

Pause here for a moment—"the Common Law of England in its earliest formative period was much indebted to the Roman jurisprudence." In what sense are we using the words "the common law of England"? Do we mean "the arbitrary rules and usages" of the folk courts—the only things that look like laws before William's Chief Justiciar got to work? Or do we mean the "rough, general agreement" of the people? Or, do we not mean that the judges got some light from the civil law? That the *decisions* were colored by Roman jurisprudence? The Common Law was much indebted to the Roman jurisprudence. If we mean by this the decisions, would it not be better to say so?

When Mr. Pomeroy speaks of "building upon the Common Law with materials taken from the never-failing quarries of the Roman legislation" (y), or declares that "the ancient Common Law rigidly exacted all penalties" (z), or indicates that "the ancient Common Law paid great deference to matters of pure form" (a), everybody understands him, and every lawyer (or nearly every lawyer) would use the words "Common Law" in the same sense. Turn back to the Year Books of the 14th century and the meaning is the same:—

"Audita Querela is given rather by Equity than by Common Law" (b).

"And this suit is ordained by Parliament because I cannot have a recovery at Common Law" (c).

Let us look at the matter concretely. The courts have been examining lately some very modern developments in social relations, and adding "Boycott" and "Strikes" to the digests as additional headings. Now, from what source are the judges getting the law upon these subjects? Is it out of that gaseous Common Law which, if one may surmise, has existed from all eternity (for no one has ever heard of its creation, or other genesis)? Or are we to believe in special divine inflations for the birth of each new opinion—veritable modern themistes instead of the apocryphal inspirations of ancient days? Before trusts and combinations commenced to affright us, the English courts had little difficulty in asserting that

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(y) § 15.

(z) § 72; and see 381.

(a) § 379.

(b) 17 Ed. III, 370.

(c) Ib. 386.