a Deacon, returned for the borough of Newport. It was determined that he was duly elected. The decision was in no respect *affected by the fact of Rushworth* being merely in Deacon's orders, although he was objected to on the ground of being in Holy Orders. Between the period of 1604, when the clergy waived the privilege just now alluded to, and 1785, the date of Rushworth's election, it is believed, as stated by Lord Holland, that "there was scarcely a Parliament in which *de facto* a person in priest's or deacon's orders had not sat;" and yet sixteen years later, viz., in 1801, the bill which is now under our consideration, became the law of the land. An observation of Mr. Luder in reporting Rushworth's case, vol. ii., p. 282, is so pertinent to the second part of our subject, that we give it as follows:—

"There is a much greater analogy between the two functions of priest and barrister than between the former and that of representative; for anciently the clergy pleaded commonly at the bar of the secular Courts, and were regular advocates: which occasioned the proverbial saying, '*Nullus clericus nisi causidicus.*'"

In corroboration of this state of things we refer to a case in Coke's Second Institutes, 562, 29 edit., more for the curiosity of the case than with a view of laying much stress on a precedent of such remote antiquity,—indictment against a parson for conspiracy, who pleads that he was "*Communis advocatus*," and so justified as attorney to the other. It was found that he was "*Communis advocatus*," and not guilty.

We now proceed to consider the ineligibility of persons in Holy Orders to be called to the Bar. It is somewhat remarkable that the only precedent for such exclusion was created about the same time, and directed against the same obnoxious individual, as was the unjustifiable law upon which we have just now commented. Can any one doubt that they were both the emanations of party spirit and political rancor?

In the 20th volume of Howell's "State Trials," on the Proceedings against John Horne (afterwards John Horne Tooke) for libel, the following note occurs:—

"In Trinity term, 1779, Horne Tooke applied to be called to the Bar, when only three benchers (Sir James Burrow, Mr Baron Maseres, and Mr Wood) voted in his favour, and eight voted against him. Upon this occasion the benchers of the Inner Temple had consulted those of the other three Inns respecting the propriety of calling to the Bar a gentleman in priest's orders (Mr. Horne Tooke had received priest's orders). Eleven benchers of Lincoln's Inn who took the matter into consideration, reported, June 16th, 1779, their unanimous opinion that it was not proper to call to the Bar a person in priest's orders. And a verbal answer, expressing a like opinion, was sent from the benchers of the Middle Temple and of Gray's Inn. See 2 Luder's Rep. of Election cases, p. 281, note.

"Mr. Tooke made his second attempt to be called to the Bar in Trinity term, 1782. At this time Lord Shelburne, afterwards the first Marquis of Lansdowne, was First Lord of the Treasury, and as it was known that he wished well to the application (as did his friend Lord Ashburton) it is probable that a successful issue was expected: the attempt, however, failed. I believe, that in favour of Mr. Tooke voted the Earl of Suffolk, Sir James Burrow, Mr. Baron Maseres, and Messrs. Coffin, Jackson, and Wood; and that on the other side voted Messrs. Annesley, Daniel Barrington, Baron, Barton, Bearcroft (in 1788 Chief Justice of Chester), Coventry, and Hall. In Michaelmas term, 1793, the benchers of the Inner Temple sent to the other law societies an inquiry whether a person in deacon's orders was admissible to the Bar. In the same term, Mr. Tooke's name being again inserted among candidates for admission to the Bar, no bencher moved his call. Particulars concerning the last-mentioned proceedings are to be found in the Order Book of the Inner Temple, in the Black Book of Lincoln's Inn, under dates, December 13th, 1793, June 2nd, July 9th, July 22nd, 1794, and I conjecture among the documents of *the other* societies."

From this account it would appear that there is no inflexible rule against the admission of a person in priest's orders to the Bar, but that a majority of the benchers of any Inn of Court may at any time decide either to call or to refuse, according to the disposition of the Bench, influenced as it may be by the signs or circumstances of the times.

However much each Inn of Court may desire to respect the opinion of the others, it is clear there is no rule binding upon the body, but that every Inn possesses an independent power of action, to admit or reject, according to the disposition of its constituent elements. There is, however, a check upon the arbitrary or capricious exercise of this responsible power. In the case of Hart (Pasch. 20 Geo. III. reported in Dougl. 553) Lord Mansfield laid down that "all power of the Inns of Court concerning admission to the Bar is delegated to them from the Judges, and that in every instance the conduct of those societies is subject to the control of the Judges as visitors. A mandamus will not lie to compel the Masters of the Bench of an Inn of Court to call a candidate to the Bar. From the first traces of the Inns of Court no example can be found of an interposition by the Courts of Westminster Hall proceeding according to the general law of the land; but the judges have acted as in a domestic forum." If a person conceive himself to be aggrieved by the benchers of an Inn of Court in refusing to call him to the Bar, or in disbarring him, it seems that the proper application for redress is a petition of appeal to the twelve (now fifteen) judges.

The only question remaining for consideration is, whether the Canons Ecclesiastical, or any express Act of Parliament, effectually exclude a person in Holy Orders from being called to the Bar, even assuming that the benchers or judges offered no opposition. The only Canon that can be supposed to have this effect is the 76th, which is as follows:—

"No man being admitted a deacon or minister shall, from henceforth, voluntarily relinquish the same, nor afterwards use himself in the course of his life as a layman, on pain of excommunication. And the churchwardens shall present," &c. Now "*ipso facto*" excommunication has been extinguished by 53 Geo. III. c. 127. See *Mastyn* v. *Escott*, Arches' Court, January 28, 1841.

Excommunication can now only be pronounced by a sentence of an Ecclesiastical Court, and all the civil disabilities attached thereto are abolished by 53 Geo. III. c. 127, sec. 3. An imprisonment, not exceeding six months, may form part of the sentence, but even this cannot take effect unless the sentence be certified by a "Significavit" to the Court of Chancery; and the Ecclesiastical Court is not bound to certify to the Court of Chancery, even though sentence of excommunication be passed, unless called upon to do so by the promoter of the suit. See Rogers on Ecclesiastical Law, p. 512. In re *Hoiles* v. *Scales*, 2 Hag. We might perhaps contend that an honourable calling such as the Bar, itself of a *quasi*-clerical character, is scarcely within the meaning of the Canon, but we reserve our argument on that point till we come to a consideration of any statutable prohibitions on the subject. The Stat. 1 & 2 Vict. c. 106, may be said to embody and consolidate all former Acts prohibiting the clergy from following secular avocations. In the first place, then, this prohibition only relates to such clergy as are either "beneficed," or "licensed, or otherwise allowed to perform the duties of any ecclesiastical office whatever," s. 28. And in the second place, it has reference solely to being "engaged in or carrying on any trade or dealing for gain or profit," s. 29. Now, an honorary pursuit, the remuneration attached to which is purely "*quidam honorarium*," and which gratuity is not recoverable at law, surely cannot, by any force of construction, come within the definition of a "trade or dealing carried on