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COMMENTARIES
ON THE LAW OF
MUNICIPAL CORPORATIONS.

BY

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COURT OF IOWA.

FOURTH EDITION,

THOROUGHLY REVISED AND ENLARGED.

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TO THE
HONORABLE SAMUEL F. MILLER, LL.D.,

ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES.

YOUR ACKNOWLEDGED MASTERY OF THE SUBJECT TO WHICH
THIS WORK RELATES MAKES IT FITTING,
YOUR ESTABLISHED AND PERMANENT RANK IN OUR JURIDICAL AND
CONSTITUTIONAL HISTORY AS A GREAT AND ILLUS-
TRIOUS JUDGE MAKES IT AN HONOR,
AND OUR LONG AND UNBROKEN FRIENDSHIP MAKES IT A
RENEWED PERSONAL PLEASURE,
ALBEIT THE EVENING SHADOWS OF OUR LIVES FALL
UPON THE PAGE,
TO REINSCRIBE TO YOU WITH UNALTERED REGARD AND VENERATION
THIS REVISED EDITION OF A WORK WHICH, MORE THAN
EIGHTEEN YEARS AGO, WAS ORIGINALLY
DEDICATED TO YOU.

PREFACE TO THE FOURTH EDITION.

IN the nine years that have passed since the last edition of these Commentaries appeared, constitutional provisions have been adopted, legislative enactments passed, and numerous State and Federal decisions made on the important subjects which are embraced in its plan. And thus the law has not only been still further extended on previous lines, but it has in material respects been modified, altered, and enlarged. This is well known to those who have kept currently informed of the general progress of our jurisprudence; it will be apparent to all who shall compare the chapters of the present edition with the corresponding chapters of the previous edition upon Constitutional Limitations, Contracts, Streets, Eminent Domain, Taxation, Actions and Liabilities.

That the work shall adequately present the law relating to our Municipalities as it exists to-day, the author has spared no reasonable labor. The adjudged cases to date have been examined one by one, and the results thereof are embodied in this edition.

Grateful to the Courts and to the Profession for the favor with which from the first they have regarded the work, and with, as the author trusts, a pardonable ambition on his part to improve it, he deems it to be due to them, as well as to himself, to state that he has sought with diligent and loving care to make the revision thor-

ough, and that to this end he has personally gone over not only every section but every sentence, and has made such changes as the expansion of the law required and his own maturer judgment approved. Scarcely a single section is without alterations or additions.

A few further observations may be permitted, if, indeed, they are not required. In this day of the unprecedented multiplication of law books, there are two questions which the profession may as of right put to an author. The first is, Can your work justify its existence? The justification of the present Treatise is placed on the grounds quite fully stated in the preface to the first edition, which in substance are, that the subject is of acknowledged importance in all the States and Territories of the Union; that no English work is applicable or adequate; and that no other American work thereon existed or exists.

The other question is, Can it justify its size? An elementary treatise may be wrought out upon one of two different plans. The one is to state as clearly as may be ultimate legal principles without any or much elaboration of their grounds and reasons. It requires the mind of a master to frame propositions which shall be at once comprehensive and exact. Instinctively the profession in both countries has immemorially shared in Lord ELDON'S fear of the dangers that lurk in abstract and general propositions. The other is to state such propositions and principles, but to state them in connection with the reasons and grounds on which they rest, which are chiefly to be found in the adjudged cases. The latter course has been here pursued, for reasons which are peculiarly forcible in a treatise on this subject and in this country. Our Municipalities are inseparably connected with the organic framework and with the daily action of our political institutions. The law relating to them is developed day by day in the actual workings of those institutions in every

section of the country, and this development registers itself in constitutional provisions, in statutory enactments, and in judicial judgments. In this work the people, the legislatures, and the Courts, State and National, all take their respective parts, of which perhaps the most important, certainly the most varied and constant, is the part taken by the judicial tribunals. It is the high and delicate office of the judiciary department to elaborate the rough materials of our daily experience and litigation into the enduring products of law and justice, and to place on record for our instruction and guidance the reasons of the Judges for every step in this wondrous, this ceaseless, this beneficent process.

No writer on our jurisprudence is authorized to speak oracularly, to excogitate a system, or to give to his views any authoritative sanction. To this rule the most eminent are no exception, since every work upon our law is necessarily unauthoritative. No author can alter this inexorable condition; and any author ought to be content, and certainly will be fortunate, if he can leave on the imperishable structure of our jurisprudence some visible imprint, some lasting touch, some embodied memorial, however slight, of his labors. Even judicial judgments, if unaccompanied by the reasons on which they rest and which give to them their real worth, would have no recognized standing—and ought to have none—in the professional estimation and regard.

It is the humble function—but, at the same time, the priceless privilege—of an author to traverse the wide, rich, and varied fields which the legislative records and the judicial reports of all the peoples in both hemispheres who have adopted the institutions and who use the tongue of England thus open to him; to gather, analyze, and compare, and then to state the results of his labors and his studies, accompanied with his own reflections, criticisms,