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A Sketch of English Legal History. By Frederic William Maitland and Francis C. Montague. Edited with notes and appendices by James F. Colby. New York: G. P. Putnam's Sons. 1915. pp. 225.

Maitland's inaugural lecture at Cambridge in 1888 was on "Why the history of English law is not written." While he was producing lectures, monographs, prefaces and editions, Sir Frederick Pollock and he in 1895 published their *History of English Law*—chiefly Maitland's work. He had been a barrister of seven years' standing, he tells us, before he "had any idea of the whereabouts of the first-hand evidence for the law of the middle ages." That brought him to 1883. Twenty-three years later he died; by the materials he had made available and the extent and brilliance of his own writing, the chief historian of English law.

The present little book consists of essays written for Traill's Social England, five by Maitland and three by Francis C. Montague. Maitland is a social as well as a legal historian. What he presents in his hundred-odd pages here, is English society in its law-making, breaking and enforcing aspects, between 600 and 1600. His concern is with the sort of thing that is done and who does it, how it works and how people feel about it, and how these things change as time goes on. He tells of the focus of early law on keeping the peace; of its formalism—and that this perhaps delayed the use of the trained counsellors that it made so necessary; of early modes of trial, and the growth from its French roots of the jury system; of the languages that law spoke, and the growth of a legal profession; of the medieval antipathy to legislation; how some judges wished, but failed, to control legislation; how our modern law took its shape as a "commentary on formulas," whose "skeleton is the system of writs;" how the court of Star Chamber grew up, and the Equity jurisdiction of the Chancellor branched off and expanded. He slips readily into the dramatic and the present tense, and shows things as they may have looked to their contemporaries. In the twelfth century, the "oath with oath-helpers * * * * is not so easy as it looks. * * *. A slip, a stammer, will spoil all * * *. Besides, it is common knowledge that those who perjure themselves are often struck dead, or reduced to the stature of dwarfs, or find that they cannot remove their hands from the relics that they have profaned."[48] Roman law was, after the thirteenth century, an "unintelligible, outlandish thing, perhaps a good enough law for half-starved Frenchmen." (110). In the middle ages "The need for legislation * * * was occasioned (so men thought) not by any fated progress of the human race, but by the perversity of mankind. Ideally there exists a perfect body of law, immutable, eternal, the work of God, not of man. Just a few more improvements in our legal procedure will have made it forever

harmonious with this ideal; and, indeed, if men would but obey the law of the land as it stands, there would be little for a legislator to do." (103).

Maitland himself has said, "The lawyer must be orthodox otherwise he is no lawyer; an orthodox history seems to me a contradiction in terms." For all his eight years at the bar, Maitland was a historian. That a matter has been supposed by centuries of English lawyers to be thus and so did not make it so for him. "The holy but imbecile Edward" the Confessor (10) "in after days. * * * won not only the halo of the saint, to which he may have been entitled, but the fame, to which he certainly was not entitled, of having been a great legislator. In the minister that he reared, king after king made oath to observe the laws of the Confessor. So far as we know, he never made a law." (13) The pride of Englishmen in the jury system, "if in other respects it be reasonable, need not be diminished by any modern discoveries of ancient facts, even though they may have to learn that in its origin, trial by jury was rather French than English, rather royal than popular, rather the livery of conquest than a badge of freedom." (46) "Sir Edward Coke, the incarnate common law, shovels out his enormous learning in vast disorderly heaps." (113)

Montague's essays, the last three in the book, chiefly describe statutes. The modern system of courts in England he goes into at some length. He is readable. Maitland wrote an English that should have made him famous if he had had much less to say. It is as vigorous as Macaulay's, but simpler and much more varied; full of happy phrases and just words. One wonders how many men since the days of the English bible have written serious English so delightfully.

The book can be read in a few hours, and without a dictionary. Throughout it is untechnical; seisin and conversion and the forms of action do not figure in it.

The editor has added definite and useful collateral references, some quotations, and a number of notes. Slight liberties have been taken with Maitland's text, if a liberty with Maitland's text can be slight. Many of his paragraphs have been broken up. Many old dates, printed parenthetically in the text, look as if Maitland vouched for them; they are not in his original text in Social England. There are bracketed gloss words which leave the reader free to guess whether author or editor inserted them; neither guess would be right, for some are the author's and some the editor's. A rugged "somehow or another" that Maitland permitted himself has been dressed up as "somehow or other," without apology. One hopes that nothing worse has been done to the text. Montague's essays, by their headings in Traill, purport to cover only the periods 1660 to 1742 and 1865 to 1885, and they touch on extremely little that happened outside those 102 years. But the chapter headings of the present edition hold them out as dealing with the whole 300 years from 1600 to 1900.

Maitland's essays in the book had already been printed as a unit, in volume two of his Collected Papers (Cambridge University Press; 3 vols.)

Henry White Edgerton.

The Law of Automobiles. By Xenophon P. Huddy, LL.B. Fourth Edition by Howard C. Joyce, 1916. Mathew Bender & Company, Albany, N. Y.

Very rare is the case of a single legal topic of so rapid a growth as to demand of its own nature four editions within a space of ten years. But such is the case of the law of automobiles. So rapid has been the increase in interest, in the number of cases, and in the legislation on this topic that a work that has any pretension to comprehensiveness and usefulness must have its citations months old, and not years old.

The fourth edition of Mr. Huddy's work on automobiles treats the topic in at once a comprehensive and interesting manner. It is, as stated to be, a book for the automobilist, lawyer and judge; but nowhere has the attempt to make the book popular detracted from its usefulness to the jurist. The citations are recent and intelligently grouped, cases from states holding like views on a topic being grouped together. And the citations are not confined to those of cases stating a holding on a particular point of law pertinent to the automobile topic there discussed, but include those interpreting the statute law of the different states on automobile regulation, thus creating that necessary attribute of a true and valuable legal work, the exposition of the rules of law stated. For example, it is stated in the work (page 409) that "It is the duty of the manufacturer of automobiles to place reliable and safe equipment on their machines. This duty is not only statutory but one imposed by the common law." And preceding a discussion of the meaning of the terms used in most of the statutes, there is a reference to and extensive quotation from, a very excellent opinion on this topic, precisely stating the judicial view, *MacPherson v. Buick Motor Co.* (217 N. Y. 382).

An interesting point considered with some emphasis in the work is that courts now universally hold that the automobile is not dangerous *per se*. "The fact that it has been judicially established that the automobile is not inherently dangerous is of the greatest importance * * * since a limit has now been placed upon the character of motor vehicle legislation which may be constitutionally enacted (page 35)." But it is stated that "the court will take judicial notice that automobiles may be driven at a high rate of speed (page 43)." A noteworthy chapter is that on insurance. Although this chapter is of undoubted value, yet it is by no means exhaustive in its treatment of insurance, and probably need not be in a work of this kind; however, it appears that some of its legal force and value has been sacrificed in order to make it understandable to the layman. This cannot be said of the chapter on "Jitneys," for that chapter is treated as becomes its importance. The jitney is classed as a common carrier, and involves in its law practically all the law of carriers. Under this classification, the jitney uses the highways not for a purpose of travel, but uses the highways themselves for a purpose of business. "The former is a right which every one has subject to proper regulation, the latter a privilege which may be granted or denied as in the wisdom of the legislative bodies may best subserve the interests of the entire public" (page 482).

Harper Holt, '17.

The Law and the Practice of Municipal Home Rule. By Howard Lee McBain: Associate Professor of Municipal Science and Administration in Columbia University. *Columbia University Press.*

The first portion of this volume is devoted to a survey of the development of constitutional limitations placed upon the legislature in its control over cities. The second part of the volume takes up in detail the study of the municipal practice in the states which have by constitutional provisions granted charter making powers to their cities. It is this second part which gives this volume its peculiar value to lawyers and students of municipal development. The author has here carefully collected in an unusually readable manner, the decisions relating to such constitutional provisions in the states of Missouri, California, Washington, Minnesota, Colorado, Oklahoma, Arizona, Oregon, Michigan, Ohio, Nebraska and Texas. In some of these states the constitutional provision is of so recent adoption that few cases have as yet been heard. But in Missouri, the first state to adopt this method of dealing with a sphere of municipal autonomy, and in California, a close second, a very considerable body of law has been developed.

And this is of importance not only as revealing our method of settling the so-called home rule question; but of graphically setting forth our constitutional conservatism which bends only in the face of actual facts.

This volume is notable as the first comprehensive attempt made to set forth the details of this struggle between the old theory of legislative omnipotence and the newer practice of municipal freedom. It shows how difficult after all is the problem which professional reformers are telling us is simple; and how complex are the details which have to be provided for. Whether we have already reached the stage when this can be called "the law of home rule" may be open to question: that we have begun a "practice" of home rule is unquestioned.

The practitioner will find the volume valuable: perhaps too discursive to be of great practicable value, but none the less an illuminating review of actual experience.

S. P. O.