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P R E F A C E.

Nor only the student of our Common Law, wherever he enters upon the task of acquiring its elementary parts, but its practitioners as well, and indeed all, of every pursuit in life, here, and in the mother land, who have occasion to know the obligations under which society places them, are largely indebted to Sir William Blackstone; whose proudest distinction it is, that, although a great lawyer and an eminent judge, he was the author of the "Commentaries on the Laws of England."

They were written and published between the years 1753 and 1770; when, we are assured, the way of the Common Law, to the student, was rough indeed, and obstructed with thorns and brambles, which, as yet, no other skillful and friendly hand had even attempted to remove.

The commentator was a *belles-lettres* scholar, of acquirement and taste—even a poet. About 1741, when, in his eighteenth year, he had just concluded upon the law as his profession, his own muse presents the contrast, not an inviting one, between pursuits he was to abandon and those which were, thenceforth, to form for him the serious business of life:

"Shakspeare no more, thy sylvan son,
Nor all the art of Addison,
Pope's heaven-strung lyre, nor Waller's ease,
Nor Milton's mighty self must please;
Instead of these, a formal band
In furs and coils around me stand,

With sounds uncouth and accent dry,
That grate the soul of harmony.
Each pedant sage unlocks his store
Of mystic, dark, discordant lore;
And points with tottering hand the ways
That lead me to the thorny maze."

The forms of administering justice came to perfection, in England, at an early day; but Common Law, the fountain of that justice, as a pursuit, or a study, was not in general favor with the learned, or lovers of learning.

When it was enacted by Magna Charta: *communia placita non sequantur curiam regis*," and WESTMINSTER became permanently the "*aliquo loco certo*" in which they were held, the influx thither of the Common Lawyers, from all parts of the realm, gave rise to the Inns of Court. In this union was strength, that enabled the law itself to withstand the attacks of the canonists and civilians, who labored to extirpate and destroy it. Our law there, perhaps, began first to assume at all the proportions or features of a science.

The lawyers, assembled together at Westminster, naturally fell into a kind of collegiate organization; and, being excluded from Oxford and Cambridge, found it expedient to establish a university of their own. There, exercises were performed, lectures read, and degrees were conferred in the Common Law; those of "barrister," and "sergeant." For a time, this seminary of the law flourished; but afterward fell from its early purpose, and degenerated.

When Blackstone wrote, "Alfred and Edward were habitually sacrificed to the manes of Theodosius and Justinian; the edict of the prætor, and rescript of the emperor were preferred to the immemorial customs of Common Law, and sanctions of parliament. At that day, in most of the nations on the continent, where the civil or imperial law

under different modifications was, as now, closely interwoven with the municipal law, no gentleman, or at least scholar, thought his education completed, till he had attended a course or two of lectures upon the Institutes of Justinian, and the local constitutions of his native soil, under the very eminent professors that abounded in their several universities.* In England, also, civil law professorships existed in both universities; but the opportunities of gaining legal knowledge, through those channels, would seem to have been quite incomplete, as it was then usual, we are assured, to send the English youth to foreign schools, as better nurseries of the civil law.

But, at that time, it was the peculiar lot of the Common Law, in England, and here, the only guardian of natural rights and rule of civil conduct, to be neglected, and even unknown, by all but one practical profession.

There had been no Chair of Common Law in either University, when Mr. Viner left, by his will, the copyright of his ABRIDGMENT, with other property to a considerable amount, to Oxford, for the purpose of founding a professorship, fellowships, and scholarships of Common Law. In October, 1758, Blackstone was elected Vinerian professor. This appointment, we may here remark, led him, in the preparation of his lectures, to investigate the elements of Common Law, and the grounds of civil polity peculiar to England; and, to it we are, beyond doubt, indebted for his Commentaries on that law and polity. The plan favored by Mr. Viner, and which Blackstone strove to carry out, was not ratified in convocation; and, in consequence, his views of an established society for the study of the Common Law coming to an end, he resigned his professorship in 1766, and while the Commentaries were in course of publication.

* Black. Comm., Introd., s. 1, p. 4.

Superadded to this want of suitable schools, was another; perhaps a greater, at least a more immediate, impediment in the way of those who desired to acquire the Common Law. There were no proper text-books. The student was compelled to encounter "sounds uncouth and accents dry;" the "mystic, dark, discordant lore" of the only elementary works to which he had access. Finch's Common Law and Wood's Institutes were ill adapted to reconcile him to the profession he was about to enter.*

These, and the "harsh and forbidding pages" of Coke, were readily laid aside for a Manual, in which accurate learning, systematic arrangement, and comprehensive research were accompanied by an elegance of style to which, theretofore, the compositions of the English jurists had been strangers.

The Commentaries absorbed the ardent labors of several years. Not until sixteen years after Blackstone began to lecture on the law, at Oxford, were his lectures presented to the public under their new title of Commentaries. Their reception was of the most flattering description. The new work achieved at once a most decided success. The author anxiously sought to free it from errors, as far as possible, and with this purpose, we are informed, submitted it, in MS., to the scrutiny, or revision, of such men as Lord Mansfield and Chief Justice Wilmot.

The position of the Commentator upon some, as well as his very conservative ideas on most, topics treated of, subjected his work to the severest criticism. It passed the ordeal, for censure or approval, of the first minds of that day, in jurisprudence, statesmanship and letters—of Priestley, Furneaux, Fox, Sheridan, Bentham and others. Their strictures were a means of adding completeness to the work: they induced the Commentator to revise it, in

* Black. Comm., *Life*, p. 27.

respect to the particulars objected to by his "animadvertisers;" "to retract or expunge from it what appeared to be really erroneous; to amend or supply it when inaccurate or defective; to illustrate and explain it when obscure."

All, however, even Bentham, united in commending its literary excellence. Says he: "correct, elegant, unembarrassed, ornamented, the style is such as could scarce fail to recommend a work still more vicious in point of matter, to the multitude of readers."

Fox, the statesman, of distinguished authority also as a critic, esteemed the style in which the Commentaries are written, the very best among English modern writers; always easy and intelligible, far more exact than Hume, and less studied and made up than Robertson; distinguished as much for simplicity and strength as that of any writer in the English language.*

Lord Mansfield expressed, in strong terms, his admiration of the manner in which Blackstone had executed his task. Having been requested to point out the books proper for the perusal of a student, he is said to have replied, "till of late I could never, with any satisfaction to myself, answer that question; but since the publication of Mr. Blackstone's Commentaries, I can never be at a loss. There your son will find analytical reasoning diffused in a pleasing and perspicuous style. There he may imbibe, imperceptibly, the first principles on which our excellent laws are founded; and there he may become acquainted with an uncouth, crabbed, author, Coke upon Lyttleton, who has disappointed and disheartened many a tyro, but who cannot fail to please in a modern dress."†

In connection with his great work on bailments, Sir William Jones alludes to the Commentaries, as the most

* Trotter's Memoirs of Fox. † Halliday's Life of Mansfield, p. 89.

correct and beautiful outline that ever was exhibited of any human science.

The Commentator on American Law, also, placing Blackstone at the head of modern writers, adds this generous and beautiful tribute: "by the excellence of his arrangement, the variety of his learning, the justness of his taste, and the purity and elegance of his style, he communicated to those subjects which were harsh and forbidding in the pages of Coke, the attractions of a liberal science and the embellishments of a polite literature."

We might add largely to these testimonials from the most eminent sources, but general opinion, among the discriminating, has long since confirmed the sentiment they embody. We introduce them here, rather, in order that the student, at the outset, may have the fullest introduction to the author, whose great work he is to peruse, perhaps in connection with and aided by the following pages; and to excite, in advance, his admiration for a masterpiece, that must tell upon his application to its pages, and will, therefore, be well and profitably bestowed.

It is the first book given into his hands upon the threshold of legal studies; the grammar, from which he may derive the rudiments, to which he will constantly refer, as the rule and standard, his future acquisitions in legal lore. It is reported as the saying of a celebrated English judge, that every practitioner of the law should read yearly Blackstone's Commentaries; an observation to which the profession generally will assent. Upon their appearance, the Commentaries became, indeed, the lawyer's *vade mecum*; a position in which they have not been superseded. They not only held their ground, but have grown constantly in use and good repute, among men of the law, as the first and foremost of law books.

The Commentaries have affected a revolution in our

legal learning, at least as to the method of acquiring it. As a precedent, they have been abundantly followed in the style and construction of text-books, and elementary works generally. Indeed, through them,

"Grim visag'd law hath smooth'd her wrinkled front."

She is still "a jealous mistress," and exacts the greatest devotion in those who would addict themselves to her with success, but is no longer repulsive. Her service, wisely followed, with the more recent aids and appliances, is, compared with what it was when the Commentaries were projected, easy and pleasant. We are here again tempted to cite Blackstone's verse, as in point. In the "*Farewell to his Muse*," he has prescience of a career (such as it then was), as follower of the law, which the student, now-a-days, cannot anticipate without gross exaggeration; even though ready to sacrifice as much for "fair justice."

"Then welcome business, welcome strife,
Welcome the cares, the thorns of life,
The visage wan, the pore-blind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall,
For thee, fair *Justice*, welcome all!"

This volume, containing the most material parts of Blackstone's Commentaries, by way of question and answer, was intended, especially, to facilitate the student; but, it is hoped, will be found, also, of use to many outside of the profession.

The knowledge intended for practical, every day use, should be full and accurate. Cursory, even careful, perusal of its sources will not answer the purpose. What the

practitioner reads of necessity, should penetrate his memory, so as to remain there a fixture. To that end, masters in all branches of learning counsel the mode of acquisition by question and answer, as well calculated to impress the mind lastingly with what is read; and each one's experience, as a student, doubtless, confirms the piece of advice as wise and judicious.

But, in the following pages, the questions not merely draw and fix attention to the text of the Commentaries, but are fully answered apart from that text; so that, taking together question and answer, the information conveyed is complete, without any reference to the immediate source from which each is derived.

Thus, this volume may be of use, as a source of information, briefly and accurately conveyed, upon most important topics, in the absence of the Commentaries themselves; particularly to those, outside of the profession, who have no time to attack elaborate or ponderous volumes, but read for general information as to the reason, policy and justice of the law, to which they are subject; which they are bound to know, in order to obey.

Certainly, an acquaintance with the general principles and maxims of law is of great importance, in every well-regulated community; and some general knowledge of the municipal law, especially, is of use in nearly all situations of life. Few, in any position, can discharge properly their duty, either to the public or themselves, without some degree of that knowledge.

To a self-governed people such information is of the greatest moment. In this country, every one who votes is, in some degree, virtually a legislator; and is eligible to positions in which he would be one in fact. Apprenticeships are held necessary to almost every art and profession, but each man thinks himself born a legislator. It is self-

evident, that for the duties of law-giver a knowledge of the laws is necessary; for, in the words of the Commentator, "how unbecoming must it appear in a member of the legislature, to vote for a new law who is utterly ignorant of the old! What kind of interpretation can he be enabled to give who is a stranger to the text upon which he comments!" The confusion, perplexity, and litigation, introduced by ill-judging and unlearned legislators, are greatly to be lamented, as the source of lasting injury to the community's best interests.

A word, as to the origin of this book. Some years since, Mr. Asa Kinne, of this city, published a work, much smaller than this, with a title nearly similar, consisting of questions and answers from Blackstone's Commentaries, intended especially for the use of students. With a second edition, it went out of print. But it had proved serviceable; and the demand for it, or a work of similar character, continues—as became evident to the publishers of this volume.

It was at first proposed to revise and re-publish Mr. Kinne's work, but, on trial, a suitable revision of it proved to be quite out of the question. It was concluded, therefore, to re-write the whole, and furnish a new work, embracing much additional matter; with the main feature, the method by questions and answers, fully preserved. As already stated, the following pages are not merely a book of reference, but each question is accompanied by its corresponding answer, full and complete without consulting the text of any other volume.

In short, it may be considered an independent CATECHISM, *i. e.*, form of instruction by means of questions and answers, in the principles of the Common and Statute

Law of England as expounded in Blackstone's Commentaries.

J. C. D.

NEW YORK, *August*, 1858.

NOTE.—The twenty-first English Edition of the Commentaries, in four volumes, was used in the preparation of this work. That edition, the last and best, has been reprinted, in this city, by Harper & Brothers.

It contains, in the course of very full and accurate notes, the alterations in the law, mostly by statute, since the time of Blackstone, so far as they affect the text of the Commentaries. For obvious reasons, very slight reference is made herein to those alterations. Our design related to the Common Law; not, at all, to English Statutory Enactments of the last eighty-eight years, which are of no authority here.

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* The — opposite a section or chapter shows that it is omitted from this volume.