SHAKESPEARE'S LEGAL MAXIMS.

BY

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Juvat integros accedere fontes atque haurire.
LUCRETIUS.

It is pleasant to handle an untouched subject.
HENRY FIELDING.

LIVERPOOL:
HENRY YOUNG & SONS,
1907.

NOTICE.

THE first edition of this attempt to illustrate

ERRATA.

age	10,	Line	13,	*for* Revocare	*read*	Revocari
,,	18,	,,	14,	,, Leges	,,	Legis.
,,	25,	,,	10,	,, Ædificio	,,	Ædifico.
,,	31,	,,	13,	,, Jurator	,,	Juratore.
,,	33,	,,	9,	,, Debit	,,	Debit'
,,	36,	,,	9,	,, Jussa	,,	Jussu.
,,	38,	,,	26,	,, Cogitationes	,,	Cogitationis.
,,	38,	,,	14,	,, Hood's	,,	Wood's.
,,	42,	,,	4,	,, Rarmun	,,	Ramum.
,,	44,	,,	9,	,, Eum aliam	,,	Cum alium.
,,	52,	,,	24,	,, Quid	,,	Quia.
,,	53,	,,	21,	,, Civitus	,,	Civitas.
,,	54,	,,	23,	,, Debet	,,	Debent.
,,	54,	,,	24,	,, Continum	,,	Continuum.
,,	56,	,,	13,	,, Et	,,	Ex.
,,	56,	,,	14,	,, Justa	,,	Juxta.

himself, without acknowledgment, of Mr. Rushton's labours, as the *Examiner* conclusively pointed out. Like its predecessor, this brochure shows the author is deeply read in law.'

NOTICE.

The first edition of this attempt to illustrate obscure passages in the works of William Shakespeare by legal maxims was published when I was a student-at-law. It was sent to the press for review, and some of the London papers referred to it as a second edition of 'Shakespeare a Lawyer.' The only notice I saw of it appeared in the *Liverpool Albion* as follows:—

'Not very long since, Mr. Rushton published a pamphlet, "Shakespeare a Lawyer," which attracted considerable attention in the literary and theatrical world. It is well known that Lord Campbell, some time afterwards, published a similar work, availing himself, without acknowledgment, of Mr. Rushton's labours, as the *Examiner* conclusively pointed out. Like its predecessor, this brochure shows the author is deeply read in law.'

On page 100 of 'William Shakespeare' by Karl Elze, published in Germany in 1876, the following may be seen :—

'Lord Campbell, "Shakespeare's Legal Acquirements," London, 1859—Vergl. ausserdem W. L. Rushton, "Shakespeare a Lawyer," London, 1858. Rushton ist schon vor Lord Campbell zu dem gleichen Ergebnisse gekommen wie dieser, wenngleich sich seine Schrift im Uebrigen nicht mit der des letztern messen kann. Beachtung verdienen jedoch Rushton's Erklärungen der einschlagenden Stellen bei Shakespeare.'

German students of Shakespeare, who are induced by this note to refer to Lord Campbell's 'Shakespeare's Legal Acquirements Considered' for accurate explanations of the law and law terms they meet with in Shakespeare's works, will often be misinformed, because that book contains many mistakes in law.

Bacon, in his 'Legal Maxims,' says, 'It might have been more flourish and ostentation of reading to have vouched the authorities and sometimes to have enforced or

noted them; yet I have abstained from that also, and the reason is, because I judged it a matter undue and preposterous to prove rules and maxims.' I should have saved myself some trouble if I had 'abstained from the flourish and ostentation' of vouching my authorities.

In the plays of Ben Jonson, George Chapman, and other dramatists of their time, legal maxims are to be seen in Latin. Shakespeare never quotes legal maxims in Latin, but he gives correct translations of them which are so embodied in his verse and prose that they have not the appearance of quotations. This may be one of the reasons why they have not been noticed by the commentators. Another reason may be that the commentators who were not members of the legal profession did not recognise them because they were ignorant of law, and the commentators who were lawyers did not recognise them because they were ignorant of Shakespeare. Shakespeare's correct translations of legal maxims are, I think, the only satisfactory evidence we have of his knowledge of Latin.

I now give one example of Shakespeare's correct translations of the Latin maxims, and of the good verse he makes of it.

Dormiunt aliquando leges moriuntur nunquam.
The law hath not been dead, though it hath slept.

where the verbs dormio and morior in Latin are represented correctly by the verbs sleep and die in English. Although Bacon's legal maxims are twenty-five in number I have not found any of them in Shakespeare's plays, but a portion of one of them [1]—Sententia definitiva revocari non potest, as I venture to put it—expresses the law to which Shakespeare refers in the *Comedy of Errors.*

Duke. But, though thou art adjudged to the death,
And *passed sentence cannot be recall'd*
But to our honour's great disparagement,
Yet will I favour thee in what I can.
Comedy of Errors, Act i. Scene 1.

Those who believe that Francis Bacon wrote the plays attributed to William Shakespeare

[1] Sententia interlocutoria revocare potest, definitiva non potest.

may think that this statement is worthy of consideration.

Some commentators have concluded that Shakespeare was not a lawyer because, as they say, he has made mistakes in law. In answer to this conclusion, I ask three questions.

1. Is there a barrister or a solicitor in large practice, or a judge on the bench, who can say with truth, 'I never made a mistake in law'?

> Seldom sits the judge that may not err.
> *Partheniades.*

2. Why have we a Court of Appeal?

3. Was it established to confirm or reverse the judgments and decisions of men who were *not* lawyers?

But it is not necessary to cite the Court of Appeal to prove that even learned lawyers make mistakes in law. It is sufficient to mention Lord Campbell, who in his 'Shakespeare's Legal Acquirements Considered,' has made several mistakes in law, a few of which I have noticed in Archiv. f. n. Sprachen and in 'Shakespeare's Testamentary Language,'

published in the year 1869. The Appendix B. of that book concludes with these words: 'We all know that Lord Campbell was a lawyer of great experience, yet in his "Shakespeare's Legal Acquirements Considered" he has made several mistakes in law. How, then, could any errors in law which I might find in Shakespeare's works afford conclusive evidence that Shakespeare was not a lawyer?'

4 Ullet Road,
Dingle,
Liverpool,
Long Vacation, 1907.

SHAKESPEARE'S LEGAL MAXIMS.

> Qui genus humanum ingenio superavit, et omneis
> Restinxit, stellas exortus uti aerius sol.
>
> *Lucretius.*

THE lawyer, when he reads attentively the works of William Shakespeare, may not be more surprised by the poet's correct use of law terms, and intimate acquaintance with legal customs and tenures, and the lex scripta, than by his extensive and profound knowledge of the maxims of the English law.

Portia. To offend and judge are distinct offices,
And of opposed natures.

Merchant of Venice, Act iii. Scene 1.

Queen Katherine. I do believe,
Induc'd by potent circumstances, that
You are mine enemy; and make my challenge
You shall not be my judge: for it is you
Have blown this coal betwixt my lord and me,—

Which God's dew quench!—Therefore I say again,
I utterly abhor, yea, from my soul
Refuse you for my judge; whom yet once more
I hold my malicious foe, and think not
At all a friend to truth.

Henry VIII., Act ii. Scene 4.

¶ Nemo debet esse judex in suâ propriâ causâ (12 Rep. 113). No one ought to be a judge in his own cause. It is a fundamental rule in the administration of justice that a man cannot be judge in a cause in which he is interested (per cur. 2 Stra. 1173). Nemo sibi esse judex vel suis jus dicere debet (C. 3, 5, 1).

If a man will prescribe, that if any cattle were upon the demeanes of the manor, there doing damage, that the lord of the manor for the time being hath used to distrain them, and the distress to retain till fine were made to him for the damages at his will, this prescription is void; because *it is against reason, that if wrong be done any man, that he thereof should be his own judge;* for by such way, if he had damages but to the value of a halfpenny, he might assess and have therefor one hundred pounds, which

would be against reason. And so such prescription, or any other prescription used, if it be against reason, this ought not nor will not be allowed before judges; Quia malus usus abolendus est. An evil or invalid custom ought to be abolished (Co. Litt. s. 212). It is also a maxim of the law of England, that Aliquis non debet esse judex in propriâ suâ causâ quia non potest esse judex et pars (Co. Litt. 141a).

Olivia. This practice hath most shrewdly pass'd upon thee;
But, when we know the grounds and authors of it,
Thou shalt be both the plaintiff and the judge
Of thine own cause.

Twelfth Night, Act v. Scene 1.

Portia and Queen Katherine both seem to refer to this maxim; and Olivia promises, when the persons are discovered who have made Malvolio—

The most notorious geck and gull
That e'er invention play'd on,—

that she will then allow him to be both plaintiff and judge of his own cause, not-

withstanding that Nemo debet esse judex in propriâ suâ causâ.

Shy. My deeds upon my head! I crave the law,
The penalty and forfeit of my bond.
Por. Is he not able to discharge the money?
Bass. Yes, here I tender it for him in the court;
Yea, twice the sum: if that will not suffice,
I will be bound to pay it ten times o'er,
On forfeit of my hands, my head, my heart:
If this will not suffice, it must appear
That malice bears down truth. And, I beseech you,
Wrest once the law to your authority:
To do a great right, do a little wrong;
And curb this cruel devil of his will.
Por. It must not be; there is no power in Venice
Can alter a decree established:
'Twill be recorded for a precedent;
And many an error, by the same example,
Will rush into the state: it cannot be.
Merchant of Venice, Act iv. Scene 1.

Portia may expound the law of Venice, but in the English law it is an established rule to abide by former precedents, stare decisis, where the same points come again in litigation. An English judge is sworn to determine, not according to his own private

judgment (see per Lord Camden, 19 Howell's State Trials, 1071 ; per Williams, L. 4, Cl. and Fin. 729), but according to the known laws and customs of the land; not appointed to pronounce a new law, but to maintain and expound the old, Jus dicere et non jus dare : (I. Bla. Com. per Lord Kenyon, C. J., 5 T. R. 682, 6 Id. 605, and 8 Id. 239; per Grose, J., 13 East, 321; per Lord Hardwick, C. Ellis v. Smith. 1 ves Jun. 16 T. R. 696, I. B. & B. 563). Stare decisis et non quieta movere—to stand by things as decided, and not to disturb those things which are tranquil, for Omnis innovatio plus novitate perturbat quam utilitate prodest (2 Bulstr. 388);—every innovation occasions more harm and derangement of order by its novelty, than benefit by its abstract utility. The ancient judges of the law have ever (as appeareth in our books) suppressed innovations and novelties in the beginning, as soon as they have offered to creep up, lest the quiet of the common law might be disturbed, and so have Acts of Parliament done the like (Co. Litt. 379b). The judges say in one book, 'We will not change the law which always hath been

used'; and another saith, 'It is better that it be turned into a default than the law should be changed, or any innovation made' (Co. Litt. 282b).

The rule — stare decisis — does, however, admit of exceptions, where the former determination is most evidently contrary to reason or divine law.

Cranmer. Ah, my good lord of Winchester, I thank you;
You are always my good friend: if you will pass,
I shall both find your lordship judge and juror.
Henry VIII., Act v. Scene 2.

Ad quæstionem facti non respondent judices ad quæstionem legis non respondent juratores (8 Rep. 308).

It is the office of the judge to instruct the jury in points of law—of the jury to decide on matters of fact. It is the office of the judges to instruct the grand assize or jury in points of law; for as the grand assize or other jurors are triers of the matters of fact, ad quæstionem facti non respondent judices, so, ad quæstionem juris non respondent juratores. It is of the greatest consequence to

the law of England and to the subject that these powers of the judge and jury be kept distinct, that the judge determine the law, and the jury the fact; and if ever they come to be confounded, it will prove the confusion and destruction of the law of England (Rex v. Poole, Cas. temp. Hardw. 28).

Eli. What now, my son! have I not ever said,
How that ambitious Constance would not cease,
Till she had kindled France, and all the world,
Upon the right and party of her son?
This might have been prevented, and made whole,
With very easy arguments of love;
Which now the manage of two kingdoms must
With fearful bloody issue arbitrate.

K. John. Our strong possession, and our right for us.

Eli. Your strong possession, much more than your right,
Or else it might go wrong with you and me:
So much my conscience whispers in your ear,
Which none but heaven, and you, and I, shall hear.

King John, Act i. Scene 1.

In æquali jure melior est conditio possidentis (Plowd. 296). Where the right is equal, the claim of the party in possession shall prevail. The lowest and most imperfect

degree of title consists in the mere naked possession, or actual occupation of the estate, without any apparent right, or any shadow or pretence of right, to hold and continue such possession. This may happen when one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands; which is termed a desseisin, being a deprivation of that actual seisin, or corporal freehold of the lands, which the tenant before enjoyed (2 Bla. Com. 195; 1 Institute, 345). Or it may happen that after the death of the ancestor and before the entry of the heir, or after the death of the particular tenant and before the entry of him in remainder or reversion, a stranger may contrive to get possession of the vacant land, and hold out him that had a right to enter. In such cases the wrong-doer has only a mere naked possession, which the rightful owner may put an end to by a variety of legal remedies. But until some act be done by the rightful owner to divest this possession and assert his title, such actual possession is prima facie evidence of a legal title in the possessor; and it may

by length of time, and negligence of him who hath the right, by degrees ripen into a perfect and indefeasible title (Bla. Com. 196).

King John seems to refer to this maxim when he says—

> Our strong possession and our right for us.

but Elinor says—

> Your strong possession much more than your right,

because John was not in æquali jure with Arthur, but he was a wrong-doer, having merely a naked possession; for after the death of Richard I., John occupied the throne in defiance of the right of his nephew Arthur, who was the son of John's elder brother Geoffry.

> *Hamlet.* Farewell, dear mother.
> *King.* Thy loving father, Hamlet.
> *Hamlet.* My mother: father and mother is man and wife;
> Man and wife is one flesh; and so, my mother.
> *Hamlet*, Act iv. Scene 3.

Vir et uxor sunt quasi unica persona, quia

caro una, et sanguis unus. (Bracton, lib. 5, Tract. 5, cap. 25).

Man and wife are as one person, because they are one flesh and blood. A man may not grant nor give his tenements to his wife, during the coverture, for that his wife and he be but one person in law (Litt. S. 168).

If a joint estate be made of land to a husband and wife and to a third person, in this case the husband and wife have in law in their right but the moiety, and the third person shall have as much as the husband and the wife, viz. the other moiety. And the cause is, for that the husband and wife are but one person in law, and are in like case as if an estate be made to two joint tenants, where the one hath by force of the jointure the one moiety in law, and the other the other moiety (Litt. S. 221): for the husband and wife are accounted to be one person in law, Duæ animæ in carne una (Lex divina, and see 4 Rep. 118).

Fal. Of what quality was your love, then?

Ford. Like a fair house, built upon another man's ground; so that I have lost my edifice, by mistaking the place where I erected it.

Merry Wives of Windsor, Act ii. Scene 2.

Quick. Marry, sir, I come to your worship from Mistress Ford.

Fal. Mistress Ford! I have had ford enough; I was thrown into the ford; I have my belly full of ford.

Quick. Alas the day! good heart, that was not her fault: she does so take on with her men; they mistook their erection.

Fal. So did I mine, to build upon a foolish woman's promise.

Merry Wives of Windsor, Act iii. Scene 5.

Quicquid plantatur solo solo cedit (Went. Off. Ex. 14 ed. 145). Whatever is affixed to the soil belongs to the soil. It is a general and a very ancient rule of law that whatever is affixed to the soil becomes, in contemplation of law, a part of the soil, and is consequently subject to the same rights of property as the soil itself. The ancient common law, regarding land as of far more consequence than any chattel which could be fixed to it, always considered everything attached to the land as part of the land (4 Rep. 64a; Lord Raymond, 738; Mackintosh v. Trotter, 3 Mee & Wel. 184, 186). Hence it follows that houses themselves, which consist of an aggregate of chattels personal (namely, timber,

bricks, &c.) fixed to the land, were regarded as land and passed by a conveyance of the land without express mention; and this is the law at the present time. So if a man eject another from land and afterwards build upon it, the building belongs to the owner of the ground on which it is built, according to the principle Ædificatum solo solo cedit. But where a man, supposing that he has a good title to an estate, builds upon the land with the knowledge of the real owner, who allows the erections to be made, without giving any notice of his claim, the Court of Chancery will compel him, in a suit brought for the recovery of the land, to make due allowance and compensation for such improvements. Ford evidently refers to this maxim, and Falstaff probably intends this much to be understood, that he committed as great a mistake, by building upon a foolish woman's promise, as they make who build upon another man's ground. Shakespeare does not in either of these passages, as Lord Campbell supposed, refer to Cujus est solum ejus est usque ad cœlum, which expresses the extent of the rights of the owner of land, but he

refers to the maxim Ædificatum solo solo cedit, which expresses the action of building on another man's land and the legal consequence of doing so.

When Shakespeare quotes a legal maxim he generally gives the words of the maxim and the law which it describes. So Ford makes use of the verb 'build' and the noun 'edifice' which words are exact translations of ædifico and ædificium.

George Chapman, in 'May Day,' makes a humorous application of Ædificium cedit solo. Ædificatum solo solo cedit, and Quicquid plantatur solo solo cedit, have their origin in Justinian's Institutes.

> *Angelo.* The law hath not been dead, though it hath slept.
>
> *Measure for Measure*, Act ii. Scene 3.

Dormiunt aliquando leges, moriuntur nunquam. The laws sometimes sleep, they never die. Although it was a maxim of the civil law that as laws might be established by custom, they could likewise become obsolete by disuse or be abrogated by contrary usage, Ea vero quæ ipsa sibi quæque civitas con-

stituit sæpe mutari solent vel tacito consensu populi vel aliâ posteâ lege latâ (I. L. 2, 11, Irving, Civil Law, 4th ed., 123): and by the law of Scotland a statute is said to lose its force by disuse (Stair, Macdonal, Wallace), if it has not been in execution for sixty years, and, according to some Scotch lawyers for a hundred years, and a distinction is made between statutes which are as it were half obsolete and those in viridi observantiâ, yet by the law of England every statute continues in force until it is repealed by a subsequent Act of Parliament. Lex Angliæ sine parliamento mutari non potest (2 Institute, 619), for nothing is so agreeable to natural equity as that everything should be dissolved by the same means which made it binding. Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est (2 Institute, 360).

The statutes can only be altered or repealed by the same authority by which they were made—jura eodem modo distituuntur quo constituuntur (Dwarr. Stats. 672), eodem

ligamine quo ligatum est dissolvitur (Co. Litt. 212b).

Wolsey. That seal
You ask with such a violence, the king
(Mine and your master) with *his own hand gave me;*
Bad me enjoy it, with the place and honours,
During my life; and to confirm his goodness,
Tied it by letters-patents:—now, who'll take it?
Sur. The king, that gave it.
Wol. It must be himself, then.
Henry VIII., Act iii. Scene 2.

The Lord Chancellor (a cancellando, from his power to cancel letters patent, being the highest point of his jurisdiction) or Lord Keeper, is the chief judge in the extraordinary Court of Equity, as well as in the ordinary Court of Common Law (4 Inst. 79, 82, 88, Wood's Inst. 2nd ed. pp. 459, 460). He is not made by letters patent, but by the delivery of the Great or Broad Seal to him, and by taking an oath to serve the king and his people faithfully in the office of Lord Chancellor (4 Inst. 87). He is made Lord Chancellor of England or Lord Keeper of the Great Seal, per traditionem magni sigilli sibi per dominum regem, and by taking his oath

forma cancellarium constituendi regnante Henrico Secundo fuit appendendo magnum Angliæ sigillum ad collum cancellarii electi (Camden, p. 131). Thus the delivery of the king's seal or the taking it away, alluded to by Shakespeare in this passage, is the ceremony used in making or unmaking a Lord Chancellor. Some have gotten it by letters patent at will (35 Hen. VI. 3 b. of Winch., I Hen. VI. sec. 16) and one for term of his life (Cardinal Wolsey); but it was holden void, because an ancient office must be granted as it hath been accustomed (4 Inst. 87).

Ant. E. What, will you murder me? Thou gaoler, thou,
I am thy prisoner: wilt thou suffer them
To make a rescue?
Off. Masters, let him go:
He is my prisoner, and you shall not have him.
Pinch. Go bind this man, for he is frantic too.
Adr. What wilt thou do, thou peevish officer?
Hast thou delight to see a wretched man
Do outrage and displeasure to himself?
Off. He is my prisoner: if I let him go,
The debt he owes will be requir'd of me.
Comedy of Errors, Act iv. Scene 4.

If a sheriff or a gaoler suffers a prisoner,

who is taken upon mesne process (that is, during the pendency of a suit) to escape, he is liable to an action on the case (Cro. Eliz., 625). But if after judgment a gaoler or a sheriff permit a debtor to escape, who is charged in execution for a certain sum, the debt immediately becomes his own, and he is compellable by an action of debt, being for a liquated sum and ascertained, to satisfy the creditor his whole demand; which doctrine is grounded on the Equity of the Statute of Westminster second (13 Edw. I. c. 11, and I. Rich. II. c. 12. Bro. Alr. t. parliament, 192; Inst. 382; 3 Bla. Com. 165), ubi jus ibi remedium (I. T. R. 512). There is no wrong without a remedy. Jus, in the sense in which it is used in this maxim, signifies 'the legal authority to do or to demand something' (Mackfield, Civ. Law, 6). Remedium may be defined to be the right of action, or the means given by law for the recovery of a right, and, according to this maxim, whenever the law gives anything, it gives a remedy for the same; Lex semper dabit remedium (Jacob, Law Dic. title Remedy, Bac. Alr., actions in general). Every injury to a legal right

necessarily imports damage in the nature of it, though there be no pecuniary loss (per Holt, C. J., Ashly v. White, 2 Lord Raymond). Thus where a prisoner is in execution or final process, the creditor has a right to the body of his debtor every hour till the debt is paid; and an escape of the debtor, for ever so short a time, is necessarily a damage to him, and an action for an escape lies (Williams v. Mostyn, 4 M. & W. 153; Wylie v. Birch, 4 Qu. B. 566, 567; Clifton v. Hooper, 6 Qu. B. 468).

York. I took an oath that he should quietly reign.

Edw. But, for a kingdom, any oath may be broken:
I would break a thousand oaths to reign one year.

Rich. No; God forbid, your grace should be forsworn.

York. I shall be, if I claim by open war.

Rich. I'll prove the contrary, if you'll hear me speak.

York. Thou canst not, son; it is impossible.

Rich. An oath is of no moment, being not took
Before a true and lawful magistrate,

That hath authority over him that swears:
Henry had none, but did usurp the place;
Then, seeing 'twas he that made you to depose,
Your oath, my lord, is vain and frivolous.
Therefore, to arms.

3 *Henry VI.*, Act i. Scene 2.

An oath is an affirmation or denial of anything *before one that hath authority to administer the same*, calling God to witness that his testimony is true (3 Inst. 165, C. 74). Sacramentum, habet in se tres comites, veritatem, justiciam et judicium; veritas habenda est in jurator; justicia et judicium in judice (Bracton, I. 4, f. 186). Four sorts of oaths have been enumerated, viz., Juramentum promissionis, where an oath is taken to do or not to do such a thing (it appears that York had taken an oath of this description); Juramentum purgationis, which is where a person is charged with any matter by bill in Equity; Juramentum probationis, where one is produced as a witness to prove or disprove a thing; and Juramentum triationis, where one is sworn to try the issue, such as a juror. The oath must be lawful, allowed

by the common law or some Act of Parliament; so Salisbury says—

Sal. It is a great sin to swear unto a sin;
But greater sin to keep a sinful oath.
Who can be bound by any solemn vow
To do a murd'rous deed, to rob a man,
To force a spotless virgin's chastity,
To reave the orphan of his patrimony,
To wring the widow from her custom'd right;
And have no other reason for this wrong,
But that he was bound by a solemn oath?
2 *Henry VI.*, Act v. Scene 1.

and it must be taken before one that hath authority, not before a person acting in a private capacity, or pretending to have authority where he hath none; nor by one that goes beyond the authority which was granted. For such false oaths cannot amount to perjury in law, because they are of no validity, being coram non judice (3 Institute, 165; 4 Institute, 278, 279; 2 Roll. Alr. 257; Wood's Institute, 2nd ed., pp. 411, 412).

Car. The commons hast thou rack'd; the clergy's bags
Are lank and lean with thy extortions.
Som. Thy sumptuous buildings, and thy wife's attire,
Have cost a mass of public treasury.

Buck. Thy cruelty in execution
Upon offenders, hath exceeded law,
And left thee to the mercy of the law.
2 *Henry VI.*, Act i. Scene 3.

Executio est executio juris secundum judicium (3 Institute, 212). It is a maxim of the law of England that the execution must be according to the judgment, Et quæ in curia nostra rite acta sunt, debit executioni demandari debent; and for express authority, Non licet felonem pro felonia decollare. In the case of high treason, beheading is part of the judgment, and therefore the king may pardon all the rest saving beheading, as is usually done in case of nobility. But if a man being attainted of felony be beheaded, it is no execution of the judgment, because the judgment is, that he be hanged till he be dead: in this case the judgment doth belong to the judge, and he cannot alter it; the execution belongs to the sheriff, &c., and he cannot alter it. And if the execution might be altered in this case from hanging to beheading, by the same reason it might be altered to burning, stoning to death, &c.

(3 Institute, 211). It is worthy of notice that Shakespeare seems to have been well aware of the distinct offices of judge and executioner, for he makes Guiderius, in speaking of Cloten, say—

> Why should we be tender,
> To let an arrogant piece of flesh threat us;
> Play judge and executioner, all himself?
> *Cymbeline*, Act iv. Scene 2.

If an officer beheads one who is adjudged to be hanged, or vice versâ, it is murder (I. Hale P. C. 494; I. Hawk. P. C. c. xxviii. ss. 11, 12, 17, 18), for he is merely ministerial, and therefore only justified when he acts under the authority and compulsion of the law; but if the sheriff substitutes one kind of death for another, he then acts by his own authority, which does not extend to the commission of homicide (4 Bla. Com. 179). If the sheriff, or other proper officer, alters the execution or any other doth execute the offender, or if he is slain without authority of law, it is felony, and the law implies malice (Wood's Inst., 2nd ed., p. 662). So

Clarence says to the murderers hired by Gloster—

Clar. Are you drawn forth among a world of men
To slay the innocent? What is my offence?
Where is the evidence that doth accuse me?
What lawful quest have given their verdict up
Unto the frowning judge? or who pronounc'd
The bitter sentence of poor Clarence' death?
Before I be convict by course of law,
To threaten me with death is most unlawful.
Richard III., Act i. Scene 4.

To conclude this point: Judicium est legibus, non exemplis (4 Rep. 33), and Judicium est jurisdictum and Executio est executio juris secundum judicium (3 Inst. 211). Buckingham may also refer to Gloster's cruelty in making the law an instrument of oppression or extortion and the liability thereby incurred, for Executio juris non habet injuriam (2 Inst. 481; 1 Inst. 289a). The law in its executive capacity will not work a wrong. If an individual, under colour of law, does an illegal act, or if he abuses the process of the Court to make it an instrument of oppression or extortion, this is a fraud

upon the law, by the commission of which liability will be incurred.

Claud. Fellow, why dost thou show me thus to the world?
Bear me to prison, where I am committed.
Prov. I do it not *in evil disposition,*
But from Lord Angelo by special charge.
Measure for Measure, Act i. Scene 3.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est (10 Rep. 70, 76).

Where a man does anything by command of a judge, the law will not consider that he acted from any wrongful motive, because it was necessary for him to comply with the orders of the judge. In 26 Ed. III. vii. 70, it is taken for a maxim, that the thing which an officer doth by warrant or command of a Court, cannot be said to be against the peace, and (Doct. and Stud. 150) the king's officers are bound to execute the king's writs at their peril (10 Rep. 70). When a Court has jurisdiction of a cause, and proceeds inverso ordine or erroneously, no action lies against the party who sues, or the officer or minister of the Court who executes the precept or process

of the Court. But when the Court has no jurisdiction of the cause, then the whole proceeding is coram non judice, and actions will lie against them without any regard of the precept or process, for it is not necessary to obey him who is not a judge of the cause, no more than it is to obey a mere stranger, for the rule is, Judicium a non suo judice datum nullius est momenti (10 Rep. 76).

Lady Macbeth. What need we fear who knows it, when none can call our power to account?

Macbeth, Act v. Scene 1.

Lear. No, they cannot touch me for coining;
I am the king himself.

Goneril. Say if I do; the laws are mine, not thine;
Who shall arraign me for it?

Lear, Act v. Scene 2.

Lady Macbeth, Lear, and Goneril seem to refer to the ancient and fundamental principle of the English constitution, that the king can do no wrong. Rex non potest peccare (2 Roll. R. 304; Jenk. Cent. 9, 308).

Duke. He dies for Claudio's death.
Isab. [*kneeling.*] Most bounteous sir,
Look, if it please you, on this man condemn'd,

As if my brother liv'd. I partly think,
A due sincerity govern'd his deeds,
Till he did look on me: since it is so,
Let him not die. My brother had but justice,
In that he did the thing for which he died:
For Angelo,
His act did not o'ertake his bad intent;
And must be buried but as an intent
That perish'd by the way: thoughts are no subjects;
Intents but merely thoughts.

Measure for Measure, Act v. Scene 1.

An evil intention is not punishable equally with the fact; Crimen non contrahitur nisi nocendi voluntas intercedit (Bracton, lib. cap. 4; Hood's Inst., 2nd ed., p. 340), except in treason, when the maxim Voluntas reputatur pro facto (3 Inst. 5, 69), the will is taken for the deed, is said to apply to its full extent. It is a rule laid down by Lord Mansfield, said to comprise all the principles of previous decisions in similar cases (per Lawrence, J., Rex *v.* Higgins, 2 East, 21), that so long as an act rests in bare intention, it is not punishable by the law of England—so Ulpian says: 'Cogitationes pœnam nemo patitur' (D. 48, 19, 18), and Montesquieu:

'Les lois ne se chargent de punir que les actions exterieurs'—but when an act is done, the law judges not only of the act itself, but of the intent with which it is done.

Angelo. What's open made to justice,
That justice seizes.
Measure for Measure, Act ii. Scene 1.

And if the act be accompanied with an unlawful and malicious intent, though in itself the act would otherwise be innocent, yet, the intent being criminal, the act likewise becomes criminal and punishable (Rex *v.* Scofield, 2 East, D. C. 1028). Non officit conatus, nisi sequitur effectus (6 Rep. 42; Wood's Inst., 2nd ed., p. 340), for it is a principle of natural justice and of our law that the intent and the act must both concur to constitute the crime (Lord Kenyon, 7, T. R. 514). But where one has the use of his reason, and is at liberty, his endeavour to commit a felony, as to rob, &c., is punishable, though not to that degree as if the felony and robbery, &c., had actually been committed. For in such cases Voluntas non reputabitur pro facto, the will

shall not be taken for the deed (3 Inst. 69; 11 Rep. 98).

Ham. Give me your pardon, sir: I've done you wrong;
But pardon't, as you are a gentleman.
This presence knows, and you must needs have heard,
How I am punish'd with a sore distraction.
What I have done,
That might your nature, honour, and exception,
Roughly awake, I here proclaim was madness.
Was't Hamlet wrong'd Laertes? Never Hamlet:
If Hamlet from himself be ta'en away,
And, when he's not himself, does wrong Laertes,
Then Hamlet does it not; Hamlet denies it.
Hamlet, Act v. Scene 2.

In all crimes there must be an evil disposition; a mere mistake is not punishable; and those that are to be esteemed guilty of any offences must have the use of their reason, and be at their own disposal or liberty (Wood's Inst., 2nd ed., p. 340, 339), for, Actus non facit reum nisi mens sit rea (3 Inst. 107), the act does not make a man guilty unless his intention were guilty. Moreover Hamlet says—

Who does it then? His madness: if't be so,
Hamlet is of the faction that is wrong'd;
His madness is poor Hamlet's enemy.

And in criminal cases idiots and lunatics are not chargeable for their own acts, if committed at a time when they are non compos mentis, for it is a maxim of the law of England that Furiosus solo furore puniatur, a madman is only punished by his madness (Co. Litt. 247b; Bal. Com., 24, 25). So Hamlet says he is of the faction that is wronged, and he seems to refer, not only to the maxim that the act does not make a man guilty unless his intentions were guilty, but afterwards, in the same passage, to the kind of homicide to which it is applicable—

> Sir, in this audience,
> Let my disclaiming from a purpos'd evil
> Free me so far in your most generous thoughts,
> That I have shot mine arrow o'er the house,
> And hurt my brother.

viz., homicide per infortunium, or by misadventure,[1] which is, where a man doing a lawful act, without any intention of hurt, by accident kills another; as, for instance, where

[1] Homicide (from the Latin homicidium; homo, a man, and cido, to strike, kill) signifies the killing of a human creature, and it is of three kinds, justifiable, excusable, and felonious.

a man is working with a hatchet, and the head flies off and kills a bystander. So Bracton says, 'De amputatore arborum, qui cum ramun projiceret, inscius occidit transeuntem, aut cum quis pilam percusserit, &c., ex cujus ictu occisus est, tales de homicidio non tenentur' (lib. 3, fo. 136b). If a man shooting at butts or a target, by accident kills a bystander, it is misadventure (I. Hale, 472, 475, 380), but this must be understood of cases where a proper precaution to prevent accidents has been taken, for if the target be placed near a highway or path, where persons are in the habit of passing, the killing would probably be deemed manslaughter.

Camillo. Have you thought on
A place whereto you'll go?
Florizel. Not any yet:
But as th' *unthought-on accident is guilty*
To what we wildly do, so we profess
Ourselves to be the slaves of chance, and flies
Of every wind that blows,
Winter's Tale, Act iv. Scene 4.

If the act be unlawful it is murder. As if A, meaning to steal a deer in the park of B, shooteth at the deer, and by a glance of the

arrow, killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although A had not intent to hurt the boy, nor knew not of him. Thus if B, the owner of the park, had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. So if one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium, for it was not unlawful to shoot at the wild fowl; but if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man, this had been murder, for the act was unlawful. If a man, knowing that many people came in the street from a sermon, threw a stone over a wall, intending only to fear them or to give them a light hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain (Marlbr. c. 25; 3 Inst. 56, 57). All crimes have their conception in a corrupt intent, have their consummation and issuing

in some particular fact, which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of the error, if another particular ensue of as high a nature. As if A, having malice to B, strikes at him and misseth him and kills C, this is murder in A (9 Rep. 81; H. P. C. 50). So Bracton says, 'Si quis unum percusserit, cum aliam percutere vellet, in felonia tenetur' (lib. 3, fol. 155). And if one lays poison to kill B, and C takes it and dies in consequence, this is murder in him that laid the poison: for, In criminalibus sufficit generalis malitia intentionis cum facto paris gradus (Bacon, Max., 65). The malice intended to one makes the accidental death of another to be murder (Wood's Inst., 2nd ed., 353).

Hub. Stand back, Lord Salisbury, stand back I say:
By heaven, I think my sword's as sharp as yours:
I would not have you, lord, forget yourself,
Nor tempt the danger of my true defence;
Lest I, by marking of your rage, forget
Your worth, your greatness, and nobility.

Big. Out, dunghill! dar'st thou brave a nobleman?

Hub. Not for my life: but yet I dare defend
My innocent life against an emperor.
King John, Act iv. Scene 3.

Excusable homicide is se defendendo, or where one has no other possible means of preserving his own life than by killing the person who reduces him to such a necessity, for, Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad sumendam vindictam, sed ad propulsandam injuriam (I. Inst. 162a; Wood's Inst., 2nd ed., 359).

Alcibiades. Who cannot condemn rashness in cold blood?
To kill, I grant, is sin's extremest gust;
But, in defence, by mercy 'tis most just.
Timon of Athens, Act iii. Scene 5.

It is said that it must be a killing upon an inevitable necessity; but necessity implies that the act was inevitable, or that it could not have been otherwise. The party assaulted is not to be excused, unless he gives back to the wall, hedge, river, &c., beyond which he cannot go, before he kills the other. But if A assault B so fiercely and violently, and in such a place, and in such a manner as, if B

should give back, he should be in danger of his life, he may in this case defend himself, and if in that defence he killeth A, it is se defendendo, because it is not done felleo animo: for the rule is, when he doth it in his own defence, upon any inevitable cause, Quod quis ob tutelam corporis sui fecerit, jure id fecisse videtur (H. P. C. 41, 42; 3 Inst. 55, 56). What any one may have done for the protection of his person, is considered to have been done by law.

Enter two Clowns, *with Spades, &c.*

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

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

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

2 *Clo.* Why, 'tis found so.

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

2 *Clo.* Nay, but hear you, goodman delver.

1 *Clo.* Give me leave. Here lies the water;

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

2 *Clo.* But is this law?

1 *Clo.* Ay, marry, is't; crowner's-quest law.

Hamlet, Act v. Scene 1.

It seems that Shakespeare has made the first clown confound a felo de se, or one who is guilty of self murder, with a person who commits homicide se defendendo, in his own defence, or, as he miscalls it, se offendendo; for, in answer to the second clown's assurance that 'the crowner hath sate on her and finds it Christian burial,' he says, 'How can that be, unless she drowned herself in *her own defence?*' This is also apparent from his reasoning, which, although it may appear absurd, is good law; for he evidently means, that if the water comes to a man and drowns him, not wittingly, but against his inclination, he is as innocent of suicide as that man is innocent of murder, who, se defendendo, in his own defence, kills another who, felleo animo, presses upon him. And so the crowner

found it 'Christian burial;' for although the 'churlish priest' tells Laertes that 'her death was doubtful,' yet the queen says—

> There, on the pendent boughs her coronet weeds
> Clambering to hang, an envious sliver broke;
> When down her weedy trophies, and herself,
> Fell in the weeping brook.

And although, according to this account, the water cannot be said to come to Ophelia, it appears that she was drowned, not 'wittingly,' but against her inclination. Suicides were not entitled to what is called 'Christian burial,' for it was formerly the custom to drive a stake through the body of one who had been guilty of self-murder, and to bury it in the highway; but this brutal law and ignominious burial has been altered by the 4 Geo. IV. c. 52, which directs that a person felo de se shall be buried without any stake driven through the body, privately in a churchyard, within twenty-four hours from the finding of the inquisition, and between the hours of nine and twelve at night; but this statute does not authorise the performance of the rites of burial.

Ch. Just. I then did use the person of your father,
The image of his power lay then in me:
And, in the administration of his law,
Whiles I was busy for the commonwealth,
Your highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me *in my very seat of judgment;*
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you.

2 *Henry IV.*, Act v. Scene 2.

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maxime si fiat in exercentem officium (3 Inst. 1).

Shakespeare in this passage probably refers to this maxim, or to the law which it describes. The Chief Justice says, 'When I did use the person of your father, &c., you struck me in my very judgment seat, whereon as an offender to your father I did commit you,' and according to this maxim, an injury offered to a judge, or one holding the place of the king, is considered to be offered to the king himself, especially if done in exercise of the office of a judge.

In the first part of 'Shakespeare Illustrated by Old Authors,' published in the year 1867, I quoted this maxim in illustration of this passage, beginning my comment with these words: 'Shakespeare in this passage probably *refers to this maxim or the law which it describes.*' The author of a book entitled 'Shakespeare as a Lawyer' quotes this passage and this maxim after saying, 'Shakespeare, in the following passage from the second part of *Henry IV.*, *refers to this maxim or to the law which it describes*,' using the initial words of my comment. Without this explanation those who have read 'Shakespeare as a Lawyer,' and have not seen 'Shakespeare Illustrated by Old Authors,' may suppose that I, instead of originating this illustration, had adopted it without acknowledgment.

This method of appropriation and concealment extends to other books of mine. I give one more example of many. In 'Shakespeare's Euphuism,' published in 1871, I showed that the advice of Euphues to Philatus was probably the origin of the advice of Polonius to Laertes, but a few years ago a 'Life of Shakespeare'

was published by Smith, Elder and Co., in which are these words—'In later life, Shakespeare in *Hamlet* borrows from Lyly's "Euphues" Polonius's advice to Laertes,' and this statement is made without mentioning my name or my book, from which the information was obtained. This and much more inclines me to say with Falstaff—

> I would to God my name were not so terrible to the enemy as it is.
>
> 2 *Henry IV.*, Act i. Scene 2.

Puttenham in his 'Second Book of Proportion Poetical,' speaking of device or emblem, says—

> 'The Greeks call it Emblema, the Italians Impresa, and we, a Device, such as a man may put into letters of gold and send to his mistresses for a token, or cause to be embroidered in Scutchions of arms on any bordure of a rich garment, to give by his novelty marvel to the beholder.'

To this impresa Shakespeare refers in *Richard II.*, when Bolingbroke, addressing Bushby and Green, says—

You have fed upon my signories,
Dispark'd my parks and fell'd my forest woods,
From my own windows torn my household coat,
Razed out my *imprese*, leaving me no sign,
Save men's opinions and my living blood,
To show the world I am a gentleman.

Richard II., Act iii. Scene 1.

The tearing of Bolingbroke's household coat was actionable, according to the old maxim quoted by Coke, 'Actio datur si quis arma, in aliquo loco posita, delevit seu abrasit' (3 Institute, 202). In *Pericles*, ii. 2, Thaisa describes the devices on the shields of the six knights.

Hor. How was this seal'd?
Ham. Why, even in that was heaven ordinant.
I had my father's signet in my purse,
Which was the model of that Danish seal;
Folded the writ up in form of the other,
Subscribed it, gave't the impression, placed it safely,
The changeling never known.

Hamlet, Act v. Scene 2.

Sigillum est cera impressa, quid cera sine impressione non est sigillum (Co. 3 Institute, 169).

The wax without an impression would

not be a seal. Hamlet subscribed the writ and also impressed the wax with his father's signet. Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data authoritas, de sigillo regis rapto vel invento, brevia, cartasve consignaverit (Fleta).

Lear. No, they cannot touch me for coining;
I am the king himself.

Lear, Act iv. Scene 6.

Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur (Dav. 18).

Shakespeare may here refer to this maxim, that the right of coining is comprehended in those regal rights which are never removed from the regal sceptre.

Scici. What is the city but the people?
Cit. True, the people are the city.

Coriolanus, Act iii. Scene 1.

In this passage Shakespeare probably refers to the maxim, Civitas et urbs in hoc differunt quod incolæ dicuntur civitas, urbs vero complectitur ædificia (Mirror, cap. 2, sect. 18, Brit. fol. 87, Co. Litt. 109b). A

city and a town differ in this, that the inhabitants are called the city, but the town comprises the buildings.

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

Measure for Measure, Act i. Scene 3.

The wisdom of the law abhors that great offences should go unpunished, which was grounded without question upon these ancient maxims of law and state: Maleficia non debet remanere impunita, et impunitas continuum affectum tribuit delinquendi, et minatur innocentes qui parcit nocentibus (Co. Rep. iv. 45).

Crimes ought not to remain unpunished,

and impunity offers a continual temptation to the delinquent.

Spes impunitatis continuum affectum tribuit delinquendi (3 Institute, 236).

Macb. There's blood upon thy face.
Mur. 'Tis Banquo's, then.
Macb. 'Tis better thee without than he within.
Is he despatch'd?
Mur. My lord his throat is cut; that I did for him.
Macb. Thou art the best o' the cut-throats:
Yet he's good
That did the like for Fleance: if thou didst it,
Thou art the nonpareil.
Mur. Most royal sir,
Fleance is 'scaped.
Macb. Then comes my fit again: I had else been *perfect,*
Whole as the marble, founded as the rock,
As broad and general as the casing air.
Macbeth, Act iii. Scene 3.

Id perfectum est quod ex omnibus suis partibus constat; et nihil perfectum est dum aliquid restat agendum (9 Co. 9).

Fleance had escaped, therefore Macbeth was not perfect, because something remained to be done to make him—

Whole as the marble, founded as the rock.

King. Things done well,
And with a care, exempt themselves from fear;
Things done without example, in their issue
Are to be fear'd. Have you a precedent
Of this commission? I believe, not any.
We must not rend our subjects from our *laws*
And stick them in our *will.*

Henry VIII., Act i. Scene 2.

'Neither have judges,' says Coke, 'power to judge according to that which they think fit, but that which out of the laws they know to be right and consonant to law.' Judex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis sed justa leges et jura pronunciet (7 Co. Rep.).

According to this maxim a good judge may do nothing from his free choice or private *will*, but he must decide according to the *laws*, and King Henry says—

We must not rend our subjects from our *laws*
And stick them in our *will.*

Angelo says—

Be you content, fair maid;
It is the law, not I, condemns your brother.
Were he my kinsman, brother or my son,
It should be thus with him; he must die to-morrow.

Measure for Measure, Act ii. Scene 2.

And according to another maxim of the law of England, Justitia non novit patrem nec matrem, solam veritatem spectat justitia (I. Bulstrode, 199). Justice knows not father nor mother, justice looks at the truth alone.

Hector. Brother, she is not worth what she doth cost
The holding.
Troilus. What is aught, but as 'tis valued?

Coke in his Third Institute, 105, considering how the value of a thing shall be construed, quotes the maxim, Tantum bona valent quantum vendi possunt; things are worth as much as they will sell for.

Richard. God save the King! Will no man say amen?
Am I both *priest* and *clerk?* Well then, amen.
King Richard II., Act iv. Scene 1.

Shakespeare may here refer to two legal maxims, for one says, Rex est persona sacra et mixta cum sacerdote (5 Co. Eccl. L), and the other says, Reges dicuntur clerici (Dav. 4).

Lady Macbeth. Alack, I am afraid they have awaked
And 'tis not done. The attempt and not the deed
Confounds us.

Macbeth, Act ii. Scene 2.

Non officit *conatus* nisi sequatur *effectus* (11 Co. 98). *Attempt* is the English of conatus, and *deed* may represent effectus.

Scici. He shall be thrown down the Tarpeian rock
With rigorous hands; he hath resisted law,
And therefore law shall scorn him any further trial
Than the severity of the public power,
Which he so sets at nought.

Coriolanus, Act iii. Scene 1.

Merito beneficium legis amittit, qui legem ipsam subvertere intendit (2 Inst. 53). According to Scicinius, Coriolanus had resisted law and therefore lost the benefit of the law.

Sal. May this be possible? may this be true?
Mel. Have I not hideous death within my view,
Retaining but a quantity of life,
Which bleeds away, even as a form of wax
Resolveth from his figure 'gainst the fire?

What in the world should make me now deceive,
Since I must lose the use of all deceit?
Why should I, then, be false, since it is true
That I must die here, and live hence by truth?
King John, Act v. Scene 4.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis (6 Co. 76).

Melun was in articulo mortis, and according to this maxim no one is presumed to be unmindful of his eternal welfare, and especially at the point of death.

Diana. 'Tis not the many oaths that make the truth,
But the plain single vow, that is vow'd true.
What is not holy, that we swear not by,
But *take the Highest to witness.*
All's Well That Ends Well, Act iv. Scene 2.

Jurare est Deum in testem vocare, et est actus divini cultus (3 Inst. 165). Shakespeare evidently refers to this maxim, for to take the Highest to witness, est Deum in testem vocare.

Antony. Hear me, queen:
The strong *necessity of time* commands
Our services awhile; but my full heart
Remains in use with you.
Antony and Cleopatra, Act i. Scene 3.

'If the Bishop makes a certificate, and dies before it is received, it is nothing worth, but his successor ought to certify it (F. N. B. 65, 8 E. 2, Excom. 26, 14 E. 3; ibid. 8). But note, reader, that in some cases the Vicar-general may certify an excommengement, that is when the Bishop is in remotis agendis, which is as much as to say, extra regnum, in the king's service; but the Court will be apprized of it by matter of record, scil. by writ out of the Chancery directed to them, and not by the surmise of the party, and then for necessity (which is always the law of time, for necessitas est lex temporis) the certificate of the Vicar-general shall be allowed, because no other can make it' (Co. Rep. viii. 69). In excuse for his going away Antony mentions the necessity of time, and it was the necessity of time which required and rendered valid the certificate of the Vicar-general.

In the books mentioned on the title-page of this small volume, in my contributions to the Berlin Society for the Study of Modern Languages, published in Archiv. f. n. Sprachen,

and in *Notes and Queries*, I have called attention to Shakespeare's knowledge of old law books, of the Real Property Law, the Common Law and the Lex Scripta, but I think the knowledge and correct application of legal maxims displayed in his works afford the strongest evidence I have yet produced that the great poet must have been, for some time, a student-at-law.

THE END

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