above are the richly-emblazoned coats of arms of all the Doctors for a century or two past; the fire burning so cheerily, this winter's day, in the stove in the centre; the picturesque dresses of the unengaged advocates in their scarlet and ermine, and of the proctors in their ermine and black, lounging about it; the peculiar arrangement of the business part of the Court, with its raised galleries on each side, for the opposing advocates; the absence of prisoner's dock or jury-box—nay, even of a public, of which we do not see a solitary representative—altogether impress the stranger with a sense of agreeable novelty. As to the business going on, it is a sitting of the Court of Arches; and the cause one of the least interesting of the subjects that come before this Court, which include, as in Chaucer's time, cases—

* Preamble to Statute 25 Hen. VIII.

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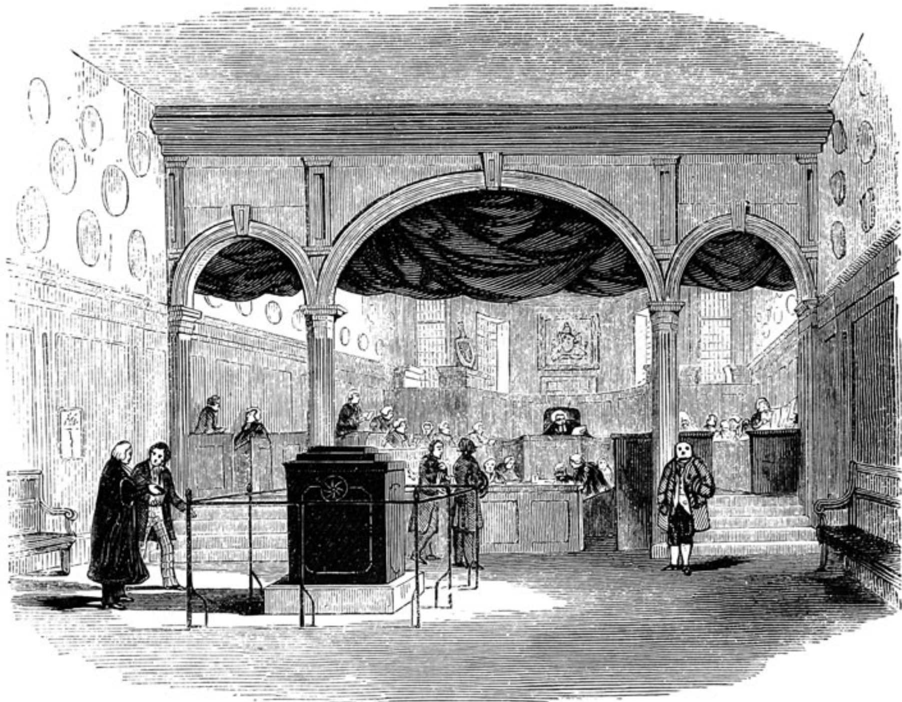

[Hall of Doctors' Commons.]

"Of defamation, and avouterie,
Of church reves, and of testaments,
Of contracts, and lack of sacraments,
Of usure and simony also:"

besides those of sacrilege, blasphemy, apostacy from Christianity, adultery, partial or entire divorce, incest, solicitations of chastity, and a variety of others connected chiefly with the discipline of the Church, its buildings, and its officers: a formidable list of offences, when the Church was strong enough to enforce its powers, and, in case of conviction, to punish offenders with the infliction of fines and penances, or the more awful doom of excommunication. Almost the only criminal cases now brought before the ecclesiastical courts throughout England are those for defamation, generally of female character, and for brawling and smiting in churches, or places attached, as vestries. Penance for defamation, though almost banished from the supreme courts here, is still in practice, it appears, in the country. In connection with the dioceses of Exeter, Salisbury, and Norwich we read, in the Report of the Ecclesiastical Commissioners on the Ecclesiastical Courts, in 1832 (the Report on which the measures now pending are based) of cases of this kind;—but the ridicule and excitement caused by the appearance, in open church, of offenders in their white sheets, has caused the penance to be privately performed. The general method seems to be that described by Mr. John Kitson, the "Joint Principal Registrar" of Norwich: the defamer makes retractation in church, "in the presence of the complainant and six or eight of her friends." The nature of the business in the Court of Arches may be best shown by the brief summary given in the Report, for three years—1827, 1828, and 1829. There were twenty-one matrimo-

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nial causes: one of defamation, four of brawling, five church-smiting, one church-rate, one legacy, one tithes, four correction—total, thirty-eight; of these, seventeen were appeals from other courts and twenty-one original suits. The last arise from the Court having original jurisdiction in certain cases, and assuming it in others, at the request of the inferior courts. The great majority of cases, it will be seen, are matrimonial. Dr. Nicholl "conceived that the jurisdiction in matrimonial contracts was given to ecclesiastical courts partly in consequence of the fact that marriage, at that period, was regarded as a sacrament, and partly because the marriage law was chiefly founded on the canon law." The peculiar mode of procedure in this Court (and it is the same in the others) demands some notice. At the commencement of a suit a proctor is employed, who obtains a citation, calling upon the party, whether defendant or offender, to appear. This citation is served by one whom Chaucer has made an old acquaintance, though he now appears under a new name. He is no longer the Sumpnour, but the Apparitor. And we may pause a moment to observe that this change is but the slightest of the many this character has undergone. In the very commonplace but, no doubt, respectable person, who now executes the high behests of the Church, who would look for the successor of him whose portrait is given in Chaucer's matchless collection?—

"A Sumpnour was there with us in that place,
That had a fire-red cherubinnes face;
* * * * *
With scalled* browes black, and pilled† beard,
Of his viságe children were sore afeard.
There n' as quicksílver, litarge, ne brimstóne,
Boras, ceruse, ne oil of tartar none,
Ne ointement that woulde cleanse or bite,
That him might helpen of his whelkes‡ white,
Ne of the knobbes sitting on his cheeks.
Well lov'd he garlic, onions, and leeks;
And for to drink strong wine as red as blood,
Then would he speak, and cry as he were wood.§
And when that he well drunken had the wine,
Then would he speaken no word but Latíne,
A fewe termes could he, two or three
That he had learned out of some decree."

Alas! the sources of all these generous tastes, good living, and of so much personal beauty, are gone; he is no longer allowed to seek out, as of old, cases for punishment, with the agreeable alternative of showing a world of kindly feeling and mercy, when melted into compassion by—the proper reasons. From being, as he was, the dread and curse of the community, he has, it must be owned, sunk into melancholy insignificance. Well, the citation served, and the party appearing (if not, he is declared in contempt, which is, even now, a really serious piece of business), a war of allegations and counter-allegations commences; then witnesses are examined, each alone by the examiner, on oath, on a set of questions as well calculated as so vicious a system can admit for the eliciting of the truth; and then the opposing advocates finally appear in Court, each armed with his formidable mass of papers, from which he lays the case before the Court, selecting such evidence as he pleases. Of course his sins, whether of

* *Scalled*—scurfy. † *Pilled*—bald, or scanty.
‡ *Whelkes*—probably some corrupt humour breaking out on the face. § *Wood*—mad.

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omission or commission, are pointed out by the advocate in the gallery opposite, and thus the judge, who is busy making notes the whole time, obtains as complete a view of the case as is possible where the witnesses do not appear in Court to give their evidence publicly, when there may be those present who could detect any falsehood, and where they are free from the grand test of all truth—cross-examination. Yet there should be something good in this mode of examining witnesses, when we find the Bank solicitor, Mr. J. W. Freshfield, making the following statement to the commissioners:—

"My opinion is, that *vivâ voce* examination is the very worst method; that the examination in the Court of Chancery [where distinct but unalterable questions are put] is defective in an inferior degree; and that the examination in the Ecclesiastical Court is the most perfect: speaking of my own experience upon that subject, I think that in *vivâ voce* examination it is not the question what is the truth, but how much of the truth shall be allowed to be elicited: it is a question who is to be the examiner, and what will be the state of the nerves of the individual who is to be examined." He adds, that whilst a violent man with good nerve often becomes a partisan from the personal and annoying character of his examination, and says more than he knows—timid men, on the contrary, either give their evidence very insufficiently, or stay away altogether. Being asked whether he has ever known an instance of an honest witness being kept back from examination in the prudent management of a cause, he replied, "Many instances; I have known it done at considerable peril. I have had to tender, or not to tender, in my own discretion, men of the highest honour, upon whose veracity I would pledge my life; but have decided against their production, on account of the anxiety I have felt as to what might be the effect of placing them in the witness-box"*

On the other hand, another highly respectable solicitor, Mr. T. Hamilton, says he knows of a case in which "the plaintiff lost a valuable property from nothing in the world else but because the interrogatories were previously formed; the material witness was the solicitor to the defendant, and it was impossible to get out the whole facts on cross-interrogatories so prepared."† The truth lies, it is tolerably evident, between the two: to our mind there can be no question of the value, nay, the indispensableness of cross-examination in courts of justice; the problem, therefore, to solve is, how the rude, frequently brutal conduct of counsel is to be restrained, and a witness's feelings and character spared the outrages too frequently committed on both without the slightest provocation, with no other object indeed than a reckless determination to misrepresent or to lessen the value of his evidence, simply because it is unfavourable. Mr. Freshfield's statement at all events demands consideration, and, if possible, remedy. Surely the Judges themselves ought to have the power to repress all that tends to the obstruction of justice, even though it be done on the plea of the advancement of justice; and might lay down a few simple, well-considered rules for counsel, and enforce their observance.

With the growth of the canon law there grew up also in connection with it a race of judges, commentators, and practitioners, at first distinct from the analogous body of persons belonging to the civil law, but gradually becoming even more closely connected with them than the laws themselves, until at last there

* Report on Eccles. Courts, p. 38. † Ibid. p. 46.

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remained, in England at least, but one body, the existing Doctors of Civil Law, who alone have the right of practising as advocates of Doctors' Commons. The period of the junction of the students in both laws seems to be the Reformation; before that event degrees were as common in the canon as in the civil law, many persons indeed taking both; but in the 27th of Henry VIII. that monarch prohibited the University of Cambridge, and probably of Oxford also, from having lectures or granting degrees in the canon law. The practice of the supreme Ecclesiastical Courts must, therefore, have necessarily fallen into the hands of the doctors of civil law. The founder of what we now call Doctors' Commons was, according to Maitland, "Dr. Henry Harvey, doctor of the civil and canon law, and master of Trinity Hall in Cambridge, a prebendary of Ely, and dean (or judge) of the Arches; a reverend, learned, and good man," who purchased a house here for the doctors to live in, in *common* together, hence the name. This house was burnt down in the Great Fire, and the present building erected on the site by the members. The doctors, we may observe, still dine together in a room adjoining the Court, on every court day. The admission of doctors to practice as advocates is a stately piece of ceremony, the new member being led up the Court by two senior advocates, with the mace borne in front, and there being much low bowing and reading of Latin speeches. The number of advocates at present, we believe, is twenty-six; the difference in the dress that we perceive among them marks them respectively as Cambridge and Oxford men. The proctors, who are in effect the solicitors of Doctors' Commons, are also admitted with ceremonials, and have to exhibit their attainments in a similar manner. Every pains are taken to ensure their respectability. When articled, at or after the age of fourteen, they must present a certificate from the schoolmaster as to their progress in classical learning; they are then articled for seven years, and a considerable fee is given to the proctors, and as only the senior proctors are allowed to take such clerks, and to have but two at the same time, a considerable amount of experience and knowledge of the laws and customs of Doctors' Commons is ensured. Finally, they can only be admitted to practise as proctors by presenting a certificate signed by three advocates and three proctors, stating their fitness. Yet, with all this precaution, there appears to be something more than suspicion on the minds of some of the respectable witnesses examined by the commissioners, that there are those among them who—to alter an old phrase—go the way of all lawyers.

One of the legal beauties of the Ecclesiastical Courts' system is that of appeal; a system certainly unique for the admirable skill with which it cherishes the pettiest and weakest cases till they grow into importance and respectability, raising them gradually, a step at a time, till the litigating combatants, instead of having their own little town or village coterie for spectators, look around with amazement at their own grandeur, from the elevation of a supreme metropolitan court. Mark the advancing stages which a case may have to, and often does, pass through. First, there are spread through the country two or three hundred minor courts, essentially the same in all cases, though bearing a variety of appellations, as peculiars of various descriptions, royal courts, archi-episcopal, episcopal, decanal, sub-decanal, prebendal, rectorial, vicarial, and a few manorial courts having similar jurisdiction. This is the base of the edifice, and in one of these we will suppose a case arises, is heard, and decided, and, being unsatisfactory to

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