THE WORK OF A SCHOOL OF LAW.*

Mr. Vice Chancellor, Ladies and Gentlemen:

In coming here today, as a Saxon stranger, to speak before the University of Wales, I desire in the first instance to congratulate the University in general, and the College at Aberystwyth in particular, on the creation of its new Law School.

The people of Wales, like the people of Scotland, have ever shown a zeal for education, in advance, I grieve to say, of the majority of Englishmen. And it is no longer necesary now, as it was on October 25th, 1758, when Dr. Blackstone rose to deliver the first Vinerian lecture in the University of Oxford, for anyone to argue that the common law of England is a subject which may properly be included in the *curriculum* of a university. Wales has now its University, and that University could not long exist without a Faculty of Law. Still I cannot but feel that the University College of Wales has done a plucky and a patriotic thing in establishing here in the far west at Aberystwyth a School of Law—a teaching and not merely an examining body—a School with two professors, whose lectures will include the law of imperial Rome as well as that of modern England, who will not neglect that somewhat neglected science, jurisprudence, but will also correct and expand its academic propositions by the practical study and comparison of the legal systems actually prevailing in the British Empire, on the Continent, and in the United States of America.

Many legal writers have dwelt on the dismay and discouragement that attend the commencement of the study of the law, when that study is commenced in the old-fashioned way. A lad fresh from school is placed in his father's office; he is caught up at once in a whirlpool of business unintelligible to him; he is set to copy out certain common forms of conveyancing; as a relaxation he may accompany the managing clerk when he goes to issue a writ. No one in the office has any spare time to explain to him the elements either of the theory or the practice of the law; these he must dimly discover for himself as best he may, with the result that his original

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discoveries will probably be erroneous or only half true. Many a practitioner, educated in this way, suffers all his life from wrong ideas which became rooted in his mind when he was in his teens, and which no subsequent training can wholly eradicate. But here the future practitioner will be started on the right road, a road which avoids the Slough of Despond; he will be shown a map of the district and taught how the land lies before he begins his journey; if there must be peas in his shoes, the professor will kindly boil his peas for him before he starts.

Your students, as a rule, will enter here when they are young, for there is a good deal of law to be learnt. But they must first receive a sufficient training in general Arts subjects; this you will secure by requiring them to pass a matriculation examination. They will then proceed to the degree of L. L. B., which will save the future solicitor two years of his articles. The future barrister can keep terms at the Temple while reading here for his degree.

It is unnecessary, then, for me to urge upon you the need of a School of Law, for yours is already an accomplished fact; the only School of Law in the Principality. But I propose this afternoon to tell you what I humbly conceive the work of a School of Law should be; I shall even venture to state the methods by which I think such work can best be done. I am fully aware, of course, that such subjects include many debatable points—that men, at least as capable of judging as I am myself, will probably differ from me in many particulars. But that is no reason why I should not state my views for what they are worth. And I think it is better to state them boldly and baldly, so that there can be no mistake about my meaning, than to hedge them about with saving generalities so as to deprecate criticism from any quarter. But please do not think when in a few minutes you hear me laying down the law bluntly and curtly in the imperative mood, that I wish to dictate to others, or that I am not ready to listen to all that may be urged in answer to the opinions which you have rashly invited me to inflict upon you today.

I.

What, then, is the work that lies before this School of Law?

Its first and foremost duty will be to train future practitioners, to teach them how to learn law.

First, it must teach them our legal language; it must teach them the true signification of the terms which they will have to use in practice hereafter. They must know exactly what is meant by an "easement" or an "estate in fee simple." And they must learn

to use such words with accuracy and precision; they must not regard "devise" and "demise" as interchangeable terms. Above all, they must learn always to use the same word in the same sense. Different lawyers seem to attach different meanings to the same word; nay, often the same man will use the same word in different senses. Nothing leads to confusion of thought so much as this looseness of nomenclature.

Hence, whenever a teacher in addressing beginners has occasion to use such phrases as "mesne profits" or "days of grace," he should always stop to make sure that they understand the meaning of those words before he proceeds to state the law relating to them. Some students are most ingenious; they have great powers of invention; and will assign to such terms very remarkable meanings of their own. Others will be content to repeat them like parrots without any idea as to their proper use.

Next, the teacher should make clear to these beginners what I may call "elementary legal notions." For instance, he should teach them to distinguish "accident" from "negligence," and "negligence" from "fraud." And he should teach them that there is no such thing as "legal fraud" or "constructive fraud." Fraud is fraud; the word means in law exactly what it means in ordinary English, and always did mean that till certain Chancellors and Vice-Chancellors took to calling any conduct of which they disapproved "equitable fraud." Then teach them, if you can, what the word "malice" means in law, and above all teach them that there is no such thing as "malice in law"—that phrase has been a stumbling block gratuitously placed in the path of the student for more than a century.

Next, you must state to the student in clear bold language of your own the elementary principles of our law, as it at present stands. Do not worry him at the same time with history; that should come later. The existing law is one thing; how and by what stages it came to be the existing law is another. Teach him first what you conceive to be the present law. And state it to him so far as posible in your own words. Do not string together scraps and tags from different judgments delivered, one fifty, one a hundred years ago. Above all, do not read them sections from Acts of Parliament. They will have to suffer all the rest of their lives from the involved and tortuous style in which our legislature thinks fit to issue its edicts to the people. Spare them this yet a while! Avoid, too, the ancient phraseology so incessantly repeated in our text-books. Do not talk to beginners about a "tabula in naufragio," or tell them that the grantee to uses in an ordinary settlement of real estate is

merely "a conduit pipe"; most students find these time-honored metaphors more difficult to understand than the propositions which they are supposed to elucidate. I cannot conceive why English law should be taught in bad Latin. I am sure that much of the difficulty which a beginner experiences when he has to grapple with the rule in Shelley's case is caused by the words "either mediately or immediately," which invariably occur in the statement of that proposition. The student never saw the word "mediately" before; and has no idea what it means; yet he is afraid to ask for an explanation.

And do not teach doubts to your younger students. There is plenty of law that is absolutely fixed and clear. The "uncertainty of our law" is grossly exaggerated by ignorant persons. I always find that the uncertaintly is in the so-called "facts." In ninety-nine cases out of one hundred the law is clear enough; the trouble is caused by the witnesses not swearing up to their proofs. If the facts suggested in the brief are proved to the satisfaction of the jury, then a man in good practice has seldom any serious doubt about the law applicable to those facts; though he may not know at first just where to find it clearly stated.

But here in your School of Law I would advise you (if I may) to leave "moot points" and other *"apices juris"* till the men reach their third or fourth year. Teach the younger men what the undoubted law is; it will take them quite two years to master that. State it to them in clear general propositions; and illustrate those general propositions by decided cases drawn from the reports. Whenever you lay down a rule, you should also give an example. State to them the actual facts of some decided case and leave them to say whether the action will lie or not in that case. If they decide it will, then alter one fact; will the action still lie? If so, take away or add another element of the cause of action—does that bring the case across the dividing line? In this way they will learn the exact limits of the rule of law laid down, and will also learn to apply that rule to varying set of facts. With beginners you must pursue deductive methods.

Later on, when the frame work is put together, when the student knows the outline of the law of England, then precisely the reverse method can be employed. Now the student should be urged to dig in the rich mines of English case-law. Set him to study four or five decided cases apparently in conflict; bid him evolve from them the *ratio decidendi,* the guiding principle, the rule of law which underlies them all. This is work which has constantly to be done in practice. Every lawyer writing an opinion, every legal writer

composing a law book, every judge preparing a judgment, must go through this process. It is right, therefore, that the more advanced students should attempt this. Encourage them by all means, *after* they are familiar with the general outline of the law, to reconcile and distinguish apparently conflicting decisions, to discuss moot points of law, to argue cases as in court, to write essays on legal subjects. Teach beginners merely the *results* at which you have arrived. But to the more advanced students explain the method by which you have arrived at those results, and invite them to embark on similar journeys. Teach them how to find out the law for themselves. Teach them where to look for it. Teach them, too, how to state their argument and how to marshal and present their facts.

If this Law school does nothing more than teach the future practitioners of Wales to think clearly, and to express themselves clearly, to state facts clearly and in proper order, whether in a speech or a letter, in instructions or in the recitals of a deed, it will have done the State good service and saved much public time.

While thus sketching out the training of the intending practitioner at college, I do not for one moment underrate the value of "practice." No man is fully competent to act either as a barrister or a solicitor till he has been brought into contact with actual cases that are coming before the law courts, or has helped in the preparation of legal documents which are really needed by actual clients. There are also many practical details which can only be properly mastered when the student is engaged in the work of a solicitor's office or a barrister's chambers. These the law school will wisely neglect. But it will ever strive to prepare the student for contact with the business of the profession; and so to prepare him that he may quickly grasp the meaning, and thoroughly appreciate the importance, of even technical details when he meets them in actual practice.

II.

But a school of law will not confine itself to training future practitioners. It aspires also to teach the principles of our law to laymen, and to laywomen. Every citizen, whether male or female, should have some acquaintance with the laws by which he or she is governed, and which he (though not yet she) has some share in making. The laws of this country are not the exclusive property of any special clique or class; they are not the perquisite of any particular profession; they are the heritage of the nation as a whole.

Therefore the nation should take a pride in its property, and make some effort to understand its value.

And in former days it did so. In Saxon times the jury were judges of law as well as of fact. The Norman barons knew their exact rights, and refused to change the law of England at the bidding of the clerical canonists: *"Nolumus leges Angliae mutare quae usitatae sunt et approbatae."* In the days of Queen Elizabeth a lad from Stratford-on-Avon, who ran away to London because he had been out poaching, yet knew so much of the law that some of his misguided admirers actually assert that his plays were written by a Lord Chancellor. Falkland and Hampden knew the laws of their country and fought for them sturdily and well. During the sixteenth and seventeenth centuries some years study at an Inn of Court was the natural finish to a liberal education. But that is not so now. Our laity seem to have abandoned any attempt to comprehend even the outline of the system by which they are governed, or rather by which they are supposed to govern themselves. Our law is to them a matter of indifference. They take no interest in it, except when they abuse it and ignorantly declare it unjust.

This is matter for regret, though the cause of it is not far to seek. The law of England is worth studying. It embodies the traditions and instincts of a noble people that has ever sturdily maintained its rights. To us the whole world has come for lessons in the law of freedom. And shall we now pretend that this, our birthright, is valueless? The genius of the English race, its manners and customs and modes of thought, the growth of its civilisation as well as the development of its constitution, are best learnt from its litigation and its legislation. Our law is not a thing of today; it is not the product of one period; it has broadened slowly down from precedent to precedent. The trained intellects of a long series of most capable judges, lawyers and legislators, have been for centuries busy in its amendment. It is a thing of native growth: not a ready-made importation, nor a Code Napoleon suddenly imposed by an Emperor on his people. And yet, while still retaining what was valuable in the former law, it has never been unduly reluctant to accept suggested improvements from any source. It has assimilated what was best in Roman law, in Teutonic custom, and in the Maritime laws of Oleron and Rhodes. We can trace in it the gradual interweaving of the Saxon law with the feudal system which the Conqueror introduced; we see how both these subsequently were modified by the rise of commerce. Our law is full of human interest; it is a living and a growing thing, which has spread and grown, and still

will spread and grow, with the social development of the people. The law of England is worth knowing for itself alone.

Again, the study of the law is of great value as an educational factor. I should place it next after mathematics and classics, and before natural science, as a training for the mind. It supplies all the fundamental requisites of a good education; for it tends to develop and enlarge the mind, and to quicken and invigorate its powers. It requires an intellect of no mean order to grasp the rules and fundamental notions of our jurisprudence, to distinguish true from false analogies, to draw correct inferences from evidence and to reason justly and readily on questions which are not concluded by authority, or on which the reported decisions of our judges appear to clash. Moreover, from the law—if properly taught—the student learns an invaluable lesson: how to "sift facts," that is, in the first place, to reject much unnecessary recrimination, charge and countercharge, and narrow down the dispute to the real question which has raised the controversy between the parties; and next, to disentangle from a crowd of irrelevant details the facts that are material to the question in issue. Then comes a further mental process, equally valuable, equally difficult to learn elsewhere, namely, the application to these material facts of the appropriate rule or principle which guides us to the right conclusion. These lessons will be useful in every scientific study, and in every problem of a busy life.

And if we descend to more utilitarian considerations, it is surely the interest, as well as the duty, of every English citizen to understand the law by which England is governed. That law is not only a most interesting product of the human mind; it has at the same time a direct practical bearing on our health and wealth, on our means of livelihood and our personal happiness. It regulates all our social concerns. How can a man adequately and intelligently discharge his various duties as a citizen, how can he share in local government or take his part in the administration of justice, without some knowledge of the law—in its principles, if not in its practice? Each one of us is liable to be called as a witness, or to serve on a jury, or to be made a guardian of the poor; each one of us ultimately must become either a testator or an intestate. We might be asked to stand for Parliament; we might be made an executor or a trustee, or worse still, a defendant in a law-suit. Is it not wise to prepare ourselves for these various calamities? Is it too much to say that some knowledge of the law is the best introduction to the living business that goes on around us, the best preparation for the

actual affairs of life? In all the infinite variety of human concerns, law has a finger. The progress and well being of a nation depend largely on its legal system. It is right then that a school of law should not be merely a training ground for future lawyers, but should open its doors to all future citizens of the state.

And in the phrase "future citizens" I include women as well as men. I have the honor to be a graduate of an ancient and learned University which refuses to allow the letters, B. A., to be placed after the name even of a young lady whose place in the Mathematical Tripos was "above the Senior Wrangler"! But in the University of Wales men and women stand in all respects on equal footing. And I see no reason why women should not know some law, though they cannot act as advocates. A married man dies unexpectedly; his widow is suddenly called upon to take command of his family and his affairs. At a moment when she is overwhelmed with private sorrow she is called upon to deal with questions of probate duty and partnership law, of trustee investments, of specific legacies and the guardianship of young children; and she cries, "Why was I not told about all this before?" Even a spinster must live somewhere, and must pay her bills; she will be none the worse for knowing something about a lease and a cheque. Moreover, the legislature has at last admitted that a married woman is capable to some extent of managing her own affairs. If so, should she not be taught what her rights are over her separate estate? A learned note to Blackstone's Commentaries quotes a writer of the fifteenth century who states in so many words that "it does not appear to me unseemly that women should know law; for it is written concerning the wife of John Andreas, the commentator, that she was so learned in both the civil and the canon law that she dared to teach publicly in the schools."* I myself examined and presented for her degree at the University of London a young lady who took first class honors in the L. L. B. examination, beating all the men but one. So who shall say that the twentieth century may not rise to the level of the fifteenth, and see a lady professor expounding the Common Law of England to a class at Aberystwyth. Professors Brown and Levi must look to their laurels!

* "Nec videtur incongruum mulieres habere peritiam juris. Legitur enim de uxore Joannis Andreae glossatoris, quod tantam peritiam in utroque jure habuit, ut publice in scholis legere ausa sit."—Bernadinus de Busti: Mariale, part IV, serm. 9.

III.

Then, again, there is research work to be done. A law school may do much to improve and extend our knowledge of the existing law and of the history of our law. Such work as my friend, Professor Maitland, has done at Cambridge is invaluable, beyond all praise from me. But there is room for many laborers in that field. And there are other fields awaiting Welsh followers of Savigny, Austin, and Maine.

First comes Jurisprudence,—a science which can only be adequately studied in detail by those who are already acquainted with more than one system of law. The province of this science was most accurately determined, its boundaries marked out with most exact precision, by John Austin some seventy years ago. But the intervening area has not yet been occupied by buildings of much actual utility. We need now a more practical jurisprudence—a scientific statement of the elementary principles which underlie all modern legal systems —a true primer of the law. Next, there is much work to be done in the field of comparative law. Every lawyer in practice should be acquainted with some system of law besides his own. Such knowledge will help him in his practice; it will clear his ideas; it will suggest to him many an argument and apt illustration; it will give him a wider grasp of general principles. And the means are close at hand. If we keep to these islands alone—England, Scotland, Ireland, the Isle of Man, and the Channel Islands—we meet with very various rules of law and procedure. It is startling to an English lawyer to learn that in Jersey legal documents require no stamp, that in Guernsey a land owner cannot dedicate a highway to the use of the public, and that in Scotland a husband who is found guilty of adultery is still liable to be treated as civilly dead. While if we extend the field of view till it covers the whole British Empire, we shall find every variety of modern civilized law and many specimens of ancient law still in force—Hindu and Mahomedan law in India, Roman-Dutch law in Cape Colony, French law in Quebec and Mauritius, and many another variety; while each member of the new Australian Federation has a legal system of its own. And how much depends on the way in which these various bodies of law are administered by Englishmen abroad. In many of our recent acquisitions any careless disregard of local law and custom might create disaffection, or even arouse revolt. Now add the present law of France, Germany, Switzerland and the United States; and from the apparent conflict of laws extract the common *substratum,* the essential elements of civilized law; and

the problem of jurisprudence is solved. You have arrived at the true *Jus gentium.* You have refined away the dross of antiquated technicality, the accidents of local custom, and only the pure gold is left.

And now we enter the field of Legal History. The study of the various existing bodies of law must provoke the question: How did all these differences arise? Whence did these various systems spring? First in importance comes the history of our own law. We sadly need a good modern text-book on this subject. I do not mean by this a book on Constitutional History. The men and women who study at this University are of course taught the English Constitution; as it is and as it was. Nor do they neglect, I trust, the kindred study of the laws affecting local government. The future District or County Councillor must learn what are the powers and what are the duties of those important bodies which hold in their hands the health and comfort of each neighborhood. And the History of Local Government in England and Wales deserves attention also. But apart from the existing law of the Constitution, apart from Constitutional History, apart from Local Government, stands the History of our Private Law. Look at the changes which the last century saw in the law of libel, in the law of husband and wife, in the law of master and servant. What a flood of light these changes throw on the social history of the period! What an advance they show in the morality, in the sense of justice and fair dealing, and, I may add, in the common sense of the English nation!

Is the same advance to be traced in other nations? For this we must study the History of Continental Law; we must see how France and Germany have dealt with the problems of capital and labor, husband and wife, master and man. How do they manage their prodigals and lunatics, their habitual drunkards and their habitual criminals? Have they pursued the same path as we have or adopted methods of their own? We may learn much of the national characteristics of these nations from the temper in which they respectively approach such questions. We may learn, too, how the methods which they did adopt have answered. Have they been effectual, or have they only aggravated the evils which they were intended to remedy? It is possible—I state this proposition mildly—it is *possible* that foreign nations may have found the true solution of some difficulties which still trouble us.

The English law of landlord and tenant works fairly well in England; in Ireland it provoked ill feeling, disaffection, agrarian

outrage. Under the later Roman emperors the peasant who tilled the soil paid his landlord a fixed proportion of each year's crop. This form of tenancy still lingers in the south of Europe; the *metayer* tenant is the direct descendant of the Roman *colonus medietarius;* he pays the landlord half the value of whatever the land has produced. I am informed that a precisely similar form of tenancy exists among the natives of Ceylon. And such an arrangement, so widely spread, seems fairer to the tenant than our system which compels him to pay the same amount of rent, in bad years as in good. Yet on the other hand it may be that such a system does not provide the same stimulus to exertion on the part of the tenant as would arise from the necesity of his paying a fixed rent.

Again, take the law of the family in France, which is very different from our own, and which is indeed at once the cause and the effect of that devout family affection which stands to many Frenchmen in the place of a religion. In France a father cannot wholly disinherit his children; a husband must make some provision for his widow; if he does not, the law will do it for him. Is this better or worse than our system which allows a man to leave not a penny to wife or child but to bestow all his property on some unworthy mistress or on a hospital for cats—a system which drives our judges to find undue influence, and our juries to discover traces of insanity, in cases where a proper will would pass muster. When the University of Wales has produced a clear and simple History of the Law of England, it must next embark on the Comparative History of the Laws of Modern Nations.

You are thinking, no doubt, that I have set you two pretty tough jobs. Well, so I have. But this new law school is going to aim high. Αἰὲν ἀριστεύειν will be its motto. There is however one little fragment of legal history which is specially for you.

Wales possesses three most valuable ancient codes written in the Welsh tongue—the Code of Venedotia (or North Wales), the Code of Demetia (or South Wales), and the Code of Gwent (or South-east Wales). There seems no reason to doubt either their authenticity or antiquity; and that being so, they prove that a higher degree of civilization existed in Wales in the eleventh and twelfth centuries than one had previously imagined. These three codes are now distinct and independent, but they are all avowedly founded on one code, said to have been made by King Howel the Good with the help of his wise men at the White House on the Taff, during Lent in the year A. D. 943. There were probably still earlier compilations of Celtic custom, as it is expressly stated in the preface to the Venedo-

tion Code that "the wise men there assembled examined the ancient laws, some of which they suffered to continue unaltered, some they amended, others they entirely abrogated, and some new laws they enacted."

I invite you to embark on a quest in search of these "ancient laws" which existed before A. D. 943. By collating the three codes that we have and noting where they *agree,* you could probably reconstruct, out of the portions comon to all three, the original Code of King Howel Dda. But ancient customs die hard; they constantly crop up again. Hence it is by studying where the three codes *differ* that you may hope to arrive at the pre-existing ancient laws of the Britons which the wise men wished to abrogate. These would be worth discovering. It would be interesting, too, to ascertain what impression, if any, had been made on the laws of the ancient Britons by the laws of the Romans during their occupation of the island and also by contemporary Saxon custom.

I said just now that I thought a beginner should not be set to study our existing law and its history at the same moment. First one and then the other; and, in my opinion, some knowledge of our present law should precede the study of its history. The existing law can be stated clearly—at all events, in outline—without any reference to the earlier law on the subject. And in a student's book it should be stated so. Suppose a workman has been injured through the negligence of the foreman in superintendence over him. Can he recover damages from their common employer? This question can now, at all events, be answered without repeating the long story of the doctrine of "common employment." And I venture to think that just as a solicitor would reply to this workman, so ought the professor to teach those who are beginning the study of our law. He ought to tell them the net result of the mixture of common law and statute. If he is writing a book for beginners he should state the existing law in his own words in big print at the head of each chapter, the history can be stated subsequently in different type. The air we breathe is more wholesome mixed; we do not want a professor to divide it back into oxygen and hydrogen before we swallow it.

I admit that no lawyer is fully equipped till he knows both the existing law and its history. So no lady is fully dressed for a ball till she has on two gloves—a right-hand glove and a left-hand glove. But I defy her to put on both at once.

Over and over again I have been assured by students that a tenant-in-tail can bar the entail as soon as he has issue born alive that

could inherit. In vain I tell him that that may have been the law once, say in the days of King Henry III, but that it is not the law now. They look at me with an incredulous smile; and refer me to that excellent compendium, "Williams on Real Property." And there no doubt the proposition on which they rely is to be found at the beginning of the chapter on Estates Tail. Of course the learned author later on explains how the law was altered in the reign of Edward I, and many times since then. But the busy student does not trouble about that; he has found one clear and intelligible statement at the beginning of the chapter; the rest makes no impression on him; he regards it merely as variations of the same air or *motif;* he perfers it as he heard it first in the overture; and so he sticks to that!

You see, if on my journey to this town I had read and tried to remember everything stated in the "Gossipping Guide to Wales" about every place of interest on the route, I should not be left with any clear recollection of the three pages about Aberystwyth to which place I have now arrived. And yet it is just those three pages that would be of the most use to me today.

IV.

Lastly, this School of Law will, I trust, aid in giving to our law a better form and a clearer expression. That is what both students and practitioners need most. I am far from saying that the substance of the law of England is perfect; each of us no doubt thinks that he could improve it in one or two particulars, though others would probably differ from him as to those very matters and prefer the law as it stands. Such amendments should be made, if at all, with caution and deliberation, and after careful inquiry as to what the law on the point really is; for our present law is far more just and far more sensible than most people imagine. Talk of the Roman law! Ours is infinitely superior. The law of England—when once we can find out what is is—is the best and noblest system which this world has ever seen. But it is sadly defective in its arrangement and the manner of its expression. The great advantage—and I think I may say the only advantage—which the Roman law possesses over ours is that Justinian had the sense to commission an eminent jurist to write an elementary institutional work, which should be an outline and introduction to the whole law. And further, he had the sense to have this institutional work passed into what was equivalent to an Act of Parliament, without allowing any layman to tinker at it. That is what we need today, a Tribonian!

It is essential to the welfare of the community that in every state there should exist an authoritative body of law, readily accessible, easily intelligible, and strictly and impartially enforced. That our law is strictly and impartially enforced, no one will deny; in its substance, I repeat, it is as logical and as enlightened as any body of law which has ever existed on this earth. But it is not easily intelligible, by laymen at all events, and it is not readily accessible to either laymen or lawyers.

Why is this? Why is our law so devoid of scientific arrangement? Why is it so difficult to find an exact and authoritative pronouncement of what we all know is the law?

There are many possible answers to these questions. But perhaps the chief reason for this sad lack of form is that our law has come to us from so many and from such different sources. The law of England is largely derived from antecedent *custom*. Much of it, and I may say the most valuable part of it, was custom before it was made law. In Norman times legal writers incorporated in their *text books* large portions of the Roman law, and declared that these were also the law of England. As civilization advanced, our judges endeavored to mitigate the rigor and the technicality of the common law by means of *legal fictions*. Subsequently the same object was attained in part by means of a separate Court of *Equity*. Later judges regarded the decisions of their predecessors as *precedents*, which they were bound to follow in similar cases; and in following them they often extended them. But now changes in the law of England are made almost entirely by *statute*.

And what is the result?

There are more than 1,600 text books in Messrs. Stevens & Sons' list; and one *must* consult the last edition; for it is unsafe to rely on an edition of a text book six years old. There are now in the library of the Middle Temple at least 2,000 volumes of reports of English cases alone; and in any one of these may lurk a decision or a *dictum* which may be cited in court on any given point of law. But worse than this is the unnecessary number of hastily-drafted and ill-considered statutes which throw the law into confusion. Every year adds more than a hundred enactments to the Statute Book; enactments often passed in the dead of night by men who, as a rule, are ignorant of the law, and who are content to trust to a general certificate from the member in charge of the bill, that "the law of it is all right." Few of these statutes are preceded by any serious attempt to master the law already existing on the subject. Very few of those who vote for a particular measure have realized the precise

effect and meaning of the enactment which they are helping to carry into law. Legislation is the only trade which requires no apprenticeship!

Our law making is at present at a low ebb. Our legislative machinery is out of gear, and does its work badly. It turns out a quantity of material; but it is poor stuff, not closely woven—not good Welsh flannel, all wool. And there is a deal too much of it produced. For three centuries after Parliaments began to assemble there was very little legislation. Now there is undoubtedly too much.

Hence ignorance of law is very excusable in the present day. How can we expect any layman to study our law, so long as it remains in its present unscientific and unattractive shape? Can he wade through thousands of statutes or through tens of thousands of reported decisions? Who shall warn him which statute is obsolete, which decision overruled? Who shall guide him to the proper text book to suit an amateur? Shall he for pleasure undertake the toil of Leolin,

> "Mastering the lawless science of our law,
> That codeless myriad of precedent,
> That wilderness of single instances,
> Through which a few by wit or fortune led,
> May beat a pathway out to wealth and fame."

Is not this description as true now as when the Laureate wrote it in 1865? The truth is that the present condition of our law is a bar to any real study of it by a layman. It is not the substance of the law, but the way in which it is presented to the non-professional man, which leads him to despise and sometimes even to abuse it.

And yet all the time the state insists that ignorance of the law affords no excuse for any breach of it. The prisoner in the dock, the defendant in a law-suit is not allowed to urge in his defense "I was not aware that I was breaking the law." One would have thought that this fact alone would be regarded as imposing on the state the duty of expressing its commands in clear and unmistakeable language and of rendering them widely known. But, if so, this is a duty which at present the state wholly ignores. It makes no attempt to teach the law to the people.

And it is not only the non-professional man who suffers. The task of any student who intends to practice the profession of the law is enormously increased by its unwieldy bulk and want of form. But it is to the lawyers themselves that the condition of our law is to my mind especially detrimental. Every year it be-

comes more and more difficult for any solicitor or barrister in active practice to retain familiarity with more than some special branch or portion of the law. Any comprehensive study of the law of England as one organized and compact whole is at present impossible to a busy man. And this renders it so difficult for him to discover and apply those broad common-sense principles which underlie our English law. A real grasp of the primary principles which pervade the whole field of law is rarely attained by a man who has thoroughly mastered only a portion of the subject. Until the law is reduced into better form and order, our study of it necessarily must be fragmentary and probably will be unscientific; and our analysis and definition of legal ideas will be neither accurate nor precise.

How is our law to be reduced into better form and order? We cannot go on much longer as we are doing now. Of course the proper remedy is a code. Sooner or later the law of England must be codified. To do this would cost the nation not one-tenth of the price of a single ironclad. And it would be well worth the money. I fully admit the value of such measures as the Bills of Exchange Act, the Partnership Act, the Sale of Goods Act, and others recently passed. But far greater benefits would in my opinion flow from a systematic and organized attempt to produce a series of such Digests, covering the whole ground, and arranged in some scientific order. The acts relating to a given subject should be all repealed and then re-enacted in one compendious and well arranged statute. Such statutes would be in fact installments of the future Code.

In the meantime much may be done by this Law School and others to give to our legal system lucid expression and scientific arrangement. And then when our law is made clear and intelligible and readily accessible to all, when at last its lack of form and defects of expression are removed, then I trust English men and women will know and understand its principles, and everyone will recognize and admit that the law of England is logical, sensible and just.

W. Blake Odgers.