

that the case ought to have been withdrawn from the jury. *Harris v. Thompson*, 20 L. T. 99. (C. B.)

*Statute of Frauds—Foreign Contract—Lex loci.*—A foreign parol contract not to be performed within a year, but good according to the *lex loci*, cannot be enforced by an action in this country. A., by a parol agreement in France, engaged B. to collect eggs for him, and consign them to him in England, at a salary of 100*l.* per annum. B. brought an action in this country against A., for not taking him into his service as agreed; to which A. pleaded *non assumpsit*: Held, that such action would not lie; that the 4th section of the Statute of Frauds was applicable to procedure, and not to the solemnities of the contract itself, and did not make a foreign contract void, so as to be contrary to the comity of nations, but only prohibited an action being brought upon it in this country. (See *Crosby v. Wadsworth*, 6 East. 611.) *Leroux v. Brown*, 20 L. T. 68; 16 Jur. 1021. (C. B.)

*Witness—Evidence—Questions tending to Self-crimination—Propriety of Judges' Interference.*—In an action on a bill of exchange, the defence was, that the money for which the bill was given had been lost in a gambling transaction. The person who let the room in which the gambling took place was asked a question tending, if answered, to render him liable to an indictment under Stat. 8 & 9 Vict. c. 109, when the judge interposed. The Court, on a motion for a new trial, on the ground of misdirection, held the judge to have been right, and the rule was refused. *Fisher v. Ronalds*, 20 L. T. 100. (C. B.)—[*Selected from Lovell's Digest.*]

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## OBITUARY.

### THE LATE HORACE BINNEY WALLACE, ESQ.<sup>(1)</sup>

Recent letters from Paris communicate the death of HORACE BINNEY WALLACE, Esq., in that city, on the 16th December last, at the age of thirty-five; and the Bar of Philadelphia, of which he was a member, have

(<sup>1</sup>) NOTE. The Editors of the Law Register had intended to prepare a notice of their friend and fellow-member of the Bar; but the accompanying classic and just sketch, prepared by an accomplished hand for private distribution, causes no regret that their duty is unperformed. The friends of Mr. Wallace have kindly consented to the publication, in the pages of our journal, of this eloquent and beautiful tribute to the memory of a finished scholar and jurist, though it was not written to meet the general public eye.

done the customary honor to his memory, with more than the usual evidences of sorrow and respect.

Mr. Wallace's health, for the first time in the course of the last summer and autumn, became considerably disturbed, in the pursuit of his habitual concerns with literature and the law, and the disturbance was indicated by symptoms, which were at first referred to the stomach, as the usual effects of dyspepsia; but they became better referable, a short time before his departure for Europe in November, to diseased cerebral action, induced by some lesion of the blood-vessels in the brain; and this has been confirmed by his sudden and afflictive death in Paris. His surviving brother, who had taken his passage to join him, was arrested but two days before his intended departure, by a telegraphic despatch to Liverpool from the American Minister in London to the Consul of the United States, which he communicated by the steamer of the same morning that the despatch came to his hands.

It is a rare circumstance that a man of Mr. Wallace's age, without wife and children, not of habits of either promiscuous or convivial association, something in appearance reserved, and certainly select in his choice of companions and society, has, by his death, left so painful a void in the bosoms of so many. The grief which is felt at his premature death transcends all ordinary experience; and one who knew him, and loved him in his heart's core, occupies a small sheet, not to unbosom his sorrow, but to explain or state the reasons why so many are partakers of it with him.

Mr. Wallace was not unknown as a writer in the Law. He has contributed to his profession in notes, or, more properly speaking, in commentaries, upon Mr. Smith's Selection of Leading Cases in various branches of the Law, upon White and Tudor's Selection of Leading Cases in Equity, and upon decisions of American Courts in several departments of the Law (a work of kindred design undertaken by himself and his associate in all these publications, the present Judge Hare), the fruits of as accomplished a legal mind, as any man, in any country, at his early age has shown. It is, indeed, an injustice to him to speak of these works in relation to age or years. There is no professional mind here or elsewhere, that would not have left as many, perhaps more, traces of youth, or immature thought, or defective research, among the clear, precise, beautifully written, and, in several instances, bright and radiant criticisms, which have proceeded from his pen in each of these works. The best judges in the country have received them, and spoken of them with the

highest respect; and the profession have accredited them in all our States, by calling for edition after edition of them in quick succession, as the demand has repeatedly exhausted the bookseller's supply. It is almost marvellous that a man of thirty, who had no time or chance to file his opinions and thoughts, by the thoughts of other men in Bar discussions, should have attained to so true, and uniform, and firm an edge, and to sharp and penetrating a point, in all of them. There is not a note or remark in the whole body, that does not show the mind of a lawyer, imbued with the spirit of the science, instinctively perceiving and observing all its limitations, its harmonies, its modulations, its discords, as a cultivated musical ear perceives without an effort what is congruous or incongruous with the harmonies of sound. They manifest the true distinction between a lawyer and a random speculator upon Law. His pen, moreover, was the true emblem as well as instrument of his mind; it was strong, pointed, clean, delicate enough for the finest thoughts, and firm enough for the strongest, making no hair strokes that elude the sight, or blurs that deform the page. There is a beautiful concord between his thoughts and his language. And all this was effected with inconceivable facility. He possessed a real and true genius for legal disquisition. The outside world commonly think, that the genius of the Bar lies in speech, and not in thought or in writing; and that there is something in the dissociating action of legal studies, that drives off all that finer essence that obtains for its effects the name of genius. But it is a great mistake, and no profession has given more proofs of it than the Bar. One of the causes of the deep grief that Mr. Wallace's death has occasioned to his young professional friends, is, that as he had a decided inclination for this species of employment, and was of habits, and in circumstances that disposed and enabled him so to devote himself, the American world has lost in him the inappreciable advantage of possessing a great legal critic and writer, in the midst of those surges of judicial opinion, which sometimes make the sway of the Law among us shake like a thing infirm.

A year or two before his last visit to Europe for his health, he had passed a twelvemonth in England and on the Continent, with particular reference to the study of their great works in the arts, especially in church architecture, as well as in painting and sculpture. If his health should be restored in his renewed tour, it was his purpose to extend that survey to Spain. It had been before limited to England and Scotland, France, Holland, Saxony, Bavaria, Austria, and Hungary, Lombardy, and Middle

and Southern Italy. He possessed a knowledge of the principles of these arts, and æsthetic sensibility to appreciate their works, which, by the aid of his pen, would have been imparted to the world, in the lights of a bright imagination, and of a most pure and refined taste. His letters from Munich, Prague, Vienna, Milan, Florence, and Rome, upon his first tour, are a treasure of criticism as well as a mine of true feeling on these subjects. They deserve publication, and will bear it without fear in their present state, written *calamo currente*. But it is believed that he had given some months, after his return, to the preparation of his journal for the press, or, at least, to bring it to a state which he regarded as a better representation of his opinions and observations; and this, it is to be hoped, may yet be communicated for public use and enjoyment.

But he was not a writer of Law only, or of instructive and elegant criticisms upon the fine arts. His mind was éxcursive far beyond the ordinary degree, even among the most liberal and cultivated lawyers, and to an extent which proved that the study of the law had imposed no fetters upon his range of thought. There was nothing worth reading that he did not read, nor hardly anything worth thinking about, that he did not profoundly weigh, and think of again and again. And he had accomplishments by education, that enabled him to read with perfect selection, and to think with accuracy and constancy. He was a fine mathematician, an excellent classical scholar, and of the purest taste. His imagination made him a poet, to appreciate what is most excellent in poetry; but with it was associated profound and susceptible feelings, which caused him to shrink from a large proportion of what passes under that name. Before he was twenty, he was the projector of a new theory of comets, which he subsequently discarded as too playful for the grave science, which is endeavoring to bring these eccentric bodies into system. At the same early age he wrote, and sent to the press, a novel in two volumes, which was published anonymously both in this country and in England, and which he never claimed, nor, after he had measured it by his improved judgment, wished to claim. But with defects in plan and mechanism, which, at that age, do not at all surprise us, and with some outbreaks, which are so natural in the flights of a noble bird, for the first time essaying his own wings, this novel contains a great number and variety of beautiful pictures, thoughts beautifully expressed, and speculations in morals, and upon character and life, that could never have proceeded from any but a highly-gifted intellect.

It is in his latter years, however, and in the periodicals in our country, as well as in works not periodical, that are to be found the best evidences of his refined taste, his philosophical mind, and his powerful and polished pen. Except in the Law, he wrote and published anonymously. His modesty, rather than indifference to reputation, was the cause of it. Time may, and probably will, disclose a part of these works, which will be honored, and give honor to him, by being connected with the author's name. He had no special or limited walk in these things. His topics were as various as his reading; and his recollections of all that he had read were as fresh at the end of years, as they were at the end of a day. His memory took the impression of what he read with attention, like softened steel; and it hardened when the book was closed, so as never to lose the most delicate lines of the author. He was, moreover, deeply read in the BIBLE, as might be inferred from parental instruction and example. He had its noble passages and its encouraging truths by heart; and he had publicly professed his faith in it by receiving confirmation in the Church of which all his family were members. It is in the highest degree consolatory to his friends to learn, that in the short intervals of calmness that were allowed by the access of his distemper, he gave almost the last look of his eyes to the divine pages of THE BOOK.

It has been said that in appearance he was reserved. The world so regarded him; and, in the same way, it misregards all men of the same type. He had no reserve whatever. He was frank, cordial, affable, full of conversation, affluent in topics, playfully imaginative in the treatment of them, and prolific in illustrating them by the treasures, great or small, that he would appropriately bring from his own memory into the common stock of conversation. He was a converser, not a talker. He was an exchanger of resources and products, not a monopolist. He was dumb to the heart's content of any man who wanted to have all the talk to himself. His reserve was a habit of the body, not of the mind or of the heart. If the heart or mind of any man whom he respected, was brought into communion with his own, there was at once a commixture and an overflow. But in our free intercourse, in which all conditions and characteristics are fused together, it does and will happen that men, who have any shyness, or sensitiveness on the surface, will be so misregarded. It happens often, as it happened with Mr. Wallace, that the mere temperament of the surface rules in this matter, to a degree of which the party is himself unconscious, as is immediately perceived by all who take any

pains to know the person whom they call reserved; for the personal knowledge, after it goes a line beneath the surface, finds an interior all open, free, and unconfined. Mr. Wallace's temperament so ruled him in this matter, and no further, nor otherwise. His heart was as warm, and as kindly as a child's, and as true as steel. No difference of opinion or sentiment turned its edge. Instead of being selfish or self-esteeming, his truer characteristic was—and, to speak after the manner of men, it was a defect—that he did not sufficiently value himself upon the productions of his mind and pen, to connect his name with them, nor upon his powers of conversation, to give general society more frequent benefit from them. If God had continued the life of his accomplished mother, as it has pleased Him to spare her this pang more bitter than her own death, you might have asked *her*, if her broken heart could have throbbled after such intelligence, what he was as a son! And, if Death had not almost emptied his quiver upon that family, you might have asked his lovely sisters, what he was as a brother, through every day and hour of his life! But this is coming too near to the sacred privacy of domestic grief. He has left but one survivor in his own line, of sufficient age to suffer and to remember. Suffer as he must and will, the time we hope may come, when remembrance will triumph over suffering, and recall the virtues that have existed, and have exalted the family relation, without anguish for their premature loss.

It is sad to record the passing away from a world, in which he was so much wanted, and from friends who so deeply admired and loved him, of this young man's pure heart, accomplished mind, and noble aspirations. It is especially sad that they have so passed away in a foreign land, without the solace of personal friends, and the aid of family physicians, who might possibly have averted the melancholy conclusion. But such regrets are now unavailing. It is our duty to be thankful for him, and to profit by the remembrance of what he was, rather than to repine that all the bright promises of his mind and life have not been fully established. It is the duty of all men to receive the gifts of God with thankfulness, and to endeavor to profit by them, whatever may be the abatements, disturbances, or term of enjoyment, which the divine appointment may have connected with them. Submission to His will is as much a part of perfect gratitude, as it is of complete obedience.