

Canada Law Journal.

VOL. XLIII.

FEBRUARY 1.

NO. 3.

ENGLISH AND ROMAN LAW.

Notwithstanding what has been said by Coke and Blackstone in favour of the supposed autochthonous character of English law, very few modern lawyers, who have considered the matter, can doubt that in many most important particulars English law is really founded and built up on principles derived from the Roman law. That majestic creation of human genius which for so long dominated Europe and even to-day is the fountain of most of its jurisprudence, forms a mine of juristic learning fortified by experience, which it would have been folly for English lawyers in search of sound rules of decision to neglect or ignore. English law cannot be said to have been founded on Roman law in the sense in which that of countries which have adopted the civil law may be said to be, at the same time our indebtedness to it is a matter of no reasonable doubt, and in this respect the eclectic genius of the English people is manifested in the way in which they have selected from its principles what seemed best for themselves, adopting what makes for freedom and liberty, and rejecting what makes for absolutism.

The debt we owe to Roman jurisprudence is obviously well indicated by our legal phraseology—where, for instance, does the word "action" as applied to legal proceedings come from, except it be the Roman "actio," and when we classify actions as being either in rem, or in personam, we are clearly following Roman precedent. Where does our idea of a writ of summons as the way of beginning an action come from but from the Roman proceeding of "vocatio in jus?"

Where we talk of vindicating our rights is it not the Roman procedure of "vindicatio" which is probably at the foundation of the idea which we wish to express. Possession in its legal and technical sense is undoubtedly derived from the Roman "possessio."