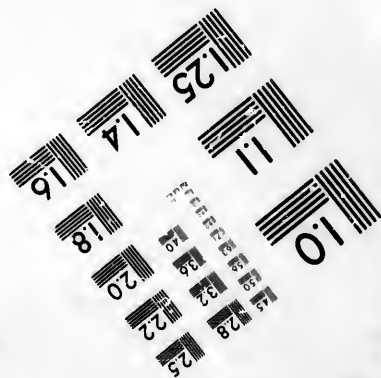
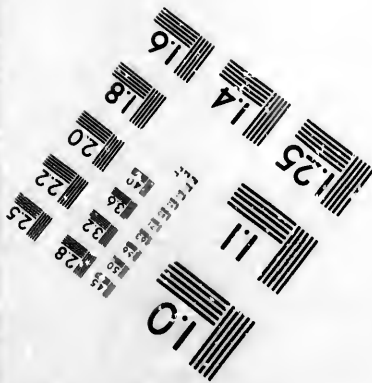
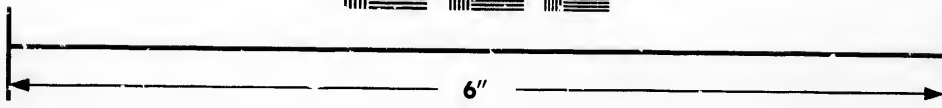
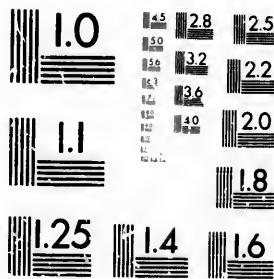


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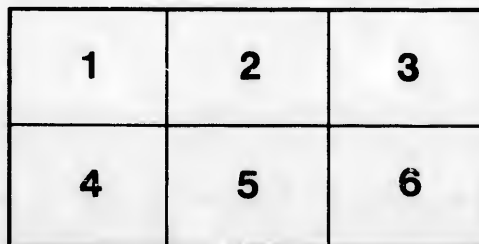
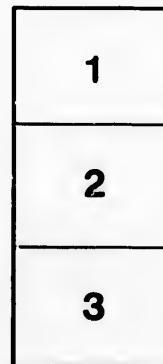
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THE
JUSTINIAN PANDECTS,
THEIR ORIGIN, PROGRESS AND COMPLETION.

—§—

PAPER READ BEFORE THE
Literary and Historical Society
OF QUEBEC.

By R. S. M. BOUCHETTE, Esq.,

24d. Vice-President
OF CANADA

THE UNIVERSITY OF CHICAGO

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THE JUSTINIAN PANDECTS—THEIR ORIGIN,
PROGRESS AND COMPLETION.

PAPER READ BEFORE THE SOCIETY,

BY R. S. M. BOUCHETTE, Esq., 2ND V. P.

THE subject which it is my intention to bring under your consideration this evening is, as announced in the public notice given by the Society, "THE JUSTINIAN PANDECTS."

As thus foreshadowed, however, the subject assumes so broad and comprehensive a shape, that I hasten to explain that the paper which I am about to read, aims not at any recondite investigation into or learned exposition of the laws themselves, contained in those renowned volumes of legal wisdom, known as the *Corpus Juris Civilis*; my present purpose aspires to nothing beyond giving a brief and succinct historical outline of the origin, progress and completion, of that great legal work as achieved by the Emperor JUSTINIAN in the early part of the 6th Century of the Christian Era.

Myself, but a very humble, though somewhat ardent, votary on the threshold of that vast Temple of Jurisprudence reared by JUSTINIAN, I have little more than contemplated with admiration some of its legal and philosophical splendours; but I was early taught to reverence the laws of the Roman Empire, and to make a knowledge of those laws the foundation of my professional studies.

The humble disciple of an eminent Jurist and Orator, one who would have ranked with the SCÆVOLAS in the Eternal City during the palmiest days of its forensic glory, I had at least the inestimable advantage of finding in him a guide and patron, who was at once an accomplished Scholar and profound Legist; one to whom and to whose teachings I am indebted for the deep interest I so early felt in the study of the Civil Law. I need but mention his name to a Canadian audience, and especially in Quebec, to obtain universal assent to this passing estimate of his transcending forensic powers, to which he added great benevolence of heart. I allude to the late lamented ANDREW STUART, Solicitor General, whose memory is still so fondly cherished in Canada.

Apologizing for this digression, I will, with your leave, proceed with my subject.

THE CODE, the PANDECTS and the INSTITUTES, of which I shall more fully speak in the sequel, appeared in Constantinople, and were promulgated as the Laws of the Roman Empire, between the years 527 and 534 of the present Era, or nearly thirteen Centuries after the foundation of Rome. By the Code and the Pandects all other antecedent laws were solemnly abrogated, and so rigorous, indeed, was the injunction to abstain from any application of the repealed laws, that the breach of that injunction was declared to be a crime amounting to *Fraud* or *Forgery*—*falsi reus est qui abrogatis legibus utitur*.

It will be, however, neither uninteresting nor uninteresting, to take a brief retrospect of Roman Jurisprudence, antecedently to the days of JUSTINIAN, and to examine what were the laws thus bodily consigned to oblivion, after escaping that wide and desolating ruin which the ruthless hand of the barbarian spread over fair Italy, and which shook the

Western Empire to its very foundations and succeeded at last in its total overthrow towards the close of the 5th Century. Nor had the new Code which had been gleaned from the wisdom of the ancient legal lore of Rome, perils of a less imminent character to encounter from the degenerate and barbarized Greeks, the Persians, the Tartars and other Asiatic nations who consummated the extinction of the Empire of the East in 1453, when Mahomet the Second stormed and plundered Constantinople, banished the insignia of the Cross, and in the place of that emblem of Christianity exalted the Crescent which now adorns the Mosques and Minarets of the far famed BYZANTIUM.

That these abrogated laws were voluminous, we are justified in believing upon the authority of JUSTINIAN himself, who informs us in his solemn confirmation of the PANDECTS, that nearly 2000 Books, containing upwards of 3,000,000 of lines (*tricies dena millia versuum*) were necessarily explored by the compilers of the Digest and condensed within the compass of 50 books and about 150,000 lines.

In the first book of the Digest, we find a succinct account of the origin and progress of the Civil Law, and of the succession of magistrates and eminent Jurists who flourished from the days of PAPIRIUS down to the time of JUSTINIAN. Borrowed from the writings of the celebrated Pomponius and followed by Gaius, this title offers at once a clear and compendious sketch of the inception, advancement and completion of that herculean legal achievement transmitted to the present generation as the *Corpus Juris Civilis*. I could not therefore, follow a more judicious course than by adopting as my text, this passage of the PANDECTS, in tracing an outline of the History of Civil Jurisprudence.

Although the primitive Government of Rome was an absolute monarchy, the wisdom and magnanimity of ROMULUS, admitted the people, at an early period, to a voice

in Legislation. The Sovereign, indeed, reserved to himself the exclusive right of proposing laws; but these laws were submitted to the assent of the people assembled in the thirty *Curie* or Wards into which the City was divided. It was not until the reign of TARQUIN THE PROUD, whose tyranny and vices provoked the expulsion of the Kings, that any attempt seems to have been made, of which at least we have any knowledge, to collect and arrange into something like Order, the Royal ordinances or enactments, and such other laws as had obtained the sanction of Magisterial decisions or had grown out of universal usage.

The compilation of PUBLIUS or SEXTUS PAPIRIUS, in the reign of TARQUIN THE PROUD, is the earliest essay of the kind we have on record; but we have at this day a few fragments only of the labours of this eminent lawyer, whose Digest was denominated the *Jus Civilis Papirianum*, * which has transmitted his name with honor to posterity.

The expulsion of Royalty seems to have been succeeded by a species of legal anarchy, the *Lex Tribunitia*, or tribunitial law, having formally annulled at one fell stroke all the Royal laws, and therefore subverted the authority of the Papirian Code or Digest, leaving the Romans, during a period of nearly 20 years, without any positive Rule for their governance, and compelling them to resort to the sole moral force of such customs, as naturally resulted from the complex relations arising out of a state of society.

* GIBBON, (from whom I have freely borrowed) in a learned chapter on Roman Jurisprudence, 8th Vol. of his "Decline and Fall of the Roman Empire," in a note on page 5, seems to doubt the existence of this code, and thinks that the *Jus Papirianum* of Granius Flaccus, quoted in the Digest, (l. l., Tit. XVI, leg. 144,) was not a commentary, but an original work compiled in the time of CESAR. But we may fairly believe that the profound PAUL, from whom this law is borrowed, would be exact in this respect, and would not use the positive language "*Granius Flaccus in libro de Jure Papiriano*," were he not quoting the commentary.

This order of things could not be long protracted in an age when the fame of SOLON and LYCURGUS had already given to ATHENS and LACEDÆMON so much celebrity as the favored seats of Legislative wisdom and moral philosophy. Under the solemn sanction of public authority, a mission to the Athenian Republic was therefore devised and carried out, for the purpose of acquiring a knowledge of their municipal laws, and of afterwards engrafting them upon the legal institutions of ROME. The laws thus copied, in so far as they were deemed applicable to the genius of the Roman people and the state of Roman society, were inscribed by the Decemvirs on Ten Tables of Brass, or Ivory or Wood, (*roboreas primum deinde Æreas*,) which were set up in the Forum for public instruction and commentary. To these were added, the following year, two other Tables, which supplied the omissions or deficiencies of the first Ten, and hence arose the denomination of the 12 TABLES OF THE ROMAN LAWS, so famous in the annals of History, and into which had been transferred so many of the wise precepts of the prince of Grecian Sages. † Nor

† I have followed in this passage, Pothier's prolegomena to the Justinian Pandects.

GIBBON, in his famous work already quoted, (*Decline and Fall of the Roman Empire*, loc. cit.) rejects the truth of the Roman mission of the Decemvirs to Athens, and he founds his rejection upon the fact that the Grecian Historians of that period appeared ignorant not only of that famous Embassy, but even of the name and existence of Rome! He cites Herodotus, Thucydides, (A. U. C. 330, 350,) Theopompus, (A. U. C. 400,) and others; and adds that Pliny (III. 9) gives to Theophrastus, who wrote A. U. C. 440, the credit of being the first Greek who diligently wrote anything of or concerning the Romans. Gibbon also thinks it improbable that the Patricians of Rome would have taken much trouble to copy the austere laws of a pure democracy. In a note by *Professor Warnkonig*, which is cited by MILMAN, in his learned Ed. of GIBBON, in reference to this passage, vol. 4, p. 303, it would appear that Gibbon's opinion upon this point is "almost universally adopted," and he particularly mentions *Niebuhr* and *Hugo* as supporting it. Nevertheless, the account of this mission is so circumstantially given, that it is difficult to treat it as fabulous: "Sed tandem ex T. Romilii sententia senatus consulto facto, quod plebiscito confirmatum est, missi Legati Athenas SP. POSTHUMIUS, A. MANLIUS, ET P. SULPITIUS; jusque inclytas SOLONIS leges describere, et aliarum Græciæ civitatum instituta, mores,

should I omit here the mention of the wise Ephesian who about this time was thrown as an exile upon the Italian shores, to whom is ascribed the honor not of the profound exposition only, of the lore of the 12 TABLES, but the merit also of having contributed to the amelioration and amendment of the laws they prescribed. The name of HERMODORUS is honorably recorded in the Pandects, and is mentioned with veneration by ancient and modern Historians.

The legal discussions of the Forum, the interpretation of the laws by learned Jurists, the judgments of Roman Magistrates pronounced in particular cases, subsequently gave rise to the *Lex Non Scripta* or common law, or what was specially designated and understood as the *Jus Civile*, just as in England or the United States of America the legal arguments of eminent Counsel, the dicta of Judges, and the decisions of Courts, combine to produce the law of precedents, and to engraft on the *Lex Scripta* or positive law, as possessing a quasi binding authority, the vast accumulations of legal opinions and speculations collected in the voluminous reports of adjudged cases; reports which threaten, from their magnitude and rapid increase, to involve future generations in that confusion of law as a science, which preceded, in the Roman Empire, the compilations of Tribonian and his associates, and which eventually led to the necessity of that comprehensive and lucid system of codification, of which so brilliant an example is contained in the PANDECTS and the CODE.

“ juraque noscere; unde leges Romanorum institutis convenientes conficerent.
“ *Reversis jam Legatis cum legibus Atticis, &c.*—(Pref. ff cap. 1, §2 de leg. XII Tab.
“ art 1 et seq.)”

But stronger evidence still, that this decemviral mission is no mere myth is found in the “proofs” (*probationes*) of *Tabula 10, Fragm. leg. XII Tab.* which treats *de Jure sacro*. The language of CICERO lib. 2 de leg. is very clear: “*Postquam sumptuosa fieri funera et lamentabilia cepissent, SOLONIS lege sublata sunt. QUAM LEGEM, HISDEM PROPE VERBIS, NOSTRI VIRI IN DECIMAM TABULAM CONJECERUNT.*”

The organisation of Tribunals of Justice about the same time suggested the expediency of method in the procedure. The importance of *forms* became manifest, and hence arose the *Actiones Legis* or *Legitimæ Actiones*, which required so strict an adherence to a prescribed form of words and certain specific symbolical acts, that any departure from the one or the other subjected the Promovent, Libellant or Prosecutor to a non-suit.

A. U. C. 446.—The *Actiones Legis* now became a momentous branch of Jurisprudence. But the Code which contained the Rules and rigid *formula* prescribed for the prosecution of actions, or the exercise, indeed, of ordinary civil rights—was, it seems, sedulously withheld from the knowledge of the vulgar. Patricians and lawyers were alone in possession of or had access to this key to judicial procedure, the code which enjoined those forms being, it is said, mysteriously confided to the custody of some Patrician Pontiff. However, in the year of Rome 449, GNAEUS FLAVIUS, the son of a manumitted slave, and the secretary of APPIUS CLAUDIUS, (who was variously adorned with the cognomina of Centumanus, Crassus and Cæcus,) filched from his employer this important Code, and published it. This won for FLAVIUS great favor with the people, who marked their gratitude by exalting him to the several dignities of Tribune, Senator and Edile, whilst he moreover enjoyed the usurped honor of having the law recognized under the name of the *Jus Civile Flavianum*; which, whilst it immortalized an act of infidelity on his part towards his chief, has equally proclaimed his love paramount for the people, who had an undoubted right to a knowledge of the laws of procedure, with which they were stringently bound to comply. The morality of the case is a fit subject for the consideration and judgment of Casuists, and to them I leave it.

A. U. C. 553.—Subsequently, *Sextus Ælius* compiled

another work on the *Actiones Legis*, known as the *Jus Ælianum*.

Hitherto, Patrician influence had so preponderated in the *Centuriæ* or hundreds into which the Roman people were divided, the votes being based upon property, that the mass of the people became jealous of an order of things which *de facto* nullified their voice, and they insisted upon and carried that, in regard to the passing of laws, the votes should be taken by *tribes*. Nor did this important modification of Patrician Legislation, yield complete independence to the voter, until the occult suffrage of the ballot was introduced to relieve the embarrassed debtor from the fear or control of a rigid creditor, the client from that restraint contingent upon his respect for his advocate or patron, and the generality of voters from that influence which leads the populace to imitate, and follow in the wake of citizens, exalted to the honors of the State and enjoying authority among the people.

The laws thus enacted were denominated *Plebiscita*; but so great became the confusion arising out of the new form of legislation, and often so incongruous were the enactments, that under the dictatorship of Hortensius, they were for the most part revoked or amended, and the *Lege Hortensia* and the reformed *Plebiscita*, were then looked upon as, alone, containing the legal Rule of action,

This paved the way to the supreme legislative authority of the Senate, and hence upon the CONSCRIPT FATHERS devolved the important and responsible task of enacting laws. The decrees of the Senate were called *Senatusconsulta* and became of great weight and authority among the people.

These laws were expounded and administered by the Roman Magistrates generally; but the Prætorian Edicts alone, went the length of supplying the defects of a law

as well as of explaining its ambiguities. These Edicts constitute what was termed, the *Jus Honorarium* as proceeding from the highest Juridical Functionary of the State, who was invested with special public honors and large judicial prerogatives.

It was to one of these Edicts, vastly more comprehensive in its scope than any others and more solemnly promulgated, that ROME was beholden for its first well digested CODE of LAWS. The reign of the Emperor HADRIAN was rendered famous as the epoch of the *Perpetual Edict*, * and the name

* IN MILMAN'S "New Edition" of Gibbon, (Decl. and Fall R. E.) we find the following notes in Vol. IV pp. 312-313, in reference to the PERPETUAL EDICT. The 1st note is the learned Editor's; the 2nd is one borrowed from Professor Warnkönig, to be found in a French translation of Chap. XLIV of Gibbon's work, cited:

1st. "Gibbon," observes Milman, "has fallen into an error, with Heineccius, and almost the whole literary world, concerning the real meaning of what is called the *perpetual edict* of Hadrian. Since the Cornelian law, the edicts were perpetual, but only in this sense, that the pretor could not change them during the year of his magistracy. And although it appears that under Hadrian, the civilian Julianus made, or assisted in making, a complete collection of the edicts, (which certainly had been done likewise before Hadrian, for example, by Ofilius, qui diligenter edictum composuit,) we have no sufficient proof to admit the common opinion, that the Prætorian edict was declared perpetually unalterable by Hadrian. The writers on law subsequent to Hadrian (and among the rest Pomponius, in his Summary of the Roman Jurisprudence) speak of the edict as it existed in the time of Cicero. They would not certainly have passed over in silence so remarkable a change in the most important source of the civil law.—M.

2nd. Hugo has conclusively shown that the various passages in authors like Eutropius, are not sufficient to establish the opinion introduced by Heineccius. Compare Hugo, vol. ii. p. 78. A new proof of this is found in the Institutes of Gaius, who, in the first books of his work, expresses himself in the same manner, without mentioning any change made by Hadrian. Nevertheless, if it had taken place, he must have noticed it, as he does l. i. 8, the *responsa prudentium*, on the occasion of a rescript of Hadrian. There is no lacuna in the text. Why then should Gaius maintain silence concerning an innovation so much more important than that of which he speaks? After all, the question becomes of slight interest, since, in fact we find no change in the perpetual edict inserted in the Digest, from the time of Hadrian to the end of that epoch, except that made by Julian, (compare Hugo, l. c.) The later lawyers appear to follow, in their commentaries, the same text as their predecessors. It is natural to suppose, that, after the labors of so many men distinguished in jurisprudence, the framing of the edict must have attained such perfection, that it would have been

SALVIUS JULIANUS, the Roman Prætor, will be handed down with glory to civilized nations as the author of that celebrated ordinance.

From this period, the power of making laws for the Empire seems to have passed wholly into the hands of the Emperors. From the reign of **AUGUSTUS** to that of **TRAJAN**, the Cæsars appear to have contented themselves with the promulgation of their Edicts, through the intervention of Roman Magistrates or as Magistrates themselves, and in the decrees of the Senate we frequently find inserted with marks of peculiar respect, the Epistles and Orations of the Prince. **HADRIAN**, was the first of the Emperors who, at the beginning of the second century, yielding to the dictates of ambition, boldly assumed the plenitude of Legislative power.

Hence arose that multitude of Constitutions, Rescripts, Edicts and pragmatic sanctions which composed that large body of Roman Law, which was afterwards methodized and condensed into the three famous compilations known under the respective names of the **GREGORIAN**, the **HERMOGENIAN** and the **THEODOSIAN CODES**. The Gregorian covers the period from **HADRIAN** in 117 to **VALERIAN** in 254: The Hermogenian commences with the reign of **CLAUDIUS** in 268 and comes down to the time of **DIOCLESIAN** in 284; and the last, the **THEODOSIAN** includes the period from **CONSTANTINE**, in 306, to **THEODOSIUS**, in 421.

Of these three Codes, the last, only, seems to have been partially preserved to the present time, and among its

difficult to have made any innovation. We nowhere find that the jurists of the Pandects disputed concerning the words, or the drawing up of the edict.

What difference would, in fact, result from this with regard to our codes, and our modern legislation? Compare the learned Dissertation of M. Bioner, *De Salvii Juliani meritis in Edictum Prætorium recte æstimandis*. Lipsæ, 1809, 4to.—W.

compilers we find the names of CAIUS, PAPINIAN, PAUL, ULPIAN and MODESTINUS, who were so pre-eminent in their day that by a special Edict of THEODOSIUS the Younger, they were solemnly pronounced to be the Oracles of Jurisprudence throughout the Empire.

Now, in glancing back at what has been said in the preceding pages we gather that, the laws which governed the Eternal City, from the early period of its history down to the age of JUSTINIAN were :

- 1o. The *Jus Civile Papirianum*, under the Kings.
- 2o. The *Lex Tribunitia*, which abrogated the *Jus Papirianum*.
- 3o. The Laws of the 12 Tables.
- 4o. The *Jus Civile*, or common law.
- 5o. The *Legis Actiones*, called also *Jus Civile Flavianum* and *Jus Aelianum*.
- 6o. The *Plebiscita*, or popular laws, which were afterwards merged in the *Lex Hortensia*.
- 7o. The *Senatus Consulta*, or decrees of the Senate.
- 8o. The *Jus Honorarium*, or Prætorian Edicts, or rather the PERPETUAL EDICT, which was or is presumed to have been a Digest of them all.
- 9o. And lastly, the Constitutions, Rescripts, Edicts and Pragmatic Sanctions of the Emperors, which were comprised in the GREGORIAN, HERMOGINIAN and THEODOSIAN compilations.

A. D. 527—Thus stood the great body of the ROMAN LAW in the beginning of the 6th Century, when the genius of JUSTINIAN conceived and devised the Herculean design of collecting and condensing that vast undigested mass of legal learning and moral philosophy (the mere manuscripts of which are represented to have been burthen enough for many Camels *Multorum Camelorum Onus*), into the comparatively narrow compass of the CODE, the PANDECTS and the INSTITUTES.

The immortal TRIBONIAN, the most laborious at least, if not also the most profound Jurist of his age, was the master spirit to whom this great and momentous work was intrusted; and he and his learned associates, 9 in number, in the preparation of the Code, and 6 in the compilation of the Digest, achieved their arduous task, much within the period assigned for its performance; such were the zeal, the ability and the genius that were brought into action in the fulfilment of the Imperial mandate.

The *Justinian Code* first appeared A. D. 529, not quite a twelve months after the work was commenced, * and the *Magnum Opus*, the DIGEST or PANDECTS, for the compilation of which ten years had been computed as necessary, were presented to the world in their present shape within the astonishing short period of three years.—(A. D. 533.)

The CODE embodies the *Constitutions* and *Rescripts* of the Roman Emperors from the reign of TRAJAN and is derived chiefly from the three Codes of which we have already spoken i. e., the Gregorian, the Hermoginian and the Theodosian. It is divided into 12 *Books*, each Book into *Titles*, and these again are sub-divided into *laws*, *principia* and *paragraphs*.

The DIGEST, the most precious of the great Works bequeathed to posterity by JUSTINIAN, contains the solemn record of the *dicta* and opinions of Magistrates and Lawyers of eminence who flourished under the Republic and the Empire, whose names are affixed to their respective laws for the laudable reasons stated in the confirmation of the Pandects, §10 & 20, "*Quia*," says that law, "*Aequum erat tam sapientium hominum nomina taciturnitate, non obliterari*,

* A second promulgation however took place in 534 containing eleven new constitutions, 6 of which partially revoked or amended former laws.

tam ut manifestum esset ex quibus legislatoribus, quibusque, eorum libris hoc Justitiæ Romanæ Templum ædificatum esset."

The DIGEST is arranged under 7 principal heads or divisions called Parts, which comprise in all 50 Books. These are divided into Titles, Laws and Principia, in an order at once simple and lucid. It contains copious and well digested Tables of Contents, which render a reference to its authority a task of little or no difficulty.

The INSTITUTES to which the name of Justinian has emphatically attached, probably from the supposition which at one time prevailed, that the Emperor was himself the writer of the work—were meant to contain, as they really do, the *elements* of Civil Jurisprudence. Inferior in magnitude and importance to the Code and the Digest, yet have they no less than these elicited in all Countries the admiration of the Lawyer and the Philosopher.

They are stated by classic judges to be written with somewhat unequal elegance, the passages ascribed to Justinian being distinguishable by the comparative barbarism of their style from those copied from a similar work by GAIUS, * dating as far back as the reign of Marcus Aurelius, or Antoninus Pius, the latinity of which is esteemed in the highest degree classic. The *Institutes*, as we now have them, are the result of the combined labours of TRIBONIAN, THEOPHILUS and DOROTHEUS. They are composed of four Books, and divided into Titles and Paragraphs.

To the CODE, the PANDECTS and the INSTITUTES were subsequently added a series of *Constitutions* and *Edicts* of the Emperor Justinian himself. These *Constitutions* were called *Novellæ* or Novels, and are 168 in number. These

* The Institutes of *Gaius* were discovered complete some 50 years ago, and were printed in Berlin 1824, (Gaii Institutiones ed. Goeschen.)

Novels, it seems, made their appearance in rapid succession, and were sometimes written in Greek, the language in which they are still extant in the *Corpus Juris Civilis*.

We have thus traced, though in a very cursory and I fear a very imperfect manner, the origin, progress and completion of the Code, the Pandects and the Institutes; and if we pause for a moment to contemplate the vast treasury of human wisdom and experience from which they have been derived, it will be no theme of surprise that these immortal compilations should have received the sanction of all civilized nations, and have been bodily adopted as texts of law by most European Countries, and received partially by all. The reference to them as written reason, in the Courts of all enlightened communities, even in those in which they possess no authority as law, is the highest order of approbation and praise which could be conferred upon them. and the universal assent of mankind to those branches of Roman Jurisprudence which are generally applicable to the transactions of civilized societies—such as the large subject of contracts, bailments, servitudes, prescription, and many others, fixes indelibly the stamp of wisdom on laws that could thus happily have generalized and settled the Rules of action by which men should be and are in truth governed.

That these invaluable repositories of legal learning should have been preserved to us amidst the vicissitudes that marked the History of Europe and Asia-Minor, during the barbarous and the middle ages, seems almost providential, especially when we consider that down to the middle of the fifteenth century, when the art of printing was invented, they existed, but in M. S. S., exposed not only to the destruction of the elements and the deprivations of barbarian warfare, but were even threatened by the cupidity or ignorance of idle scribes, poets or novellists, who not unfrequently obliterated inestimable M. S. S. of the description of the Institutes or the Pandects, for the purpose

of applying the parchments or papyrus on which they were originally written, to their own useless and oftentimes frivolous effusions.

Numerous instances of these profane and vandalic obliterations of useful chronicles and scientific essays have been discovered within the last four or five centuries, although the practise itself, of erasing manuscripts to use the parchments for other literary compositions, seems to have obtained at a much earlier period, and is stated to be coeval with the days of CATALLUS, or about the end of the 7th century of the foundation of Rome.

The restoration of Palimpsests—which is the name under which these defaced papyri are known—has now long been the favorite study of some of the most learned men in Germany, Italy and other parts of Europe, whose researches may yet bring to light new and important historical discoveries, and eventually realize the hope expressed by Gibbon, that some of the lost passages of the Perpetual Edict—of which we now possess but a few scattered fragments—may still be restored.

JUSTINIAN, the Atlas on whom rests the ponderous tomes of Roman Jurisprudence, the legal Hercules of his age, if the expression may be allowed as applicable to the magnitude of the works accomplished under him ; Justinian after a reign of 38 years died A. D. 565. The epoch becomes the more memorable, from the events which followed, for scarcely had his clay mouldered in the dust than the glory of the splendend Monument of Roman Law which he had reared became eclipsed, and the Code and the Pandects gave way to barbarian power and barbarian laws, that usurped their place and well nigh threatened them with complete annihilation.

They in fact disappeared and remained in a partial state of oblivion until towards the middle of the 12th

Century, when suddenly, and as by a divine miracle, such is the language of Pothier in his preface to the Digest, a complete Copy of the Pandects resuscitated, *emersit tandem e sepulcri tenebris*, and appeared in 1136 at AMALPHI, an Italian City, near Salerno. From AMALPHI this celebrated Copy was transferred to Pisa; and finally in 1446 was solemnly deposited in the Library at Florence. From this famous M. S. it is, that the most approved editions of the Pandects have been since copied and collated.

Thanks to the ingenius and all important discovery of Guttenberg and Faust, which, from the wonderful facilities which it has afforded for the dissemination of thought, forms perhaps the most remarkable and eventful epoch in the modern annals of mankind, the great works, of which we are now speaking, as well as those which have since that epoch, sprung from the pens of the literary and the learned of all nations, are now placed beyond the chance or probability of loss or destruction. The press has multiplied copies of the Justinian compilations to such an extent as to justify the belief that posterity can never be bereft of those invaluable treasures, and that they will go down to future ages amended, polished and perfected by the experience, erudition and wisdom of the eminent lawyers and Philosophers, whose peculiar study they have been, and whose splendid commentaries are no less precious in the eyes of the lettered and the learned world, than the text Books themselves which their commentaries have enlarged and expounded. †

Among the various editions of the C. J. C. which are now extant, the most accurate and approved is the famous Amsterdam Edition of 1668 in 2 Vols. folio with Notes by D. Gothofred. This is the edition in the Library of the

† Among the most eminent of these Commentators are *Cajacius*, GRAVINA, VINNIUS, *Everardus*, NOODT, SCHULTINGIUS, and HEINNECIUS.

Association of the Montreal Bar. Of the *C. J. C. cum glossis*, there are many editions, but the most esteemed are those of 1589 and 1627 in 6 Vols. folio. The *Corpus Juris Academicum* is of later date and is usually labelled alphabetically at the beginning of each Book.

The Commentators of the Civil Law whose Works embrace the whole or most of the subjects of the Code, the Pandects, and the Institutes, are CUJACIUS, DUARENUS, FABRUS, HEINECCIUS, NOODT, VOET and VINNIUS. They have written in latin; their Works are voluminous, and he indeed would be an ardent and indomitable Student who would seek to become acquainted with their profound exposition of the text they admitted to have most learnedly commented.

Thus far we have considered the *Corpus Juris Civilis* as it came from the hands of TRIBONIAN and his coadjutors; and it may be remembered that in speaking of the Digest in particular, some allusion was made to discrepancies and imperfections which had crept into it, through the overhaste probably with which it was completed. These consisted in some measure in the confounding of existing with obsolete laws, in the adoption in different places of the opposite opinions of the Proculeans and the Sabinians,* and in the obscurity of many passages that imparted perplexity to the laws; but the principal defect was to be found in the wrong collocation of divers laws under heads to which they had no immediate affinity. These faults did not escape the acumen of that great and virtuous French Jurist, the profound and venerated Pothier, who at an early stage of his legal studies conceived the plan of removing from the Pandects

* Also called the *Pegastans* and *Cassians*, two legal schools in the time of Augustus, at the head of the first of which was ANTISTIUS LABEO, who looked to the spirit and equity of the Law in its interpretation—whilst ATTEIUS CAPITO, the head of the second school, clung inflexibly to its letter.

those blemishes he had detected in them, without nevertheless altering the general order and method of the Work.

To the achievement of this object, his life seems to have been in a great measure devoted ; and although he sometimes despaired of the accomplishment of his task, he was encouraged by his distinguished contemporary, the immortal D'Aguesseau, to persevere to the end, and finally his elaborate work appeared in 3 Vols. folio with this title : *Pandectæ Justinianæ in novem ordinem digestæ, cum legibus codicis, quæ jus pandectarum confirmant, explicant aut abrogant.*

In this great work the order of the Books and Titles, as adopted by TRIBONIAN, has been scrupulously preserved ; but in the details of each Title, the economy of the subject matter has undergone considerable improvements, and the defects of the original to which I have already alluded have been materially, if not wholly, corrected.

This he has accomplished at immense labour, by recalling, under their proper heads, the laws scattered over the whole work, and gleaning from the Code and the Novels, additional laws to support his position and enrich his compilation. His Titles are not unfrequently divided into sections, these into articles, and these again into paragraphs and principia. Each Title retains its original heading ; but the sections, articles and paragraphs are preceded by brief explanatory denominations, which add to the facilities of reference, and give to the whole subject of the Title, the coherence and consistency of a Treatise. Nor ought it to be overlooked,—for this indeed is one of the conspicuous merits of his work,—that Mr. Pothier should have engrafted these large and important improvements on the JUSTINIAN compilations, without detracting from the usefulness of these ; for, although the order of the particular laws is often inverted in the same Book, or transferred from one Book or

Title to another ; yet, at the end of each Volume is found a Table in which the *laws* and *paragraphs* which are sought for, are indicated under the Book, Title, law or paragraph in which they stand in both compilations, the 1st number being that of the Tribonian Arrangement ;—the 2nd, that of the New Collocation, as found in Pothier's *Pandectæ in novum ordinem digestæ* ; and thus a reference to the original, is rendered both clear and easy.

Pothier's Pandects have gone thro' several editions in the various forms of Folio, 4o. and 8o. The Paris folio edition of 1818, which is the fourth, is printed with remarkable neatness and accuracy ; and besides being adorned by the portrait of the author, contains interesting *fac-similes* of his M. S., and of the famous Florentine M. S., of the Digest from which the celebrated Gothofred edition was copied.

The *Corpus Juris Civilis* has been partially translated by various French writers. FERRIÈRE'S translation of the INSTITUTES is familiar to the legal professic The Code was translated by TISSOT in 1807, and the *Novelles* by BÉRANGER, fils, in 1811. Of the Digest, we have a French translation by HULOT of the first 44 Books, and by BERTHELOT of the remaining 6. There is also a complete translation of POTHIER'S PANDECTS with the text and translation on opposite pages, 24 Vols., Royal 8o., by *L'Abbé DE BREARD-NEUVILLE*, Paris, 1818. (a) The Institutes have also been translated into English by DR. TAYLOR, LL.D., whose version is much esteemed.

The object with which I set out in the present lecture, I have now brought to a close. It has been my endeavour (whatever the success of my design) to convey to you a general but clear historical outline of that great body of

(a.) This edition is to be found in the valuable Law Library of the HON. CHIEF JUSTICE DUVAL.

Justinian Legislation, to which some reference is made in almost every page of the works consulted by the Bar of Lower Canada, in their daily professional studies and pursuits; and, by tracing, however rapidly, to their sources, the laws contained in the Code, the Pandects and the Institutes, and dwelling upon the singular and providential event of their preservation down to our own times, it has been my aim far more to excite, than to gratify, your curiosity in relation to these colossal and enduring monuments of Roman intellect and greatness.

If the ancients are constantly held up to us as the models we are to imitate in the various departments of literature and philosophy, they are no less deserving of our unwearied study in the important department of their laws. It is in the study of the Civil Law alone that the student can hope to lay the foundations of a sound knowledge of Jurisprudence.

Our early impressions, derived from the History of Rome, are those of admiration for the heroism, the independence, the genius, the literature, the laws and the power of its people. These impressions become deeper as we afterwards investigate, more philosophically, their claims to this admiration, and we have the highest authority for saying, that this sentiment of reverence we feel for Roman institutions, is one to which those institutions are, with few exceptions, fully entitled.

One of the legal luminaries of modern times, the Great Chancellor D'AGUESSEAU, thus beautifully expresses himself in one of his famous orations on the Science of the Magistrate, when speaking of Roman Jurisprudence: "Tout y respire encore," says this eminent jurist and orator, "cette hauteur de sagesse, cette profondeur de bon sens, et pour tout dire, en un mot, cet esprit de législation, qui a été le caractère propre et singulier des maîtres du monde,

“ Comme si les grandes destinées de Rome n'étaient pas encore accomplies, elle règne sur toute la terre par sa raison, après avoir cessé d'y régner par son autorité. On dirait en effet que la justice n'a pleinement dévoilé ses mystères qu'aux Jurisconsultes Romains. Législateurs encore plus que Jurisconsultes, de simples particuliers dans l'obscurité de la vie privée, ont mérité, par la supériorité de leurs lumières, de donner des lois à toute la postérité ; lois aussi étendues que durables ; toutes les nations les interrogent encore, et chacune en reçoit des réponses d'une éternelle vérité !” *

With this eloquent testimony before us, of the wisdom which pervades the laws bequeathed by the Romans to mankind, and coming, as that testimony does, from a source so exalted and of so unquestionable an authority, it would be indeed presumptuous in me to add anything of my own to press upon the attention of my hearers, the importance of the study of those laws, by him who would aspire to become either eminent as a Jurist or wise as a Magistrate or Legislator.

I therefore, with this citation, take leave of my subject, more than ever convinced that there is as much truth as elegance in the thought and the language of Pothier, when he tells us that, with reference to her laws, Rome is our common country—*Romam communem LEGUM PATRIAM confessus est.*

* “ Everything in it (Roman Jurisprudence) still breathes that exalted tone of Wisdom, that profound good sense, in short that spirit of legislation which has been the especial and distinguishing characteristic of the masters of the World. As if the great destinies of Rome had not yet been fulfilled, she still reigns through the empire of her reason, after having ceased to reign thro' the conquests of her legions. It would indeed seem as if the mysteries of the Temple of Justice had been revealed in their plenitude but to the favored Jurists of the Eternal City. Legislators far more than Jurisconsults, mere citizens dwelling in the retirement of private life, were, through the superiority of their enlightenment, found worthy of giving laws to all posterity, laws as vast and comprehensive in their scope as they are enduring ; all nations consult them still, and each receives from them responses stamped with eternal truth.”

