

THE

Dalhousie Gazette.

— A Era of Labor. —



Dalhousie College & University.

— HALIFAX, 1890-91. —

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[Address delivered at the Convocation of Dalhousie College, September, 1888, by Hon. S. L. Shannon, D.C.L., Q.C.]

THE CIVIL LAW OF ROME IN RELATION TO THE LAW OF ENGLAND.

It is recorded that in the 20th year of the reign of Henry III, an effort was made on the part of the hierarchy of the Church, to have the laws of inheritance in England changed, so as to be assimilated to those of the Continent, and that on this occasion the barons of England declared with unanimous voice "*nolumus leges Angliæ mutare*"—we will not change the laws of England.

This sturdy attachment to the laws and constitution of their native land, has been a marked characteristic of the race at all times—a feature undoubtedly derived from their Teutonic forefathers, whose love of freedom and adherence to ancient customs have been noticed by historians. And the English people, were also taught by their legislators and their most eminent lawyers, that the Common Law of the land was superior to all the codes and laws which had ever been framed by any preceding or existing nation, and their admiration for it was, at times, not a little extravagant, as may be judged from the following quotation from the celebrated Lord Coke, an eminent judge and commentator in the days of Elizabeth and James I.:

"Reason," says this learned writer, "is the life of the Law, nay the Common Law is nothing else but reason: which is to be understood of an artificial perfection of reason, gotten by long study, observation and experience, and not of every man's natural reason. The legal reason '*est summa ratio.*' And therefore, if all the reason which is dispersed into so many

"different heads were united into one, yet could he not make such a law as the law of England is, because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men, and, by long experience, grown to such perfection for the government of this realm, as the old rule may be justly verified of it '*neminem oportere esse sapientem legibus*'—no man out of his private reason ought to be wiser than the law, which is the perfection of reason."

With such a character given of the laws of his country, no wonder that the sage commentator became such a sturdy opponent of the arbitrary notions of the Stuarts, and no wonder that the stout Englishmen of his age staked their lives and their properties in defence of their laws. But while the fundamental principles of the common law are as stable at this day as ever, the various changes and modifications to which it has been subject since the days of Lord Coke, would serve to show us that his idea of the "*perfection of reason,*" hardly obtains at the present day.

Mr. Hallam, the celebrated historian of the middle ages, gives the following as his testimony of the excellency of the law of England.

"No unbiased observer," says he, "who derives pleasure from the welfare of his species, can fail to consider the long and uninterrupted increasing prosperity of England as the most beautiful phenomenon in the history of mankind. Climates more propitious may impart more largely the mere enjoyment of existence, but in no other region have the benefits which political institutions can confer, been diffused over so extended a population; nor have any

"people so well reconciled the discordant elements of wealth, order and liberty. These advantages are surely not owing to the soil of the island, nor to the latitude in which it is placed, but to the *spirit of the laws* from which have been derived, through various means, the characteristic independence and industriousness of the nation."

Sir William Blackstone has well compared the origin and progress of the English law to a feudal castle, which was built and originally occupied by a Norman baron, but which in process of time has been so changed and improved as to present now the appearance of an elegant modern mansion, retaining, however, its original foundation and portions of the antique walls and appurtenances.

Taking this illustration of Sir William Blackstone, the object of this paper will be to enquire whether this antique but now modernized edifice has been wholly composed of English materials, or whether there may not be found in it large portions which have been procured or adopted from foreign countries, shaped and chiselled so as to harmonize with the remaining portion of the structure.

Let us look, first of all, at the foundation of this majestic edifice, the Common Law.

The best writers on this subject admit that its origin is of a very composite character. There is indubitable evidence, it is stated, that some parts of it have been handed down to us from Saxon times, that a far greater portion has been derived from our Norman forefathers, and that the Roman law bears a much greater proportion to the other ingredients than the jealous professors of the common law have been at all times willing to admit.

Referring again to Sir William Blackstone, we find that in the introduction to his commentaries in a note, he used the following language on this subject. "The originals of our law," he says, "should be traced to their foundations, as well as distance will permit; to the customs of the Britons and Germans as recorded by Cæsar and Tacitus; to the codes of the Northern nations on the Continent, and more especially to those of

our Saxon princes; to the rules of the Roman Law, either left here in the days Papinian, or subsequently imported, but above all to that inestimable reservoir of legal antiquities, and bearing, the feudal law."

The reference to the Roman Law in the above quotation brings into view the main object of this paper, namely, to enquire where and to what extent the Common Law of England has been affected by the Law of Rome, or the Civil Law, as it is more usually termed?

The Roman Law lies at the basis of the present Law of the Continent of Europe, and largely ruled the people of the Continent at the time when our Common Law was in process of formation. Its value was always highly appreciated wherever the Roman eagles had carried the conquests of the Empire. It was then, and is now, acknowledged to be the great store house of legal principles which have been handed down to us from antiquity. It is the product of the wisdom of the greatest nation of the past, accumulated for ages. The great masters of jurisprudence who flourished in the golden age of the Antonines, have left imperishable remains which were consolidated by Justinian, and which have been drawn upon in all subsequent periods as the exigencies of human affairs, requiring the application of legal principles, occurred. As the Colosseum at Rome was for ages the quarry from which the materials of many a Roman palace was constructed, so the wise axioms and decisions of the Roman lawyers have been drawn upon and adopted, and are used and applied in most of the law courts of modern Europe at the present day.

Chancellor Kent, the great American commentator, speaking of the Roman, or as it is more commonly called, the Civil Law, calls it "a singular monument of wisdom." "It fills," he says, "such a large space in the eye of human reason, it regulates so many interests of man as a social and civilized being; it leads us so far into the recesses of antiquity, and it has stood so long against the waves and weather of time, that it is impossible while engaged in the contemplation of the system not to be struck with some portion of the awe and veneration which are felt in the midst of the solitude of a majestic ruin."

This admirable system of law the Romans took with them wherever they settled, or their dominion extended, and it was as efficacious to protect an apostle at Cæsarea as it was to condemn the conduct of a Verres in Sicily, or to punish the rapacity of any remote governor on the borders of the empire.

When Cæsar conquered Britain, and the country was afterwards reduced to the settled condition of a Province of the Empire, the law of Imperial Rome was in force throughout the island, as in every other part of the Roman dominions. With the laws were introduced the civilization and refinements of the Roman people.

For nearly 400 years they ruled the country, and during that time it presented the appearance of a settled law-abiding community. The science of jurisprudence was cultivated, and we have traditions that a flourishing law school was still in existence in the city of York, as late as the year 804. It is said also, that the celebrated Papinian, the most distinguished jurist of the day, was an inhabitant of the island during the reign of Septimius Severus. When the Roman legions were withdrawn, and the land became a prey to the Northern invaders, are we to suppose that every vestige of Roman life and law was swept away by the intruders, or is there reason to conclude that some portions of the usages and customs which had prevailed so long, and the advantages of which had been so universally acknowledged, still remained intact, as in the neighboring continent during the same period, and had become ultimately imbedded in the Common Law of England? This latter proposition has been maintained by some of the leading jurists and historians of the present day, particularly by the celebrated German jurist, Savigny, and by Palgrave, one of our latest historians.

These writers consider that the withdrawal of the Romans, although it may have broken down the frame of government which immediately depended upon the Roman officials, yet it could scarcely of itself unhinge any of the parts of that municipal system to which many of the cities had, during centuries, been trained

and taught, and by which they were accustomed to govern themselves. The principal commercial cities remained standing, during the storms of the Northern invasions, with their institutions, and it is in this way that the writers referred to consider that the laws of Rome were suffered to form a part of the legal system of the Anglo Saxons. This subject is of great interest to the historical student, and if the conclusions of Savigny and Palgrave and other modern writers be correct, we may assume that the Roman Law still in part remained, especially in the municipal institutions of the cities, and largely entered into the usages and customs which were embodied in the composition of the Common Law.

This view has been supported by Lord Chief Justice Holt in *Lane vs. Cotton*, who, in his decision in this case, asserts that the principles of our Law were borrowed from the Civil Law, and therefore in many things grounded on the same reason. And Sir William Jones, an eminent legal writer, remarks that though few English Lawyers, in his day, dared to make such an acknowledgement, yet the Civil Law is the true source of nearly all our English Law, which is not of feudal origin. We may add also the testimony of the late learned Chief Justice of the Court of Common Pleas in England, Sir N. C. Tindale who in the case of *Acton v. Bluedell*, speaks of the Roman Law as the fruit of the researches of the most learned men, and the ground work of the Municipal Law of most of the countries of Europe.

Passing from the consideration of the connection of the Civil Law with the foundation of the Common Law, we come now to enquire whether the growth and development of the latter may not have been largely aided by an infusion of the Civil Law.

Leaving the period of the domination of the Anglo-Saxons and Danes, and coming down to the period of the Norman Conquest, we find that a complete revolution had taken place both in Society and Law. The foreigner had entered foreign laws. The Saxon was reduced in the scale of society to the humble position of a serf and a villein, and the Norman Conqueror had become the lord paramount. In the days of the

Norman and early Angevin Kings, the entire frame work of upper class society was foreign and military. The country then exhibited the appearance of a vast military camp,—the object of the sovereign being to hold his feudal chieftains, to whom the lands of the country had been transferred, in readiness to meet an enemy, whether to put down an uprising of the oppressed Saxons, or to assist in the contest for power on the plains of France. To carry out this purpose the feudal law was introduced:—the superior barons holding their lands by strict military tenure directly of the king, the inferior holding by the same tenure of the lords above them. At the first summons of the monarch all had to be in readiness to obey the commands of their liege lord.

The whole property of England was then divided by an artificial or technical arrangement, into things real and personal, differing widely from the Civil Law by which property was divided into things moveable and immoveable. Real estate was then esteemed of by far the greater value and importance; personal property, unless in the chartered and commercial cities, being of comparatively little worth. The elementary principles of feudalism, which were then stamped upon real property, are to this day in existence both in the mother country and the United States, and in those colonies which have adopted the Common Law of England, changed, however, and modified as the changing exigencies of society have since required.

We need not be surprised then that the baron of the period, who derived his power from the Feudal Law, which had given him absolute authority over his estate, and had made him both lord and judge in his own domain, should have been jealous of any attempted innovation, which might in the slightest degree impair his power or the rights of his next male heir, who would be required to step into his place and perform his legal services to his liege lord at his death.

The extent of these feudal rights and the state of society, in the days to which I refer, are pleasantly told in the fascinating pages of Sir Walter Scott's *Ivanhoe*, and are more learnedly and quaintly set forth in the pages of Coke upon

Littleton, the text book of old real property law, with which every lawyer was required to be familiar fifty years ago, and which was the storehouse of legal principles from which the professional gladiators drew the weapons that were to be used in their forensic conflicts.

But the feudal law, however operative upon the land, was not the sole law of England. Side by side with it, and in time outgrowing and incorporating it, was growing up into form and substance the great common law of the land derived from immemorial usages prevailing it may be in the Roman, and certainly in the Saxon times, comprising local and municipal customs, especially including the privileges of the Commercial Cities, and perhaps portions of the good laws of Alfred and of Edward the Confessor with an infiltration of Roman Law which had come in from various sources. It was never written, it never has been written, or codified to this day; it is plastic, ever adapting itself to the varying changes and circumstances of the country. Its true and only exponents are the judges of the land. But from the time of the Plantagenets down to the present, there have been numerous treatises and commentaries either upon the whole or upon parts of the Common Law, which have from time to time been received by the profession as of more or less authority in the exposition of the law in existence at the time they were written. Of these the most important early treatise is that of Bracton, who flourished in the reign of Henry III., and whose work upon the whole law, in force in his time, has been repeatedly referred to, as of the very highest authority, even by our very best and most recent judges. Now, on the examination of his work, it will be found that a very large part of what is treated as purely English law has been taken almost verbatim from the Civil law, which shews that the law of England had at that time largely borrowed from the law of Rome, and had permanently incorporated it in its system, so as to make it a part of the law of the land. Sir Henry Maine, in his admirable work on *Ancient Law*, is inclined to treat Bracton as an impostor, and uses the following language in reference to

him: "That an English writer," "says Sir Henry," of the time of Henry III., should "have been able to put off on his countrymen as a compilation of pure 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 expofiment in a country where the systematic "study of the Roman Law was formally proscribed, will always be among the most hopeless "enigmas in the history of jurisprudence." * *

The true solution of this enigma, however, probably is that the portions of Bracton referred to had been already borrowed from the Civil law, and had been incorporated into and formed part of the Common law at the time he wrote his work.

But there was another and perhaps a more important element in the introduction of the Civil Law into England. I refer to the Clergy.

With William the Norman, and his military hosts, came the ecclesiastic of the Western Church, and while the followers of the king had been gathered from all parts of Europe, many of them not of the most respectable characters, notwithstanding the glamour thrown by poetry around the *Vere de Veres* and the *Norman blood*; the Clergy, on the other hand, had come from the cultured and refined classes of the continent. The rude barons of England, to whom the broad lands of the country had been assigned by the conqueror, were, many of them, for generations so ignorant of the ordinary rudiments of education as to be unable to write their names, and were allowed by the law in deference to their ignorance to affix their seals to documents instead of their signatures. The ecclesiastics who came into the country were, on the other hand, thoroughly equipped with all the learning of the age, not only with the specialties of their profession, but also with a knowledge of the Civil and Canon laws which they had carefully studied. Both classes, the Clergy as well as the Laity, were ambitious of power, and in the inevitable collision between the two, which culminated in the murder of Beckett, in the reign of Henry II., the power of the Clergy became manifest.

It is true that the barons were always hostile to the encroachments of the church, and endeavored to proscribe the Civil Law and its professors, as being under the influence of the Clergy, relegating them to the two Universities of Oxford and Cambridge, while the Common Law professors enjoyed all the privileges of the Inns of Court in London; yet their efforts were in vain, either to put down the ecclesiastics or to expel the civilians. Indeed when the time of trial came and they found themselves struggling with the tyranny of a worthless king, they were only too glad to avail themselves of the assistance of an archbishop for the purpose of extorting at Runnymede the great charter, which was for all time coming to guarantee the liberties of Englishmen and their descendants.

Jurisdiction over ecclesiastical matters, as distinct from the Common Law Courts was eventually granted, as well as authority to adjudicate upon testamentary matters when personal property alone was concerned. The Courts established to take cognizance of these matters were held at Doctors Commons in London, in which courts the forms and practice of the Civil Law alone were followed, and the practitioners in these courts were wholly taken from the ranks of those professional men who had been educated in the Civil Law. These ecclesiastical Courts at Doctor's Commons have been continued down to our day, and were the origin of our own and of the present English Courts of Probate. Thus we find that the Civil Law was not only introduced but also established as part of the law of the land in the tribunals referred to. To these tribunals the High Court of Admiralty was added, owing to the fact that the law to be administered was the international law of Europe, whose procedure was mainly adapted to the Civil Law of Rome. I need hardly say how much effective work has been done in these Courts, especially in the Admiralty Court, during the long wars at the close of the last century, and commencement of the present, but I may be permitted however to say that among the long line of brilliant lawyers, who have adorned the legal profession, none has been

more conspicuous than the late Lord Stowell, who, as Sir William Scott, administered the Civil Law both in the ecclesiastical and admiralty Courts, and whose admirable decisions have been received with the profoundest respect by the jurists both of Europe and America.

But there was one more Court, and that too the very highest, which was largely influenced by the principles of the Roman Law. This was the High Court of Chancery.

In many instances, and especially in the procedure introduced by the Norman lawyers, in which technicalities often prevailed over justice, hardships were sustained and injustice done, and petitions were sent to the King complaining of the hardness of the law, and asking for relief, as the old-fashioned bills of complaint expressed it, "according to equity and good conscience." These petitions were handed by the King to his Chancellor, as the keeper of his conscience, and he was required to see that right was done to His Majesty's liege subjects.

The Chancellor took the matters in hand and gave the remedy required. From these beginnings the Court of Chancery, as a Court of Equity, arose, which was presided over by the Chancellor as judge who was generally an ecclesiastic in those early days. In remedying the defects of the Common Law the Chancellors adopted the broad principles of the Civil Law, which were largely drawn upon as the occasion required. The decrees of the Court were enforced by injunction, which answers in some degree to the interdicts and stipulations used by the Roman Proctor in similar circumstances.

Having thus briefly related the introduction and progress of the Civil Law in England, and its ultimate adoption in certain cases, in face of the most violent opposition, it remains to give a few prominent examples of the influence exerted by it in various parts of our present Law.

The power of devising real estate by a last Will was not known in Feudal times; it was contrary to the principles of succession established by the Feudal system. It was not until the power of the feudal aristocracy was broken by the Wars of the Roses that modern ideas began to

prevail in opposition to the strictness previously existing. The Law of Wills permitting real estate to be devised by Will in writing, executed under certain formalities was first passed in the reign of Henry VIII. Wills of personal property, being of less estimation than land, had been in use from an earlier period, and probates of them had been granted by the ordinary in the ecclesiastical Courts. But the distribution of the estate of an intestate was the subject of different rules, according as the property was real or personal; in the former case the law of primogeniture prevailed; in the latter distribution was made to the next of kin.

The distribution of personal estate of an intestate is regulated in England by the English statute of distributions which was passed in the twenty-second and twenty-fifth year of the reign of Charles II, which is based upon the Roman Law as enacted by Justinian in his Novels 118 and 127, a later compilation than the Institutes.

The personal property of an intestate under the English Statute, is distributed equally among his next of kin. This is the law of England and of her English speaking Colonies to the present day. It was also introduced into the United States in their Colonial state, and still remains their law as to both real and personal property,—the law of primogeniture being unknown.

The law of Nova Scotia, like that of the old Colony of Massachusetts, from which it was taken, follows the English Statute of distributions, and applies its principles both to real and personal property. There was a singular provision, which prevailed, until about forty years ago, by which, following the Mosaic law, a double portion was given to the eldest son. This, however, was long since repealed, and an equal distribution is now given in Nova Scotia to all the next of kin of the intestate. In computing the degrees of kindred, our statute directs that such computation must be made *according to the rule of Civil Law*, thus directly adopting the law of Rome as part of the law of the Province in the particulars mentioned in the statute.

The law of Guardian and Ward is another sub-

ject taken largely from the Roman Law. It is very fully treated in the pages of Justinian's Institutes, but we can only give one or two points in which our law has been assimilated to the law of Rome. The minor in the Roman Law, for whom no provision for guardianship has been made by his father's will, was subject to tutors until the age of fourteen, and to curators from that period until the age of twenty-five when he attained his majority. The tutor had charge of both the person and the property of the minor, the curator generally of the property alone. With us where no provision is made by the father, the guardian is appointed by the Court of Probate but at the age of fourteen the minor can nominate his own guardian who has charge of his person and property until he attains the age of twenty-one years. The law of guardianship as set forth in Justinian's Institutes, including also regulations respecting persons of unsound mind, and of prodigates wasting their property. We have adopted the principle in both of these cases, but have made distinct laws upon the subject. The law relating to inebriates, who are incapable of taking care of their property, and the appointment of guardians to take care of them, though the principal was known more than a thousand years ago, has only recently been put upon our Statute book.

Another instance of the incorporation of a portion of the Roman Law, almost in its entirety, is that of Donation *Mortis Causa*. This happens when a person in his last illness makes a present of a valuable chattel to another, giving him possession of it, with the understanding that if he dies it is to remain the property of the donee, but if he recovers it is to revert to the donor. In connection with this is also the subject gifts *inter vivos*, which is also embodied in the English law.

The law respecting Aquatic rights, such as rights connected with navigable and unnavigable waters, of riparian proprietorship, of atturion, and accretion, all of which are minutely treated in the Institutes of Justinian, has also been to a large extent adopted by the Law of England.

So with respect to *easements*, or more properly servitudes, or rights of one person over the land

or property of another; a great variety of incidents to be found in Justinian have been almost wholly incorporated into the Law of England.

The Commercial Law of England has grown with the commerce of the nation, which beginning in the time of the Tudors has swollen now to enormous proportions. In its progress it has developed novel questions, which were unknown to the Common Law, but fortunately there were Judges on the English Bench who were capable of grappling with them. Lord Hale and Lord Holt towards the close of the seventeenth century and Lord Mansfield in the eighteenth, were eminently fitted by their talents and learning to meet and conquer each new difficulty as it arose. Lord Mansfield, who, in his parliamentary career divided the palm of eloquence with the elder Pitt in the House of Commons, was, when he was elevated to the Bench, and became Lord Chief Justice, especially adapted to decide all such questions. Born in Scotland, but educated in England at Westminster and Oxford, where he became master of the Civil Law, and in the course of his legal studies making himself thoroughly conversant with the commercial law of the Continent, he was more than ordinarily equipped for his high office. In any question where the Common law was deficient he did not hesitate to draw upon the Civil law to aid him in his decisions. Indeed his regard for the Civil law laid him open to the bitter attacks of Junius in his well known letter. But his efforts in this direction were crowned with success, and he may be said to be largely the founder of the Commercial law of England as it exists at the present day.

I will give but one illustration of the assistance derived from the Civil law in Commercial cases. I take for this purpose the case of *Coggs v. Barnard* decided by Lord Holt, and the leading case on the subject of Bailments.

The following are the circumstances of the case:

Coggs wanted some casks of brandy removed from one cellar in London to another. Instead of employing a regular porter he accepted the gratuitous services of his friend Barnard, who

undertook to effect the removal safely. But unfortunately the amateur did his work so clumsily that one of the casks was staved and the contents lost.

Coggs was exceedingly irritated, and disregarding his friendship brought his action for damages, and gained his suit.

The liability of Barnard under the circumstances was rather a knotty point, and was solved only by reference to the Civil law. It is true that Lord Holt relies mainly on Bracton's authority in coming to his decision, and quotes a long passage from his treatise, every word of which is taken from the Institutes of Justinian, and forms the text of the 15th Title of the third book of that compilation.

This case was, as I have said, the foundation of the law of bailments, which has now become a very important branch of the law of England, on which some admirable treatises have been written, notably by Sir William Jones, whose work is one of the classics of the law, and is really most delightful reading; and latterly by Judge Story, the eminent American Jurist. Perhaps the allusion to a law book as "delightful reading" may provoke a smile among the uninitiated, but to the man who loves his profession, the perusal of such works as *Jones on Bailments*, and *Maine on Ancient Law*, will give more real pleasure than the most sensational work of fiction,—even though its scenes should be laid among the gold mines and diamond fields of Southern Africa!

I might also mention another well known subject of Commercial Law. I refer to the law of jettison, which forms part of the law of general average, well known to every shipmaster and merchant, who is aware that when goods in a vessel are thrown overboard for the safety of life, or the preservation of the vessel or cargo; the property saved has to contribute towards making up the loss sustained by the owner of the property sacrificed for the common good. This law is as old as the time of the Rhodians, who were among the principal navigators of the Mediterranean long ages ago, and was borrowed from them by the Romans, and now forms part of our law.

The classical student will be pleased to find a very well told incident of a jettison occurring in the first century of our era, in the twelfth satire of Juvenal. The poet describes a man of taste who had gone, perhaps to Greece, or perhaps to Egypt, and at considerable expense had collected some of the most precious works of art which he was conveying home. A violent storm comes on, the ship is floundering in the deep, and life is in jeopardy. In this dilemma the owner does not hesitate, though feeling the great sacrifice he is making. He calls to the master.

"*Fundite quæ mea sunt etiam pulcherrima*"—"Cast over all that is mine—even the most beautiful." Life was all important, and so the vessels of gold, and the works of art which he had gathered with so much care and at such expense must all be sacrificed in order that he might escape with his life. It is to be hoped that his loss was not total, but that there was enough property left to help to make good in part so great a loss.

The Law of Contracts originated with the Romans, and in their jurisprudence is comprised under the head of obligations, which, from the derivation of the word, pre-supposes a mutual tie or binding of two or more persons, although unilateral contracts are also recognized. The English Law of Contracts was in its inception indebted to that of Rome, but has now expanded into a system beyond any thing contemplated by the sages of the Civil Law. One mode of contracting in the early Roman Law appears to refer to a time before writing was not much used and was called stipulation. Two persons would meet in some public place in the presence of a witness, and the bargain was effected by question and answer, by the use of certain formal or technical words which had by custom a binding efficacy—such words as *spondeo*, *promitto*, &c. The buyer would say to the seller—"Do you engage (*spondeo*) to sell me your field for 100 aurei?" The seller answers, "I engage (*spondeo*)"—and the bargain is concluded." The transfer of the field, and the payment of the consideration money took place afterwards. This was the formal and familiar mode of entering into a contract in Rome in its early days.

It is curious to note how long old forms remain, and to observe how this very mode enters with us into the formalities of the most important of all contracts—the contract of marriage. We see the bridegroom and the bride take their place at the altar, and the officiating clergyman attends. He it is, who, using the old Roman form of stipulation, puts the all-important question to the bridegroom—"Wilt thou have this woman to be thy wedded wife?"—(in Latin *spondeo*)—he answers, "*I will*," (*spondeo*). He puts the same question to the bride, (that the contract may be mutual)—and she makes the same answer. The hands are joined, the clergyman pronounces them man and wife with the benediction, and the contract is complete. This old form is the very essence of the contract, and apart from legislative enactments in certain cases, is all that is absolutely necessary by the law of England.

There may be all the pomp and ceremony of a fashionable wedding;—there may be the veil, and the orange blossoms of the bride, and the exquisite dresses of the charming bridesmaids,—there may be the most distinguished company invited to grace "the interesting event" in the language of the newspapers—(with no expectation of course of any wedding presents); music may add to the effect, but all this is merely accessory to the short simple form which binds for life. A similar form is used in the ceremony of the coronation of the Monarch, and seems to have come down to us from extreme antiquity, passing to us from the Civil law through the medium of the Canon law, and linking us to the practice of remote ages.

I have thus very briefly endeavored to shew how the older law, the product of past ages, has, during the progress of centuries, and in spite of the most formidable opposition, worked its way into the sacred recesses of the temple of English Justice.

I do not consider it necessary to prolong this paper with any further details, which I leave to the diligent student who basks in the "*gladsome light of jurisprudence*" to use the well known language of Lord Coke in his Commentaries. I would only add that times have wonderfully

changed since that memorable period when the barons lifted up their voices against any change in the law of the land. The Civil Law is now carefully studied not only at the Universities, but also in the very Inns of Court in London, which were once so opposed to its introduction, and so jealous of their own privileges. No man in the present day in England can be considered to be well acquainted with jurisprudence, unless he has made himself master of the Roman Law.

It were well if the same views obtained on this side of the Atlantic. Some of the American jurists indeed—notably Chancellor Kent and Judge Story, whose names are household words in the profession—have become proficient in the study of the Civil law, but as yet it has not been considered an essential part in the education of the law student, or in the curriculum of the law school.

We will hope that this may not be always so, and that the time will come when the student at law, both in the United States and the Dominion, who does not wish to be a mere *leguleius homo*, a lawyerling only, but a true "*juris peritus*," skilled in jurisprudence, will find it not only a duty but a pleasure, to draw deeply from the fountains of wisdom bequeathed to us by the sages of the Roman law.

S. L. SHANNON.

Aug. 1888.

LITERARY NOTE.

OUTING for October contains a varied and interesting list of subjects. Noticeable articles are: The Boat Clubs of Chicago, One Man's Work for Cycling, Memories of Yacht Cruises, by the late Capt. R. F. Coffin; A Talk about the Pigskin, a review of riding for both sexes; Wild Duck Shooting, by William G. Beers; Spearing Fish at the Lachine Rapids, by H. B. Stephens; Paddles and Pallettes, illustrated by the author, E. L. Chichester; The Training of a University Crew, by F. A. Stevenson, Captain of the Yale Crew of 1888; How to take a Tramp Trip, by Lee Merriweather; and Coursing in Ireland, by Robert F. Walsh. Fiction is well represented by a powerful story, Eelin' off Goose P'int, by Scott Campbell, and Yaleta, an interesting tale of adventure among Mexicans, by E. Hough.

The Dalhousie Gazette.

Halifax, N. S., October 18th, 1888.

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It will be decidedly to the advantage of the GAZETTE for Students to patronise our advertisers.

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WITH this issue the GAZETTE attains its majority. Twenty-one years ago when no college paper existed in the Dominion of Canada, three ambitious spirits at Dalhousie started the DALHOUSIE COLLEGE GAZETTE as a private enterprise. These pioneers in College journalism should be known by name at least to all of us who are reaping the fruit of their labors. They were John J. Cameron, now the respected pastor of the Presbyterian congregation in Shakespere, Ontario; A. Parker Seeton, once a loved ecclesiastic in the Roman Catholic Church, but now at rest; and W. E. Roscoe, the present leader of the

bar in King's County—we might almost say in Western Nova Scotia. For one session, these three, almost unaided and amid a storm of adverse criticism, conducted their tiny paper; but by the ability which they displayed, and the success which accompanied their efforts, soon overcame the prejudices which their venture had at first excited. At the general students' meeting, held on the 10th of November, 1869, the following resolution,—moved (if we remember correctly) by Prof. MacGregor, then a budding Junior, was unanimously carried:—

"Whereas this meeting is of opinion that it would be highly desirable for Dalhousie College to have a periodical in connection with it, and that such a periodical would have many beneficial results in providing the students with the opportunity of improving themselves in writing as well as in furnishing a depository for all thoughts and feelings in connection with our College life:

And, Whereas, the Editors of the DALHOUSIE COLLEGE GAZETTE have offered to resign their paper into the hands of the students: therefore be it Resolved that this meeting accept the offer of the Editors, and adopt the DALHOUSIE COLLEGE GAZETTE as the property of the students of the University."

From the moment of the passage of this historic resolution, the GAZETTE became identified with the students of this University, the advocate of their interests, and the accredited representative of their views. Yeoman service have the GAZETTE, the graduates and students done for one another as the results show. It was handed over to the students, when Dalhousie's graduates might be counted on one's fingers and her yearly attendance barely reached half of the century; but all to whom it could with confidence appeal, rallied to its aid. Its infancy over, our position is much more enviable than that of our predecessors of twenty years, for the GAZETTE has now a constituency infinitely greater in number, and we trust equally as loyal in its support as were the graduates and students at the date of its birth. To some extent during this score of years its influence has been felt by the Senate and Governing Board of our University; and many of the changes, which give the Dalhousian of to-day to manifest an advantage over the Dalhousian of even a few years ago, have been entirely due to its faithful, zealous work. We propose at some

future date, when the hurry and bustle necessarily attendant upon the preparation of the opening number for the press is over, to write a short history of the GAZETTE. Such a history should be interesting to all who call Dalhousie Alma Mater; but particularly to those who watched the GAZETTE through the tender years of its childhood, and whose skill and care enabled it to reach so vigorous a manhood. Perhaps, too, we may quote some of the good things that have graced our columns in the past, for the lively pens of Fraser (D. C.), Scott (J. McD.) "Silenus," and others whom we might mention, touched no subject that they did not adorn, and left much that is worthy of being studied by us. But we will not anticipate. For the present we desire simply to make our bow to the public and sue for its favor; to greet Dalhousie's graduates with the cordiality of younger to older brothers, and crave their assistance; to extend the hand of fellowship to our exchanges, and beg for indulgence; to ask the students of our own College to be mindful of their duty to us, as we shall be mindful of ours to them; and to call the attention of all our readers to certain changes we are making in the appearance and size of our paper. Periodically, as is becoming in the youth either of a man or a journal, the GAZETTE has assumed new proportions and with them donned a more suitable garb. At first four pages were sufficient to contain all the articles the editors could secure, or could themselves evolve. In course of time it doubled its size, but continued to be printed without a cover, on a low grade of paper, and on the whole presented a most dingy appearance. A decade ago, another leaf was added, and the GAZETTE went forth as a twelve page paper with cover. At the same time the subscription price was doubled. To-day we are sending to our friends sixteen pages of reading matter, printed on a better quality of paper, enclosed in a neat if not gaudy cover. Nor need our subscribers fear that this last statement is but the preface to a modest announcement that the subscription price is to be increased. We propose to partially counteract our generosity in another way, viz,—by publishing only ten numbers instead of twelve

during the collegiate year. Still we are giving our readers the advantage in that, where as we formerly furnished them with but one hundred and forty-four pages of reading matter per year, under the new arrangement we shall provide them with one hundred and sixty. We shall bear the extra burden cheerfully, because we are confident that the changes will be appreciated by those in whose interests they were made. And here, looking forward to a pleasant winter in communing with the friends of Dalhousie College and of the GAZETTE, we lay down our pens with the formal introduction befitting so grave an occasion—Readers, the DALHOUSIE GAZETTE for 1888-89; DALHOUSIE GAZETTE, your eight hundred readers.

THE Editors of the GAZETTE wish heartily to thank the Governors of the College in general, and President Forrest in particular, for placing at their disposal a room in the College which they can call their own for holding meetings and consulting together regarding the affairs of the GAZETTE. It is true that the room is not as yet elegantly furnished nor complete in all its appointments, but it is comfortable, nicely lighted and heated. Whether or not the GAZETTE will show the improvement our readers are warranted in expecting, when its guiding spirits are housed so pleasantly, we will not venture even to prophesy; but content ourselves with the assertion, that we shall use our best endeavors to show that so much luxury has had at least no degenerating effect upon us.

CONVOCATION.

Dalhousie's first convocation in the new building was held on the afternoon of Sept. 25th, in the law library room. President Forrest presided. To his right sat Hon. S. L. Shannon, Q. C.; to his left Rev. Dr. Tomkins, of London, Eng., and, surrounding the platform, the governors and faculty of the University, Bishop Courtney, and many other prominent citizens.

The greater part of the students was present, and enlivened the proceedings by the free use of

the usual musical instruments and by an abundant supply of peas, which were mercilessly showered upon the heads of the freshmen.

President Forrest in his introductory address, congratulated the friends of the college on the completion of the new building, which, he estimated, was capable of accommodating five hundred students. He called attention to the great advantage afforded the residents of the city, who on the payment of a merely nominal fee could be enrolled as general students, and attend any of the classes of the college. He referred to the bequest of the late Mrs. Morrison, a native of Pictou Co., who had left £1,000 to the college to be devoted to the establishment of bursaries. He then introduced Hon. S. L. Shannon, Q. C., who read the usual opening address which will be found in full in this issue.

Rev. Dr. Tomkins, who occupied the chair of Mathematics and Natural Philosophy in this University in 1856-7, and who is now a Barrister in London, Eng., then addressed the meeting. He gave some very interesting reminiscences of his connection with Education in Nova Scotia over thirty years ago, and mentioned, among others who were associated with him, at that time, Sir Wm. Young, and Hon. Joseph Howe. Speaking to the students in particular, he impressed upon them the necessity of striving "To know everything of some one thing, and something of everything." He dwelt upon the value of TIME to a student; the importance of early rising and systematic study; the necessity of having the will power to say, "This must be done." He was listened to attentively throughout, and, on resuming his seat, was heartily applauded by both visitors and students.

He was followed by Bishop Courtney, who, in a short pithy address advised the students to lay well to heart the advice just given them. He compared the educational requirements of to-day with those of a few years ago. New avenues of knowledge were being opened up continually. Men were diving deeper and deeper into the realms of the unknown. He closed by expressing his joy at the past success of Dalhousie, and his hope that this was but the beginning of a still brighter future.

Before dismissing the President invited the visitors to examine the building, every part of which was thrown open for that purpose. Many accepted the invitation and inspected the building from top to bottom. All admired the large, well lighted class rooms, and the beautiful and commodious halls.

The following are the results of the Matriculation and Bursary Examinations.

SENIOR EXHIBITORS.

1. Schurman, G. W.
2. McLeod, F. J.
3. Campbell, D. F.
4. and 5, not awarded.

SENIOR BURSARIES.

1. Cogswell, G. O.
2. Grierson, Robert.
3. McIntosh, D. C.
4. Rowlings, G. R.
5. Fulton, E.
6. McKinnon, J. A.
7. Smith, E. B.
8. McKay, D. O.

JUNIOR EXHIBITORS.

1. McDonald, A. F., Pictou Academy.
2. Webster, K. G., Yarmouth "
3. West, T. F., Prince of Wales College.
4. McNeil, Rod., " " "
5. Bakin, F. W., Digby Academy.

JUNIOR BURSARIES.

1. Hill, A. R., Pictou Academy.
2. Johnson, J. B., " "
3. Archibald, Sarah E., " "
4. Johnson, Geo. F., " "
5. Sutherland, J. H., " "
6. McKay, D. T., Prince of Wales College.
7. McIntosh, D. S., Pictou Academy.
8. Fullerton, A., Annapolis "
9. McDonald, A. J., Pictou "
10. Campbell, R. S., " "

MATRICULATION EXAMINATIONS.

Passed Ordinary Examination: Borden, H. C.; Mahon, J. A.; Pelton, C. S.; Weston, R. A.; Rankine, J.

Passed on recommendation of Examiners for Munro Bursaries: Arbuckle, J. A.; Doherty, P.; Fulton, A. J.; McKay T. C.

Final Matriculation,—first year: Graham, R. N.; McKeen, G. W. Second year: Stairs, —; West, T. F.

THE CLASS OF '88.—(ARTS.)

Clark spent the summer engaged in mission work in Newfoundland. He will prosecute his theological studies this winter at Pine Hill College. We are beginning to have hopes of Pine Hill, for Clark used to be one of the boys.

Brown's whereabouts have been at length definitely ascertained. He took a through ticket for Pictou last April, somewhere before the Ides, and by devious paths reached the regions around Merigomish. The next period of B's life is enveloped in obscurity. We can be certain of very little, but we have learned from various quarters that he helped to celebrate Sir Jno. A's visit to New Glasgow. Merigomish now holds him, but he will probably be with us this winter studying engineering.

Fulton was one of the numerous who went up for "A" this summer, and unless we mistake, comprised the small number who figured at the top of the list. He goes to Edinburgh to study medicine.

The *Island Reporter* informs its readers that under the tender care of Grant, the new principal of North Sydney Academy, the innocent are being initiated into the mysteries of football. Davy always regarded football as one of the "humanities" acquired at Dalhousie. His faith is still unshaken.

"Forward gallant heart as thou wert wont"

We are expecting Ambrose McLeod and Matheson back at Pine Hill this term. No less than six of the class of '88 have chosen the high calling of the church. It was a specially marked feature of the class—its manifest leaning towards "the ways that are &c."

The inhospitable shores of Labrador have been cheered for the last six months by the presence of Wm. McKenzie, and we understand he has offered his services there for the winter. Mac is of the proper stuff. There isn't much poetry to be written about Labrador in the wintertime.

Geo. MacLeod, who is No. 5 on the list of those who are not above living by men's sins, was doing mission work in Yarmouth Co., during the summer months. He left a short time ago for Princetown to continue his studies in theology. He will not be an entire stranger there. We entrust him to the care of Allison, Coffin, and the other Dalhousians there. By the way, we saw Allison a little while ago. He looks as though it didn't hurt to be a theologian.

Morrison has been taking his time, but he has done Halifax and Dartmouth pretty thoroughly, and a little work in the Provincial engineer's office besides.

The latest acquisition to the Halifax High School is Henry MacKay as Science Master. In that position Henry will sustain his already high reputation. The eyes of his classmates are upon him.

Sutherland's movements are uncertain. He came over here this summer to try the "A" exam. We venture to say that he "passed."

SoJoan has been loitering around Halifax lately. At the commencement of the next school term he goes to Pictou to teach the English department of Pictou Academy and charm Pictou audiences with his renditions of the college hymns.

Frank Stewart left the garden of the Gulf long enough this summer to pass the "A" exam. He has lately been appointed Vice-Principal of the Yarmouth Academy in which position by the way he succeeds another Dalhousian. We hope he will visit us during the winter.

Of Johnsons whereabouts at present this deponent sayeth not. But during the winter we are informed that he too will be with the "sons of the prophets" at Pine Hill.

McLennan played cricked and studied Philosophy at his home in Sydney and found both occupations congenial. We understand he contemplates a post-graduate course at Edinburgh.

The less about McDonald and Robertson the better. They have disappointed our fondest hopes; and we have to put up with them for here they are back again studying law. Robertson played lawn tennis and did the mashing act away up there at Annapolis. McDonald plugged law and smoked in a Pictou law office and joined with Brown in welcoming Sir John to New Glasgow. It is even reported that Sir John said he was glad to meet him. History has failed to record what Billy said to Sir John.

GENERAL STUDENT'S MEETING.

The Arts Students Meeting, held in the College building on the evening of Sept. 28th., was unusually well attended. Mr. V. G. Frazee occupied the chair, and Mr. A. G. Laird acted as secretary. A statement of the finances of the GAZETTE was presented by Mr. Frazee, the financial editor. At the close of the preceding year

the GAZETTE was about \$125 in debt, but last year's transactions resulted in a small balance on the right side. Three hearty cheers were accorded Mr. Frazee for his successful management and satisfactory report.

The vacancies in the staff of editors appointed last April were filled by the unanimous election of Messrs. R. J. McDonald and G. W. Schurman.

The following committees were appointed for the ensuing year:—Financial Committee; Messrs. A. Fullerton, W. S. Thompson, K. G. Webster and B. Dodge.

Reading Room Committee; the Editors of the GAZETTE.

The students expressed themselves as determined to make the best possible use of the excellent reading-room which has been furnished for them, and authorised the editors of the GAZETTE to spend as much money as could be spared, in procuring papers and magazines in addition to the exchanges.

The *Sodales* Debating Club was re-organized with the following staff of officers:—President, A. O. McRae; Vice-President, V. G. Frazee; Secretary-Treasurer, J. A. McGlashen; Executive Committee, the officers, C. L. Moore, J. W. Brehaut, and J. A. Grierson.

The question of gowns was then taken up and discussed at considerable length, quite a number of the students taking part. It was finally decided by a majority of four, to petition the proper authorities to make the wearing of gowns, within the college building, compulsory.

The following committee was appointed to draw up and circulate the petition. Messrs. A. O. McRae, J. A. McKinnon, and B. D. Higgs. The meeting was then adjourned *sine die*.

LAW STUDENT'S MEETING.

Pursuant to notice the General Meeting of the Law Students was held in Prof. Russell's lecture-room on Saturday evening, the 29th ult. The meeting being called to order, C. F. Hamilton was appointed chairman. He explained briefly the purpose for which it had been called, and the business which would be brought before it. The adornment of the club-room was first disposed of. Messrs. George Patterson, W. J. Bowser and H. J. Logan were appointed a committee to devise means for beautifying the room, estimate the cost thereof, and report at the next meeting. The appointment of the law editors of the Dalhousie Gazette was the next matter which came up for consideration.

On motion Geo. Patterson and F. W. Howay were appointed to represent the Law Department with S. L. Fairweather as Financial Editor. In the matter of re-organizing the Mock Parliament it was resolved that the Constitution of last years parliament be adopted to govern the deliberations of that body during the present term. The meeting called upon G. O. Forsyth, to form a Government. Mr. McEachern was chosen to lead "Her Majesty's loyal opposition." C. F. Hamilton was appointed speaker for the ensuing session. The onerous duties of clerk were assigned to T. R. Robertson. A somewhat lengthy discussion on the re-adoption of gowns then ensued. The general opinion seemed to be that as the Law Student has never worn them, as their professors and lecturers did not wear them in the lecture-room, and as the action of the Art's Students applied only to themselves, the matter should be allowed to drop for the present. On motion the meeting adjourned.

Y. M. C. A. NOTES.

The executive committee of the College Y. M. C. A. have appointed the following committees for the present term.

Devotional Committee:—A. G. Laird, H. Putman, G. Millar, D. C. McIntosh, Alex. Laird, J. A. McGlashen, J. W. Brehaut, J. B. McLean, K. G. Webster, J. A. McIntosh.

Membership Committee:—J. F. McCardy, R. J. McDonald, A. E. Chapman, D. D. Hugh, J. A. McKinnon, D. S. McIntosh, — McDonald.

Sick Committee:—J. M. Fisher, C. Munro, S. Fraser.

Mr. J. R. Mott, the travelling secretary of the College Y. M. C. Associations, visited Dalhousie College during the past week. Three very interesting meetings were held, at each of which a large number of students was present. Great interest was manifested, and the prospects for very interesting and profitable meetings during the winter are good.

Professors Alexander and Seth, have kindly offered to deliver lectures to the students upon the Book of Job. The time at which the lectures will be given, will be posted up on the notice board in the college hall. It is hoped that all will avail themselves of the privilege of attending the class.

Efforts are being made to secure a room in the college building for the use of the society. It is hoped that all those who are in sympathy with the movement will assist in furnishing the room.

Among the Colleges.

The Hobart (U. S.) College students have adopted the academic cap and gown.

Cornell has raised its standard for passing exams. from 60 to 70 per cent.

Thirty college graduates are employed on the staff of the New York Sun.

The police will not allow Cornell Students to give their yell on the streets.

Fredericton, N. B., University claims to issue the best college calendar in the Maritime Provinces.

At the annual commencement exercises of St. Joseph's College, Memramcook, N. B., in June last, degrees were conferred for the first time by that institution.

Rudol Albrechts, the largest University in Europe has 285 professors and 5000 students.

Dr. McCosh says that the right age to enter college is between 16 and 17.

Columbia College library gives light meals to students who are too busy to leave their work.

Harvard's boat club is \$1800 in debt. The Dalhousie Athletic Club will please note this.

Yale's faculty numbers 140, Harvard has 189 different courses of study.

About 1300 members of Cambridge University recently signed resolutions petitioning against the admission of women.

Abbe Casgrain of Quebec succeeds Prof. Lawson of Dalhousie University as President of the Royal Society of Canada.

Mt. Allison University has begun the term under very favorable auspices. The freshman class is large.

There are 365 Universities and Colleges in the United States, one for every day in the year. Of these 278 are denominational, the Methodists having 66, the Presbyterians 41, and the Episcopalians 12.

Dr. Schurman, Sage Professor of Christian Ethics and Philosophy at Cornell, in response to a petition, has started a special course in Ethics at that institution, open to all members of the University. Between 250 and 300 students crowd his lecture room every Tuesday. An exchange says the Doctor's enthusiasm in his theme overcame the distaste of even the most reluctant to undertake the study of philosophy.

LITERARY NOTES.

Mr. C. POWELL KARR, a graduate of School of Mines, Columbia College, has in preparation a Manual of American Colleges, which proposes to give in classified form all the leading Colleges, Universities, Technical and Professional Schools, their requirements for admission, courses of study, cost of tuition and living expenses, and, in a word, a systematic resume of all the information needed by parents, guardians and students to enable them to decide intelligently what college or institution of learning it is best to attend. It is to be issued from the press of WILLIAM T. COMSTOCK, New York.

THE LARGEST BOOK PUBLISHED.—The latest edition of Webster's Unabridged, in the quantity of matter it contains, is believed to be the largest volume published. It will surprise many to know that by printers' careful reckoning it contains eight times the amount of matter that is in the Bible, being sufficient to make 75 12mo. volumes such as usually sell for \$1.25 each. But the best thing about the book is that no space is wasted. It is crammed with useful knowledge for every person who has learned to read.

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Mens'	\$1.25 to 2.00
Boys' Hose	35 to 40
Mens'	50 to 1.25
Shet. Scotch L. W. shirts and Pants	1.75 to 3.75
Merino Shirt and Pants	1.00 to 2.50
Natural Wool Shirt and Pants	1.25 to 2.25
Cardigan Jackets	1.25 to 6.00
Astrucan Gloves, in Boys, Mens and Ladies, Denix	
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