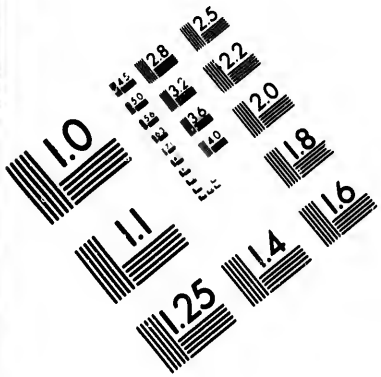

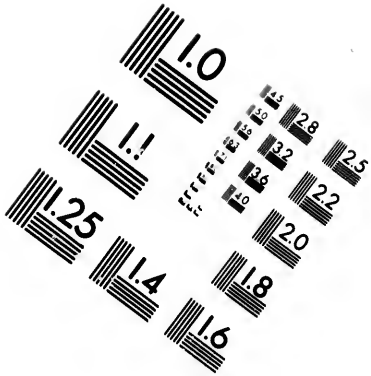

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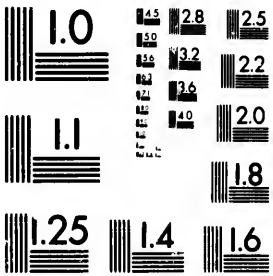

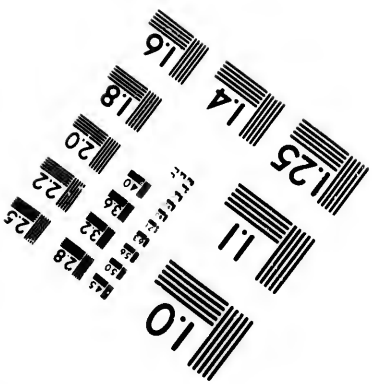

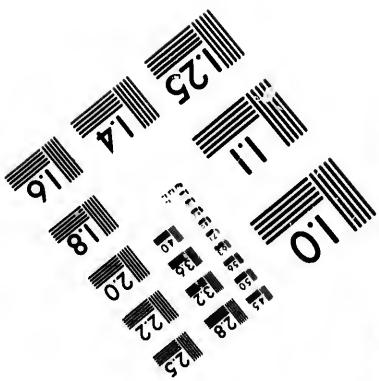

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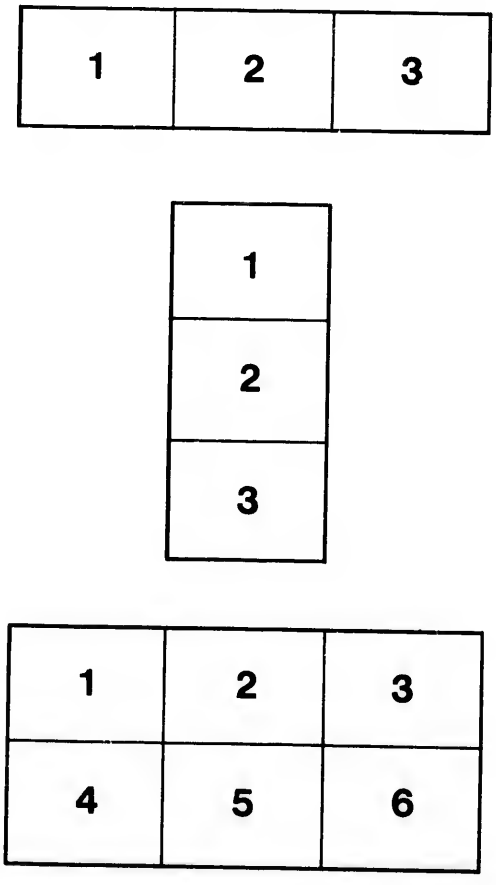

ADDRESS

DELIVERED BY

THE HON. A. G. ARCHIBALD, C.M.G., Q.C., LL.B., &c.

AT THE OPENING OF THE LAW SCHOOL

Henry J. Morgan Esq
with Mr Archibald's Compts

ADDRESS

Delivered by HON. A. G. ARCHIBALD, Q. C., C. M. G., &c., on the 30th day of October, A. D. 1883, on the occasion of the Opening of a Law School in connection with Dalhousie College, Halifax, Nova Scotia.

We are met this evening on an occasion of great interest. A branch of collegiate education, not hitherto attempted in this Province, is about to be opened.

The munificence of one of Nova Scotia's worthiest sons, has enabled the Governors of Dalhousie to add the subject of law to the curriculum of studies that may be pursued at the University. Leading lawyers among us, including Judges on the Bench, have seconded the effort. In a spirit of devotion and self-sacrifice (engaged as they are in the onerous duties that devolve on Bench and Bar) they have undertaken to contribute to the efficiency of the School. They recognize the principle which Bacon lays down in such cases when he says: "I hold every man a debtor to his profession—from the which, as men of course do seek to secure countenance, and profit, so ought they of *duty* to endeavor themselves by way of amends, to be a *help* and *ornament* thereunto."

There is one point, however, on which the Faculty have erred, if I may be permitted the use of such an expression. They should, for an inaugural address, have secured the services of a gentleman, better fitted than I can pretend to be, for the discharge of that duty. They have, among themselves, men who could have done justice to the subject. If, though not till after more than one remonstrance, I have yielded to the wishes of the Faculty, it is not because I do not feel that the service will suffer by the inefficiency of its execution, but because I acknowledge in Bacon's phrase, the debt I owe my profession, and must not when called upon shrink from the endeavor to be a "help," however little I may hope to be "an ornament thereunto."

In the history of education it is surprising that the science of law should ever have been thought unworthy of a chair in a University. "It is a science," says one of its ablest expounders, "which distinguishes the criterions of right and wrong, which teaches to establish the one, and to prevent, punish, or redress the other; which employs in its theory, the noblest faculties of the soul, and exerts, in its practice, the cardinal virtues of the heart; a science which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community."

The same eminent writer says in another passage: "I think it an undeniable position that a competent knowledge of the laws of that society in which we live is the proper accomplishment of every gentlemen and scholar, a highly useful, I had almost said, essential part of liberal and polite education. And in this I am warranted by the example of ancient Rome, where, as Cicero informs us, the very boys were obliged to learn the twelve tables by heart, as a 'carmen necessarium' or indispensable lesson, to imprint on their tender minds an early knowledge of the laws and constitution of their country." Yet what aid do the collegiate institutions of this Province hold forth to our youth who desire to have some knowledge of the Law and Constitution under which they live? None whatever—and, as for that class of young men who are entering upon the study of the law as a profession, happy are they, if they serve their time with a Master who has leisure and inclination to help them over the initial difficulties of the study. Without such aid—and we fear, the number of pupils who receive it, is very limited, a student must be content with making slow progress in the rudiments of his profession, or else he must attain his knowledge at an expense of time, of effort and of energy, which, if incurred in any other pursuit, would justly be considered wasteful and extravagant.

Sir Edward Coke, in his quaint way, gives what he considers as a proper apportionment of the day for a law student.

> Six hours to sleep, to law's grave study six,
> Four spend in prayer, the rest on nature fix.

But as from year to year, from generation to generation, there is an accumulation of the *materials* which have to be studied, there is reason to fear that this apportionment may not be strictly observed—and that as time rolls on, a tendency may grow to enlarge the time allotted for work, and abridge that assigned for prayer.

Sir William Jones makes a somewhat different division of the day. Referring to the couplet of Coke, which we have quoted, he says, "rather

> Six hours to law—to soothing slumber seven,
> Ten to the world, and *all* to heaven."

In his opinion the spirit of devotion should not prevail during four hours only, to the exclusion of the rest of the day. It should hover over every hour of the twenty-four.

There is no question that the religious element should enter largely into the composition of a lawyer's mind, but, if we may rely on the facts of history, we have reason to fear that, at all events, in the times preceding ours, lawyers have not given due heed to the precepts of either of these sages. Be that as it may they do not, as a body, seem to have derived from their religious exercises all the benefit which so much devotion should have insured.

Of the work to be done, in the orthodox six hours a-day, sanctioned by the authority, alike of Coke and of Jones, the student will be able to form a better judgment after having his mind turned for a few minutes to the various Branches of jurisprudence which constitute the municipal law of England—the basis of our own—and to the various sources from which it is derived.

First of all then we have the "Common Law," which Blackstone describes as "that admirable system of maxims and unwritten customs, which is known by the name of the *common* law, as extending its authority universally over the *whole Realm*."

Some of the doctrines of the common law have undoubtedly such an origin—Blackstone indeed traces a few of such back to very early ages. But in the confusion arising from the various invasions and conquests of England, beginning with that of the Romans and ending with that of the Normans, intercalated as

these were with other invasions and conquests by Picts, Jutes, Anglo-Saxons and Danes, and the internecine quarrels on English soil, between the latter races, it is difficult to suppose that there was in early days any very considerable body of customs which prevailed uniformly over the whole of a country whose population was made up of materials so heterogeneous. Some customs and some rules, connected with matters of daily necessity there certainly were, which chrystallized into that form, but the phrase 'the common law,' is understood to comprehend much more than these. The idea underlaying the expression—the idea in the mind of Counsel when addressing the Bench—and in the mind of the Bench when addressed by Counsel, is that there is in existence and has been from time immemorial a vast body of maxims and doctrines, having the force of law which will meet and apply to any and every case that can come before the court. The English law is, or rather has been, full of Fictions, and this is one of the boldest of them. In the early history of England, Fiction was the hand-maid of Justice. By Fiction only could law, which, in its nature, is fixed and stable, be made to keep pace with society, which in its nature, is changeable and progressive.

Many of these Fictions, from that of the Common Recoveries of the Sixteenth Century, with the mythical Common Vouchees, down to the well remembered John Doe and Richard Roe, of thirty years ago, have in their days served useful purposes. They enabled the courts to free themselves from the shackles of doctrines that had fallen behind the times—and in certain cases to administer justice by a side wind, when they could not do it directly. By and by, however, when Law, through the aid of Fiction and of another auxiliary to be mentioned presently had made great progress, the Legislature stepped in and swept away a huge heap of make-believes, and enabled the courts to do directly, what formerly they could do only by pretences and subterfuges. The courts applied to such judicial inventions the maxim that 'In fictione juris semper existit equitas.' They permitted the use of them only when they subserved the objects of Justice. But even this permission implied, that the law, as it stood, was wrong or imperfect—that to administer it in that

form, would work injustice--that to avoid this, it was proper as Broom puts it, in his Maxims, "to make an assumption that a thing was true which was not true, or which was as probably false as true."

A considerable part of what has been called the common law, had its origin not in universal customs, nor in ancient statutes, nor in any other recognized source of law, but was really and truly the creation of the Judges; as much so as if power had been expressly conferred on them to make law, where there was none, or to settle it where it was doubtful. Sir James Mackintosh says, that "the Law of England has been chiefly formed out of the simple principles of natural justice, by a long series of judicial decisions."

He might have added that in some of those decisions, we will not say in any great proportion of them, the judge, in early days, was governed by principles derived neither from immemorial custom, nor tradition, nor ancient practice, nor natural justice, nor any other authority of indigenous growth, but from a code which he ignored and affected to despise. The Judges and Parliaments of those days, alike resisted the adoption of foreign laws. "Nolumus leges Angliae mutari," was the motto of the Barons assmbled at Merton, and the Courts affected to share the feelings of the Senate. If, therefor, they appropriated from a foreign code any doctrines and principles which, however sound in themselves, had not yet found their way into English jurisprudence, it was necessary to suppose that they derived them from that vast mythical collection of maxims and unwritten customs to which Blackstone refers. The Clergy of the day were striving to introduce the Civil Law into England, and this course of the Judges reconciled the opponents of the Clergy to doctrines and principles which they would not have tolerated if there source had been known.

Good service was done to the English law by the work of Bracton. "Do consuetudinibus et legibus Anglicanis," composed about the middle of the thirteenth century, almost at the very time that the Barons assembled at Merton were making their celebrated declaration. This work is itself an illustration of the extent to which English Law has been moulded by the hand of

fiction. It is not necessary to go the length of Sir Henry Maine, who, in speaking of this work, (and there should be no better authority) says of it.

"That an English lawyer of the time of Henry III. should have been able to put off on his countrymen as a compendium of English law, a treatise of which the entire form, and a third of the contents were directly borrowed from the Corpus Juris, and that he should have ventured on this experiment in a country where the systematic study of the Roman law was formally proscribed, will always be among the most hopeless enigmas of English Jurisprudence."

And yet this work, owing much, as undoubtedly it did, to a code that had no force in England, the study of which was actually prohibited, was treated as a repository of ancient customs and met with the most marked favour. Great numbers of manuscript copies were made and scattered over the realm. Many of these are still in existence. There are eight of them in the Book Department of the British Museum at this moment.

Two centuries however had still to elapse before the invention of printing, and still another before this book was to be put in type. In that form it has become a recognized exponent of the Common Law, and on it, largely, are based the subsequent systematic treatises on English Law.

The Common Law can hardly, therefore, be said to be, as the theory was, a code in existence from time immemorial, not written indeed, but locked up in the breast of Judges, who let out from time to time so much of it as was necessary for the adjudication of the particular cases before them.

By their law-making power, the Judges not only created law when there was none, but sometimes by the aid of their fictions, they found out a way indirectly, to repeal acts of Parliament, passed in the most solemn form. The fiction threw a decent veil over the usurpation, and probably was treated as fact by the rude and illiterate men to whom the functions of legislation in early times belonged. By-and-by, when the general scheme of municipal law had acquired some degree of completeness, the necessity for judge-made law, grew less and less urgent, while on the other hand the improvement and progress of society rendered it no

longer necessary that the functions of the legislature should exercised by any body but itself.

While on this subject permit me to say, that there is so thing in the principles which govern our judicial decisions adv to the creation of a symmetrical system of law. With us judgment on a case before the Court depends upon the spe circumstances of the individual case. A judge must be un stood as deciding only the points in controversy in that c To them alone the arguments of the counsel are to be direc On them alone the decision of the judge is authoritative. I goes further, and gives an opinion beyond what the case requ this is an 'obiter dictum' without authority and is calle question whenever a case arises which really involves the p to which the 'obiter dictum' referred. So far as this conc the question directly in controversy, the decision of the ju establishes the law and is considered binding in subseq cases.

In the old Roman syste[illegible], a case when decided by the ju was settled for ever, but it affected only the litigants themsel It was not quoted as an authority to govern future cases. law remained the same after the decision that it was be The bench therefor, though it decided cases, did not make But what to our minds seems an anomaly, is that in a par stage of legal developement, the function of creating much of law, which with us was exercised by the Bench, with them fe private members of the Bar.

In our Province we all know that every young gentleman studies law hopes to be at least Chief Justice. If he were stu ing in England, he would not be content with any position un that of Lord Chancellor. In like manner a Roman lawyer his pet object of ambition, and that was to become Praetor, w for a year at least, he would exercise the highest judicial functi and be the fountain at once of equity and law.

In preparing himself for this, the highest post to which could aspire, he devoted himself assiduously to the study of profession. He was also engaged in daily practice as an a cate and juris-consult.

In this way a lawyer of eminent ability, acquired a distinc

so marked that his opinion was to a large extent looked upon as law, and certainly came in time to be the source and origin of much that was law. In dealing with cases submitted to him, he was not obliged to confine himself to the points raised by the particular facts, but he rounded off his opinion by a view of the principles which he considered to underlay the class of cases of which this was one. In this manner the 'Responsa prudentum' which is the only thing in the Roman system analagous to our case law, gave to that code a character of symmetry and harmony which we look for in vain under the English system.

Legal writers and commentators in those days addressed themselves, not to the cases decided by the Praetors, but to the opinions thus given, and drew their deductions from, and made their comments upon, the doctrines of these eminent juris-consults. The result is that the Roman law furnishes a set of principles applicable to cases, while the English system gives us cases from which principles are to be deduced. The one system furnishes the essence and spirit of law, the other the raw materials from which the essence and spirit are to be distilled. The Roman law with its digests and institutes and commentaries, is voluminous enough, but the books in which it is contained bear no proportion in number to those which embalm for us, the cases that have given occupation to our courts for six centuries. The volumes of reports at the time of Sir Edmund Coke was counted by hundreds. Now they may be counted by thousands.

When we consider the slow and fragmentary way in which our case law has been built up, by a long series of judicial decisions, extending from the earliest times to the present day, touching almost every point that can be raised before a court, covering no entire principle or branch of the law, but dealing with each case as it arose, and then only with so much of the case as was necessary to dispose of the particular controversy, it is not a matter of wonder that the system should be somewhat irregular and unsymmetrical.

Imagine any material structure, erected upon no settled plan, begun in a remote age, put up bit by bit, here a little and there a little, a wing at one time, a porch at another, here a tower, and there a steeple, a roof raised a story in one part, and lowered a

story in another; the materials of brick, of wood, of stone by turns, and built by workmen of every century. From such a mode of building we would not expect a very harmonious whole. Yet such a structure is the law of England, and, considering the way in which it has been erected, it is perfectly marvellous that the fabric should challenge as it does the admiration of the world. There has been in England no greater law reformer than Jeremy Bentham. He is probably the severest critic of British law, which England has produced. In referring to the points of which we have been speaking, he says of the English Law: "Confused, indeterminate, inadequate, ill adapted and inconsistent, as to a vast extent the provision or no provision would be found to be, that has been made by it for the various cases that have happened to present themselves for decision, yet, in the character of a repository for such cases, it affords for the manufactory of real Law, a stock of materials which is beyond all price. Traverse the whole continent of Europe, ransack all the Libraries belonging to all the jurisprudential systems of the several political states, add the contents together, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement, in a word, on all points taken together, in constructiveness, to that which may be seen to be afforded by the collection of English Reports of adjudged cases."

The splendid eulogium at the close of this estimate, is an ample set off to the censure, not altogether justifiable, with which it is introduced and derives much of its value from the known hostility with which the writer viewed many parts of the English system.

But whatever its origin, and whatever its faults, the system is destined to exercise an enormous influence over human affairs. It is true the continent of Europe, and the north part of the Island of Great Britain are largely governed by Roman Law. But England and almost every Country in which England has planted her flag, has its legal system based on the principles of English Law. Throughout the United States, with their fifty million of inhabitants—in this Dominion from the Atlantic to the Pacific—in Africa—in Australia and Austral Asia—in the Islands of the Pacific—in the West Indies and India itself,

the English system is either the Basis of the Law or is largely adopted in its administration. Of the two systems it may be said with truth, that English Law of indigenous growth, and Roman Law, between them govern the legal relations of the whole civilized world.

I need not dwell on the vast body of the Law of England, which consists of legislative enactments. These are contained in some where about one hundred and fifty volumes, with an average of perhaps five hundred pages to a volume.

But there is another branch of the municipal Law of England which cannot be passed over so rapidly. This lies side by side with the common Law, but it is founded on distinct principles, and claims incidentally to supersede the common Law by virtue of a superior sanctity inherent in those principles. It differs from fictions, inasmuch as its interference with the civil law is open and avowed. There were certain mischiefs in connection with the administration of the common Law which, we have seen, were cured by the judges themselves. There were other mischiefs which either they could not reach or were not disposed to reach by their fictions. Yet the law as they administered it, was in some cases a violation of those principles of right and wrong, which God has implanted in the breast of every man. These mischiefs required a remedy, and it was found in the doctrines of Equity. These derive their force neither from ancient customs, nor legislative enactments, nor from any other external source. They depend upon their intrinsic vigor as a system of ethics, which would not allow the Law to be used as a cloak for fraud or deception. These principles were assumed to flow from the conscience of the sovereign. He committed the administration of them, to his Chancellor, who in olden times was generally a cleric. By degrees the doctrines of Equity, were moulded by a succession of judges, until they became as fixed and certain as those of the common Law. The decisions of the Court, in cases where equity is involved, are recorded in a vast body of Chancery Reports, which swell the books of reference to which a Lawyer has occasion to resort, by some hundreds of additional volumes.

There is still another large branch of the municipal law,

being that formerly administered by the Ecclesiastical Courts, and yet another containing the Principles of Maritime and International Law. On all these branches the Student must have some information; so that it is clear he has before him no idle life, if he expects to attain a high standing in his profession.

Now when a student makes an effort to inform himself how he is to commence the work before him, he naturally looks for advice to the men who have themselves acquired distinction in the profession. Suppose he takes up the fascinating book which Lord Campbell has written of the Lives of his brother Chancellors. He will find in the biography of Lord Eldon the advice given by a sage of the Law to a person just entering upon the study of it. Lord Campbell says, "When I was commencing my legal curriculum, I was told this anecdote. A young student asked Sir Vicary Gibbs how he should learn his profession. Sir Vicary. 'Read Coke upon Littleton.' Student. 'I have read Coke on Littleton.' Sir Vicary. 'Read Coke upon Littleton over again.' Student. 'I have read it twice over.' Sir Vicary. 'Thrice.' Student. 'Yes thrice.' Sir Vicary. 'You may now sit down and make an abstract of it."

Sir Vicary's student life began over a century ago—and we are not much surprised at finding him express an opinion that had then been prevalent for nearly two hundred years, and was regarded almost as a legal maxim. But we may wonder at the emphatic confirmation of that opinion given by Lord Campbell, who studied law about the beginning of this century and who committed his opinion to writing not more than forty years ago. He says. 'If my opinion is of any value, I heartly join in the same advice. The Book contains much that is obsolete, and much that is altered by statutable enactments, but no man can thoroughly understand the law as it now stands, without being familiar with the writings of Lord Coke, nor is he by any means so dry and forbidding as is generally supposed. He is certainly unmethodical, but he is singularly perspicuous. He fixes the attention—his quaintness is often most amusing and he excites our admiration by the inexhaustable stores of erudition which without any effort he seems spontaneously to pour forth—Thus were our genuine lawyers formed. Lord Eldon read Coke up-

on Littleton, once, twice, thrice, and made an abstract of the whole work as a useful exercise, obeying the wise injunction.

"Legere Multum non Multa."

We must receive this utterance with respect, because it proceeds from a man of the highest rank in his profession. But will it be considered presumptuous to say that it does not carry conviction.

There is truth in the statement that familiarity with the work in question is of great service to a lawyer. But the point of Lord Campbell's anecdote is, not the value of the knowledge to be attained from the work, but the mode and especially the time, in which the Book should be read. The student should begin with it, should read it over and over again, and then abstract it, and all this before attempting any other Book. He admits that a great deal of it is obsolete, a great deal more not now law. Yet the student is to burden his memory with a huge amount of legal rubbish. He is for the time to believe that to be law, which is not law, and which he is afterwards to unlearn. He is by and by to jettison half the cargo he has taken on board, and still later on, to find that much remains that should have been thrown overboard before—and he is to begin his study without the slightest acquaintance with the technical terms which stare him in the face the moment he opens the Book. This mode of studying law seems to me on a par with that adopted for the dead languages in some schools, where Greek is learned from a grammar compiled in Latin. The pupil has to learn a language of which he knows nothing by the aid of another of which he knows almost as little. This is not exactly on the principle of the Dictionary which was said to define "Ignota per Ignotiora" but it comes pretty near to it.

It seems to me that a law student who without any preparation for the difficulties of the work, without any knowledge of the technical language in which it is written, takes up Coke on Littleton to study it, is groping in darkness almost Cimmerian. There may be some men who can do this and yet not become disgusted with the study, where the threshold is made so repulsive. Sir Vicary Gibbs may have done it. He does not indeed say that he did. All that we learn is, that he advised a

student to do it. Lord Campbell may have done it. He does not say that he did. He merely advises others to do it. The only thing he asserts as a matter of fact is, that Lord Eldon actually did it. This may be true. Lord Eldon did many things which no ordinary man could do. He could drink two bottles of strong Newcastle Port, and go on immediately to deliver a Judgment covering the most abstruse and complicated points in a Case in Equity—expressing himself with perfect clearness and precision. What would have muddled an ordinary brain and silenced an ordinary tongue, only seemed to clear Lord Eldon's intellect and smooth the flow of his graceful oratory. One who, as a judge, could do what it is believed no other judge ever did, or was able to do, or would have cared to do, or to be thought able to do, might, as a student, have succeeded in many things which an ordinary person should not be advised to attempt.

But we are not so much surprised at this course of study being recommended by English Lawyers, particularly the older class of them, as we are to find their opinions concurred in by eminent members of the profession on this side of the water. As late as the year 1850, one of these gentlemen, who held a high position at the American Bar, delivers himself in this wise, on the subject we are now discussing.

'Old authorities no longer divide with old wine, the reverence of either Seniors or Juniors. Most of the old Law Books that used to be thought as good a foundation for their part of the truth as the prophets and apostles are for the whole truth, are taken away, I rather think, from the bottom of the building and thrown into the ground. The Littleton, upon whom Coke sits, or seems to sit, to the end of things, as Carlyle says, has fewer than of old to sit with him, for long hours to alleviate the incumbrance.

For the most part, as I am told, the incumbent and the succumbent lie together in the dust, which uppermost not many care to know.

"Almost any law-book that is more than 21 years of age, like a single lady who has attained that climacteric, is said to be too old for much devotion. Indexes, Digests, and Treatises, which supply thoughts without cultivating the power of thinking, and

are renewed with notes and commentaries 'de die in diem' to spare the fatigue of research are supposed to be the most convenient society for student as well as practitioner. Such are the rumors which float upon the air. "All old things are passed away, all things are become new." A great truth in its one sense, when first spoken and always, is now thought to be true in all senses, and renewable from year to year for ever."

The man who gave utterance to these opinions was himself an eminent lawyer of Pennsylvania. Side by side with his State, there were, as side by side with our Province there are, some forty civilized States and Provinces, deriving their law from an English source. Each of these States and Provinces has its separate judicial Tribunals, with reports of the cases adjudicated before them. These Communities were placed in circumstances similar to his own, as they are to ours. It might therefore well be supposed that the questions brought before the Courts in all these countries, must bear a close similitude to each other. The Reports of cases in one country, if not authoritative in another, would at all events through the arguments used by Counsel and the decisions of Judges, throw much light on the points of controversy. It would become necessary, therefore, for the legal practitioner on this side of the water, not only to study the decisions of the English Courts, which up to a certain date are authoritative in every State and Province, but in addition he would have occasionally to refer to these Reports, which are comprised in some thousands of volumes. One cannot therefore, but be surprised at the sneers in which the orator indulges at the aid offered by Indexes, Digests, Treatises and Notes. What indeed under such circumstances could be more hopeless than to attempt by personal research of the Reports themselves, to find the cases which may be applicable to a particular controversy? A lawyer might have at his finger ends all that is to be found in Coke upon Littleton, and still, if applied to on any question, which, in nine cases out of ten, comes before a Court of Law with us or in the United States he would be as helpless as a child.

In the Case of the Bar in a New Country, there are many additional reasons why the course of legal study should differ from that which would be proper in England.

There the Profession is divided in various ways. First of all, there are two great Branches of the Profession. Lawyers are divided according as they prepare the written papers and proceedings—or as they address the Court. The first-class are Attorneys, Solicitors, or Proctors. The latter, Barristers or Advocates, taking the title according to the Courts in which they respectively practice. Then again each of these classes is sub-divided into sections which devote themselves to a particular portion of the business belonging to the class. Thus confining themselves within a limited range, they acquire peculiar skill in the conduct of cases coming within the sphere of activity which they select. They seldom, if ever, travel beyond that sphere. With us, and in all countries situate like ours, the case is entirely different. Here practically all members of the profession are Attornies, Solicitors, Proctors, Barristers, and Advocates. They must be prepared to appear in every Court—to be concerned in every case. They must know something of Law, and something of Equity. They must have some acquaintance with the law of Nations, and some with the law of Divorce. They must be ready to draft a bill in Equity, or a Libel in the Admiralty, alternately with a Declaration in a Civil Cause, or an Indictment in a Criminal one. In fact the business of a Lawyer in a New Country, requires great versatility of talent, great readiness of resource. It requires a general information about everything, which is hardly consistent with very profound information about anything. Consequently there is less reason for, or rather, there is more reason for not, pursuing the special course of study recommended by the eminent authorities we have quoted. The special knowledge which might in this way be acquired, like the Greek and Latin, which are supposed by some people to be 'Education,' has a value in the one case, as it has in the other, but if the time spent in acquiring it, had been devoted to objects that would better prepare the student for the work of life, the world would be the better of the student, and the student better fitted for the world.

In such a state of things, Indexes, and Digests, Treatises and Notes, are of inestimable value. Books written within

twenty-one years, which give the law to a late date, are a thousand times more useful than the Entries and Year Books, and Littleton with Coke on his back, whose desertion by the profession, our American friend so eloquently bewails. In point of fact, it is to these that our Lawyer is indebted for the time to think. Had he, in each case in which he is engaged, to search for himself, in the Reports, for Cases in point, he would waste recklessly the time which should be employed in thinking. If he is to exercise any thought at all, he will owe it to the time which these aids enable him to save.

There is another point of difference between an old and a new Country that must not be lost sight of.

In England the young men who propose to devote themselves to the higher walks of the profession, as a rule, begin after having received a good Collegiate Education, and when they enter upon the study of law, have arrived at the age of manhood. They can devote to the new persuit a trained and mature intellect. They are not disheartened by the necessity of giving attention, at the same time, to other studies. It is easy to see how much this affects the course of study, which it is possible to pursue. What would be practicable in England, is impossible here. The time may come, when our circumstances will permit a longer course of study, before commencing the active work of life. It has not yet come.

In the cases of the great Lawyers to whom we have had occasion to refer, it is worth our while enquiring how far they come within the limits of our distinction.

Sir Vicary Gibbs spent his youth at Eton, and his early manhood at Kings College, Cambridge, where he became a fellow. He was called to the Bar after this long educational period at the mature age of thirty one.

Lord Eldon was sent to Oxford when sixteen years old, and remained there till after he came of age. He obtained a fellowship at that university, which however he lost by running away with and marrying a coal fitter's daughter. He was twenty-five years old when admitted to the Bar.

Lord Campbell spent eight years of his early life at the

University of St. Andrews, and had reached his twenty seventh year at the time of his admission to the Bar.

In every one of these cases, the Collegiate Course was completed before the professional course was commenced. In each the Student was of mature years, and entered on his special studies with the advantage of an intellect thoroughly trained, and a mind instructed by other studies.

At the age when the youngest of these great lawyers was admitted to the Bar, our men who devote themselves to the law, are as a rule actively engaged in professional business, supporting themselves from its proceeds. I do not say that it would not be far better, for them and for us—I believe it would—that they should study longer and begin later. But what can we do? We must adapt ourselves to our circumstanees and do as we can, not as we would.

We might carry our argument a little further, and ask whether in the changed condition of society, and the enormous growth of personal property and of litigation depending on contract, there is any ground for giving such preeminence to the study of the Tenure of Real Estate. But we have already occupied too much of your time, with this branch of the subject.

Instead of devoting to the study of Coke such primary and exclusive attention, we think it much better for the student to take for his early reading some treatise which gives the best general idea of the whole system of municipal Law. Having thus acquired the outlines of the science, and having in his mind a map of the whole, he can fill up the interior as time and occasion permit. Since the appearance of Blackstone's Commentaries about one hundred and twenty years ago, this work has been an early companion of the Law student. Some of its law, as Campbell says of most of Coke's, has become obsolete or been repealed, but the work is an admirable one for the student to begin with. Sir William Jones has pronounced it to be "the most beautiful outline that was ever given of any science."

An eloquent clergyman has spoken of it in these glowing words :

'Nothing can exceed the luminous arrangement, the vast comprehension and (we may venture to add from the best

authorities) the legal accuracy, of this wonderful performance, which in style and composition is distinguished by an unaffected grace, a majestic simplicity, which can only be eclipsed by the splendour of its higher qualities.'

The author of this eloquent enconium was an admirable judge of the grace and beauty of the style—he could fairly estimate the skill, exhibited in the plan of the composition, but, not being himself of the profession, he does not venture, of his own knowledge, to speak of its legal accuracy. Of that he judges, as he says himself, on the authority of others.

In that respect the opinion of a professional critic of our day is much more moderate, and probably in some respects more correct:

'It may,' says the writer we refer to, 'be noticed that the great work of Blackstone marks an era in the developement of legal ideas in England. It was not merely the first, as it still remains the only adequate attempt to expound the leading principles of the whole body of law, but it was distinctly inspired by a rationalizing method. Blackstone tried, not only to express but to illustrate, legal rules, and had a keen sense of the value of historical illustrations. He worked, of course with the materials at his command. His manner and his work are obnoxious alike to the modern jurist and the modern historian. He is accused by the one, of perverting history, by the other of confusing the law. But his scheme is a great advance on anything that has been attempted before, and if his work has been prolific in popular fallacies, at all events it enriched English literature by a conspectus of the law, in which the logical connexion of its principles 'inter se,' and its relation to historical facts were distinctly, if erroneously, recognized." The praise bestowed on this great work every one who has studied it, will recognize as well deserved, while there may be some foundation for a portion of the adverse criticism which is blended with the praise.

With the choice between Coke on Littleton on the one hand, and Blackstone on the other, there can be no hesitation. It is the choice between a common place book, in which the author notes down, without system or method, everything that occurs

to him, relative or irrelative to the text on which he is commenting; a choice between that and a systematic treatise, in which every branch of the law is assigned its fitting place.

The work has gone through a great many editions, has been overloaded with notes, and reduced by excisions. But in our judgment the book in its original form without note or comment, is a most admirable introduction to legal studies. With Blackstone's scheme of law once fairly impressed on the mind by a careful perusal, the student on a second and subsequent readings will appreciate, and benefit by, notes which in the first instance would only have perplexed him.

It is worth while to note the origin of this great work. Blackstone was educated at Oxford, of which he became a Fellow. Afterwards he studied law, and was admitted to the Bar. He practised his profession for some years, when it occurred to him that he would supply a want that had always existed at his Alma Mater, at which no course of lectures on the Law and Constitution of England had been established. With all her splendid equipment in every branch of science and literature, there was no chair for common law. Accordingly he organized a course of lectures, which were highly successful. They were repeated from year to year, till by and by they were collected and published as Blackstone's Commentaries. Convinced of the value of this course of lectures, Mr. Viner, a private gentleman, a lawyer by profession, determined, as he says in his will, to dedicate the bulk of his property "to the benefit of posterity and the perpetual service of his country," and gave the sum of £12,000 sterling, to endow a chair and establish fellowships, to give permanence to the course. If England can boast of the munificence of its Viner, and of the disposal he made of his wealth, we have equal reason to be proud of our Munro. The names of both will descend to posterity inscribed on the same scroll of honor.

The experiment at Oxford owed its success in the first instance to the eminent talents of the Lecturer. But there was then, and there is now, much in the conditions of life in England; much in what we have already referred to, in the distinctions which prevail there between different branches of the profession;

much in the time of life at which young men there are in the habit of commencing their legal studies; and still something more in the situation of country towns like Oxford and Cambridge, (University towns though they be,) adverse to the success of such an enterprise. In England everything connected with law clusters in and about London. There are situate the Inns of Court, hallowed by the traditions of five centuries, through one or other of which every English Barrister has had to pass on his way to the profession. There all the business of the higher Courts is conducted, except only the trial of issues in country causes. There sat the full benches of the High Courts. There the Lord Chancellor and the various subordinates and functionaries under him, discharged their judicial duties. There sat the High Court of Admiralty, and there also the Court for the Probate of Wills, and of Marriage and Divorce. These Courts, to be sure, now form but one, but all the business which they did as separate Courts is now done by the Supreme Court which takes their place, and it is done in London. There sat, and there sits now, the Judicial Committee of the Privy Council to hear appeals from every quarter of the globe in which there is a colony or country subordinate to the crown of England,—appeals in which questions arise and are disposed of; now on laws which were passed but yesterday, now upon Codes which were in full force when our ancestors were wandering savages in the wilds of Britain. There too sits, while Parliament meets, the great tribunal of appeal, the last resort in litigation in causes arising within the realm. Before these Courts appear day by day, the ablest counsel the bar of England can furnish discussing every conceivable point of law and equity. The law student in London has the aid of the splendid libraries of the Inns of Court. He has the opportunity of daily attendance on the Courts of the branch of the profession he proposes to follow. He may listen to the arguments of the most able and astute lawyers the world can produce. He has thus access to a school of law which dwarfs anything else that can be set up beside it. Whether, therefore, in England a chair of common law is successful or not, in London or out of it, no argument, drawn from its want of success there, has any bearing on the question of its success in a

new country. On our side of the Atlantic we find these schools affiliated to almost every leading University, and working with marked success. Their influence for good is felt far and wide over the countries in which they have been established. We ourselves have been obliged, practically, to recognize their great value, and to contribute our mite towards their success. Some of our law students, disgusted with the absence of any course of legal instruction in our colleges, or out of them, and unwilling to enter their profession without the advantages which these schools afford, have resorted to the neighbouring Union, and from the law lectures of Harvard, or some other school of law in the United States, have learned to form a higher and a broader view of their profession than they could ever have attained from the uninstructive routine of a law office in Nova Scotia. By listening to lectures which explain the principles underlaying all law, the student comes, in the language of Littleton, "to understand and apprehend the arguments and reasons of the law, &c., for by the arguments and reasons of the law, a man more sooner shall come to the certainty and knowledge of the law."

"Lex plus laudatur quando ratione probatur."

Such discourses open up to him entirely new views of the field over which his studies are to range. They help him to trace law backwards to its first germs in the family group, to follow it as the family developes into a community, and the family usages into customary law, or into a code or some other written form—to learn to distinguish between the essential and the accidental, between what is common to all law, and what is peculiar to one system or to one country. With a mind thus prepared he can approach the study of our municipal law with great advantage—and it must be his own fault, if, when he comes to enter upon the active duties of his profession, he finds himself eclipsed by men who have won distinction without having enjoyed the advantages that have fallen to his lot.

Beyond and above all things, a lawyer should cultivate a high sense of personal honor—next to that, he should feel to be dear to him, the honor of his profession. He should thus,

first for his own sake, secondly for theirs, shrink from any act or proceeding, either as attorney or in the higher sphere of barrister, which could compromise or sully his own reputation, and through it, that of the profession. He is not engaged in a trade. It is the lowest view of his profession to consider it as a business to make money by. There is no more despicable creature on the face of the earth than the lawyer whose whole soul is absorbed in Bills of Costs—who uses the opportunities his profession affords for no higher purpose than to exact fees—to mulct somebody—no matter whether client or antagonist—in Bills of Costs. Some acts done by lawyers through tricks and quirks of the law, (far be it from me to say that any Nova Scotia lawyer has ever done the like,) whereby they succeed in robbing an innocent man of his money, deserve to be placed on a par with acts of piracy. The men who do these things may be in—but they cannot be of—the profession. Still it is by such men as these that a noble profession is degraded. It is the fact that men of the kind exist in some countries, that accounts for, if it does not justify, such sneers as that of Addison when he tells the anecdote of a king sending to a neighboring prince for 30,000 swine, and receiving a reply that the swine could not be spared, but he had 30,000 lawyers who were quite at his service.

It is only of late years that we have had the courage to place in the avenues to the profession, the slightest impediment to prevent any from entering that chose to do so. Now we require some educational and moral tests. A youth is no longer allowed to enter upon his pupilage without being called upon to show that he has some qualifications for the profession. It is to be hoped that as time goes on, the preliminary examination will become more and more strict, and that when the student shall have had the opportunities which the school of law will afford, the final examination will also be conducted with increased vigor. There will then be no excuse on the part of the examiners, for not exhibiting towards the profession and the public, some of that pity and sympathy which they are sure to feel for the individual.

The education which the school will afford, will not of course make a lawyer, any more than an ordinary education at college

will make a scholar. But it will afford an admirable preparation for legal pursuits. As regards all education, it may be said in the language of Gibbon, that "every man who rises above the common level, receives two educations, the first from his instructors—the second, the most personal and important, from himself."

If this be so as regards ordinary education, it is still more so in respect to Law. One of the oldest of legal maxims declares the "Lucubrationes viginti annorum" necessary to the making of a thorough lawyer. If the emphatic saying of Carlyle, "that our school hours are all the days and nights of our existence," be applicable to ordinary education, it is especially so to the Law—where life is a continuous study. Every case is a lesson; every search required in the exigencies of daily work, widens and broadens and deepens our acquaintance with a science of almost boundless width, and breadth, and depth.

In a new country like ours, lawyers exercise a large influence. They naturally take a leading part in the local business of every community. Their habits of ready speech, their acquaintance with the forms of deliberative assemblies, make them an authority at those meetings which every community in a free country has occasion to hold. It is of the highest importance, therefore, that they should possess a character for candor, for public spirit, for honor and integrity, in the communities in which they reside. With such qualities they can be most useful in their several spheres—as useful as without them they would be mischievous and dangerous. Every well-wisher of his country, therefore, will welcome any effort to raise the character and standing of the profession. We hail this enterprise as having for its aim an object so important. We trust that it will have an effect, not only on the lawyers as a class, but, through them, on the communities in which they dwell. We hope that the effect will be such as to justify the expectations which have led the munificent founder of the chair of law, to add this to his other splendid benefactions to Dalhousie, for which our people can never be sufficiently grateful.