Reviews and Notices

Advocacy: Its Principles and Practice. By R. K. SOONAVALA, B.A., LL.B. With an introductory note by the HON. MR. JUSTICE M. C. CHAGLA. Bombay: N. M. Tripathi Ltd. 1953. Pp. xii, 957. (Rs. 25/-)

This is a new book on advocacy written by Mr. Soonavala, a civil judge of the Bombay Judicial Service. Mr. Justice Chagla, the Chief Justice of the Bombay High Court, has written a most admirable introductory note on the "Art of Advocacy" and says some of the essential things with great lucidity and brevity. But it was scarcely to be expected that Mr. Soonavala, or indeed Mr. Justice Chagla, could say anything that was new upon the subject, for everything was said that needs to be said some eighteen centuries ago by Quintilian and Cicero. Even they were obliged to acknowledge their debt to earlier expositors. But all through the years, as generation has succeeded generation, the subject has exercised the greatest fascination upon the minds of men, and innumerable disquisitions have been made upon it, one of the most notable being the address given to the Canadian Bar Association at Ottawa some thirty-three years ago by the late Viscount Simon on "The Vocation of an Advocate".

This is perhaps the most comprehensive book ever written on the subject, as Mr. Soonavala's sub-title indicates, for it reads:

> Dealing with the Art of Advocacy, Examination in Chief, Cross-Examination, Re-examination, Methods of Preparing Briefs, the art of Persuasion, Trial Strategy and Trial tactics, the art of winning cases: with extensive quotations from well-known trials and notable cross-examinations.

The book is clearly intended for the beginner in practice, and Mr. Soonavala avows his purpose to be that of bringing a message of hope to those who are embarking on the precarious first years at the bar. To this end, he entitles one of his chapters "Success at the Bar", and another "How to acquire a large clientele". He cites with approval Mr. Dale Carnegie's best seller entitled *How to Win Friends and Influence People* and quotes some of the rules laid down in that work. One of them is "Smile as much and whenever you

can", and another, "Be hearty in your approbation and lavish in your praise", and another, "Never tell a man he is wrong". It appears that over twelve million people had bought Mr. Carnegie's book by the year 1940, and it is most sincerely to be hoped that none of them smiled at the wrong time (which can on occasion be more disastrous than never smiling at all), and that when they were lavish in their praise they were careful to bring the ring of sincerity into it, and used considerable circumspection, and also, when the occasion demanded it, they forgot Mr. Dale Carnegie and were ready not only to tell a man that he was wrong but that he was hopelessly wrong.

But Mr. Soonavala's intentions are manifestly good, and anything which brings hope to the beginner is to be welcomed. In rare cases, a young man with nothing else than a grin upon his face, as described by Borrow in *The Romany Rye*, may triumph; but the sounder rule surely is that there is no royal road to success, and in the practice of advocacy there is room for every kind of human personality. The present reviewer, speaking with forty years experience of the bench and bar, would venture to suggest to all beginners, and indeed to all who care to listen, that the golden rule in life and in advocacy is just to be natural. There are no fixed and rigid standards that you can lay down and say, "If you want to be a great advocate, there is the pattern". It simply cannot be done.

There are diversities of gifts but the same spirit, and there have been men who had the greatest difficulty in framing their sentences in any clear and coherent fashion, and yet had the power to impress the court in the most compelling way, so that the court strained to catch all that was so haltingly and so imperfectly said. Of Sir Horace Davey, for example—afterwards a lord justice and a lord of appeal—who had one of the largest practices at the bar, J. A. Foote says in that little classic *Pie Powder*, "the intellectual effort necessary to follow his utterances was always considerable; and the absence of anything like animation in his voice was so ostentatious, that one sometimes wondered how he had forced himself into prominence at all". In the English courts, Edward Carson, Rufus Isaacs, John Simon, F. E. Smith, Gordon Hewart, Montagu Lush, Rigby Swift, to name a few great names of the immediate past, all had their weaknesses and their strengths, but none of them conformed to the same pattern, though all were engaged in the same great task.

That task is defined by Mr. Soonavala as "the art of persuasion". That was, of course, the earliest classic definition of rhetoric, and the term "rhetoric" was then almost wholly confined to persuasive speech; and it was in that sense that Aristotle defined rhetoric as the power "to see the possible ways of persuading people

about any given subject". Quintilian said that the definition was both too wide and too narrow, but Mr. Soonavala's definition is really that of Apollodorus, the Greek grammarian, "to persuade the judge and lead his mind to the conclusions desired by the speaker". It is this definition that Mr Justice Chagla expounds in his attractive and wise introductory note. He emphasizes the importance of the advocate in the administration of justice, and proceeds to lay down certain rules which his experience has shown him to be worthy of note. The art of advocacy, he insists, consists primarily in presentation, and in the right use of words to acquire grace and lucidity. The advocate must be a man of character with the qualities of patience and perseverance. This is well said and it cannot be over-emphasized. Without character, the most brilliant man will fail. No profession calls for higher standards of uprightness, and no profession, perhaps, offers greater temptations to forsake them; but whatever gifts a man may possess, without the supreme qualification of an inner integrity he will fall short of the highest.

And here the present reviewer must beg leave to differ from Mr. Soonavala on a fundamental point when he says, "I think it is most unethical for a lawyer to conduct the defence of a client when he considers him to be guilty". Mr. Justice Sundara Aiyar in his *Professional Ethics* had stated the contrary view, and Mr. Soonavala is at some pains to challenge it. It may be pertinent to recall the famous words of the greatest advocate who ever practised in the English courts, the great Erskine. In his notable defence of Tom Paine, he stated the true doctrine in words that have never been bettered:

> From the moment any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in court where he daily sits to practise, from that moment, the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation, puts the heavy influence of a perhaps mistaken opinion into the scale against the accused, in whose favour the benevolent principles of the English law make all allowance, and which command the very judge to be his counsel

In all criminal cases, it is the duty of the Crown to prove guilt, not for the accused to prove innocence; and the duty of the advocate is to protect the accused from conviction save by a competent tribunal and upon legal and admissible evidence. In civil cases, there is so much usually to be said upon each side of the question at issue that it is in the highest degree advantageous to have the various matters fully and acutely debated. It is well that in any civilized community there should be found men of honour and

uprightness, who make the profession of the law their livelihood, trained to defend, and to speak for the citizen, and to guard his rights, his liberties and his life.

Mr. Soonavala has quoted all the best things, from more than a hundred authors, that have ever been said or written about advocacy. His book is a perfect anthology and cannot fail to be of the greatest help to the beginners in the law, as well as being most entertaining and instructive reading. It would appear in any discussion of the matter that advocacy is made up of many elements: the advocate himself, with his quick mind and understanding heart, and his integrity of character; his powers of expression, his readiness and resource, his courage; the occasion with all its dramatic possibilities; the theme, whether noble and lofty or tragic and pitiful; the form and beauty of the expression of these things; and it becomes quite clear that the thing said can hardly be separated from the moment of its saying; but the wholly important thing is the man himself. When Lord Rosebery, himself a great master of the spoken and the written word, came to analyze the oratory of the great Chatham he said:

> Assiduous study of words, constant exercise in choice language, so that it was habitual to him in conversation and could not be other than elegant in premeditated speech, this, combined with poetical imagination, passion, a mordant wit and great dramatic skill would probably seem to be the secrets of Chatham's oratorical supremacy. . . . And yet it is safe to say that a clever fellow who had mastered all this would produce but a pale reflection of the original. It is not merely the thing that is said, *but the man who says it that counts, the character which breathes through the sentences.*

The man himself is the essential thing, and the truly great advocate is always something of a rarity, and he is usually a law unto himself. When Erskine spoke for the first time in Westminster Hall in defence of Captain Thomas Baillie, he was already the complete and finished advocate; and when John Somers spoke in the great trial of the Seven Bishops and instantly made his reputation, he had little left to learn.

But advocates in general have slowly and painfully to acquire knowledge, and Mr. Soonavala's book, ranging, as it does, over so wide a field, cannot fail to be of the greatest possible assistance to all engaged in that task. Voice, gesture, demeanour, language, emotion—all these things must be brought into the service of persuasion, and throughout this book will be found the wisdom of countless advocates placed at the service of all who join their great company. If the present reviewer may express a personal view about the advocate in court, to add to Mr. Soonavala's advice and counsel, I would say that I like to see the advocate who stands erect whilst he addresses the court, keeping his eyes fixed on the

judge or the jury, and not permitting the attention of either of them to stray; I do not like to see the advocate lounging in court, leaning on the bench behind him, usually with his hands in his pockets, and, unconsciously no doubt, but certainly, giving the impression of indifference. I like to see the advocate who speaks straight on without pausing continually to take sips of water between the sentences. I like to see him examine and cross-examine from the material he has got into his head without continual recourse to the written brief. I like to hear him use the best English, the choice and appropriate words, the well-constructed sentences, the timely metaphor, the convincing quotation, and, on the rare occasions, the saving touch of humour. I like to see him respectful to the bench, but not subservient, asserting the independence of the bar when necessary to do so, as Erskine did before Mr. Justice Buller at the Shropshire Assizes in the great case of the Dean of St. Asaph, with courtesy and with unflinching courage. And above all, I like to hear the advocate who speaks so that he can be heard. Knowledge of the law and assiduous training in mastering the complexities of law are essential to any kind of success in the art of advocacy, as Mr. Soonavala continually asserts; but the complete advocate must daily add to his equipment the great weapon of the well-stored mind. Knowledge of life, of books, indeed knowledge of every kind cannot be too highly commended, and your advocate ought to be not only a man of law but in the best sense a man of letters. He may then aspire to the praise given by Ben Jonson to Francis Bacon:

> No man ever spake more neatly, more presently, more weightily, or suffered less emptiness, less idleness in what he uttered . . . His hearers could not cough, or look aside from him, without loss. He commanded where he spoke, and had his judges angry, and pleased at his devotion. No man had their affections more in his power. The fear of every man that heard him was, lest he should make an end.

Mr. Soonavala has devoted immense labour to the making of this book. He has had recourse to most of the literature on the subject. He has ranged widely over many allied subjects in order to assist the advocate in his main task. His hundred hints on advocacy, with which he concludes his book, deserve to be studied with the same care that Mr. Soonavala has shown in compiling them, for, as he says, they summarize the whole book in short and pithy sentences. It may be that the reader will find some things stated with which he does not agree, or which are not entirely applicable to the particular country in which he practises, or that even may be inaccurate—that is almost inevitable in a monumental work of this kind covering such a vast domain of knowledge—but, making all allowances for matters of that kind, it must be said in justice that this most readable and interesting book will

give pleasure to all lawyers who read it. The extracts from cases, the illustrations of notable cross-examinations, the methods of different advocates with examples of their style, the distilled wisdom of many generations of authors writing on this congenial theme, the sage and timely advice to beginners, and the elevated tone of the whole book—all combine to form a work that it must have been a great pleasure to construct, as it will most certainly be a great pleasure to read. It is to be hoped that the book will have a wide circulation and bring hope and encouragement where it is most needed.

NORMAN BIRKETT*

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Modern Trends in Forensic Medicine. Edited by KEITH SIMPSON, M.D. (PATH.). London: Butterworth & Co. (Publishers) Ltd. Toronto: Butterworth & Co. (Canada) Ltd. 1953. Pp. ix, 327. ($11.00)

Whatever it may have been in the time of the Medes and Persians, the law today is in a very active state of evolution. Medicine is equally restless in its progress. In their development, the two great professions are indissolubly linked; the comradeship of the lawyer and the doctor becomes each year more closely knit. This professional interdependence is strikingly portrayed in the valuable work edited by Keith Simpson. It is manifestly impossible to cover in one volume all the multifarious aspects of medico-legal advance, so that the author has confined himself to the last ten years and "to fields in which change or re-assessment has been notable, or in which a ponderous or equivocal literature has accumulated".

Of the twelve chapters composing the book, Simpson is responsible for six; the others are from the pens of highly competent colleagues. The whole has been welded, it seems to me, into a work of outstanding merit, with few if any discrepancies or redundancies.

The first two chapters deal with stillbirth and neo-natal death, the third with the investigation of sudden death. This last contains a stimulating section on "The Obscure Autopsy". Recent work on bodily changes after death forms the subject of the fourth chapter, and the next is devoted to a discussion, rather technical in character, of the forensic aspects of blood groups. Exposure to cold—starvation and neglect form the subject of chapter 6. This is succeeded by a very practical discussion of problems of reconstruction, with consideration of race, sex, age and stature from

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skeletal material, and evidence from dental data. The rapid progress of physical science and its application to problems of jurisprudence is the theme of an intriguing section on microscopy, including ultra-violet and electron microscopy; spectroscopy, qualitative and quantitative; flame photometry; absorption spectra; photography; radiography, and the use of radio-active tracers. How widespread is the sphere of application of these methods may be gathered from the establishment of the presence of antimony in a single human hair, the detection of strontium in the dust from the garments of a suspected burglar, and the unmasking of art forgeries.

Electro-encephalography is the subject of chapter 9. This apparatus has been applied to the study of delinquents, epilepsy following trauma and concussion. Use of the method is considered in relation to the M'Naghten Rules. Chapter 10 concerns the civil law in relation to medical practice. Here are discussed such matters as hospital authorities and negligence of staff; gratuitous treatment; legal duties of medical men; secrecy; care; delegation of duty. A discussion of "Nervous Shock as a Tort" is timely and instructive. The two final chapters are allotted to toxic agents. Both are highly technical in character, and deal not only with methods of analysis of the commoner poisons, but with identification of the more commonly used barbiturates, such as seconal, allonal and amytal, and of the local anaesthetics of the benzoic ester group, such as procaine. The newer insecticides, such as DDT, and selective weed-killers, 2-4-D and the rest, are dealt with in the final chapter.

One outstanding impression gained from a perusal of this book is that medico-legal testimony—apart from simple facts of observation—is emphatically a field for the expert. As one of the writers points out, "there is little room for the amateur or the dilettante". This qualification must apply to both the lawyer and the doctor. Truth is not always on the surface; one may have to dig deep to uncover it. The record of research, of experiment and of observation revealed in these pages is most impressive. The work is well illustrated and includes a number of reproductions in colour, each chapter is supplemented with an excellent bibliography, and the story has been clearly and attractively told. The book should be studied by all who take part in the administration of justice, as witness, as counsel, or as judge.

ALEXANDER GIBSON*

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International Law: Cases and Materials. By WILLIAM W. BISHOP, JR. New York: Prentice-Hall, Inc. 1953. Pp. xxvii, 735. ($9.75 U.S.)

In his introduction to MacKenzie and Laing, *Canada and the Law of Nations*, the late Dr. James Brown Scott (who incidentally was a Canadian-born United States citizen) wrote, "the case book which is to render the greatest service would be in the nature of what we may call an international mosaic". He then qualified this statement by adding that "his mature judgment" was that "in an American book the leading cases of the United States should be supplemented by outstanding cases of as many countries of the world at large as it is possible to find and to include in a collection without having it assume unwieldy proportions".

Canadian students of international law are grateful for the comparatively large number of excellent casebooks that have been published in the United States. But their value for us is usually determined at least in part by their approximation to Dr. Scott's ideal. It is therefore somewhat disappointing, though perhaps not surprising, to read in the preface to this collection of cases and materials of Professor Bishop's (the same Bishop whose assistance MacKenzie and Laing in their preface acknowledge "in the work of classification") that, "The point of view of the book is frankly American—that of the American lawyer and the Department of State of the United States—although there is an effort to present a rounded picture of international law rather than merely the views expressed by the United States".

This limitation apart, Professor Bishop has produced, not merely a collection of cases and materials, but a teaching tool that in the hands of the serious student should be almost self-operating. Indeed, as he points out, the book should also be of "help to the lawyer or layman who wishes to get through unaided study a better understanding of the legal side of international life". This result has been accomplished largely by the inclusion and judicious arrangement of so frequent and lengthy notes that the reader often has the impression of an incisive text on the subject rather than the usual casebook, with random notes appended to cases as introductory or further material. Thought-provoking questions are scattered throughout and there are numerous relevant extracts from the standard "authorities" and documents. The number of extracts from Hackworth's Digest does seem rather disproportionate to this reviewer, even though they may be justified on the ground that the work is intended to represent in part the views of the State Department of the United States.

The book comprises eight chapters, entitled respectively: Nature, Sources, and Application of International Law; International Agreements; Membership in the International Community; Ter-

ritory; Nationality; Jurisdiction; State Responsibility and International Claims; Force and War. The appendices contain the English versions of the United Nations Charter, the Statute of the International Court of Justice, a treaty between the United States of America and Uruguay signed in 1949, and a Selected Brief Bibliography. A foreword to the student, in which the author discusses the reasons why international law should be studied, will be especially appreciated by teachers, who know that many students at the beginning of a course doubt the practical utility of the subject. Since the book supplies so much varied material, only about 120 cases comprise the skeleton of the book, but many more are included in the notes, with the facts often supplied by the editor and extracts (occasionally lengthy) from the judgments. Quite full extracts of some cases, other than those included in the notes, are given although the facts are usually condensed by the editor and a number of cases have been edited to approximately one page: a few to half that length.

C. V. COLE*

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The Oxford Book of English Talk. Edited by James Sutherland. Oxford: At the Clarendon Press. Toronto: Oxford University Press 1953. Pp. xix, 453. ($3.75)

This delightful book of "English talk" presents 122 short examples of informal conversation ranging from 1417 to 1949. It is of special interest to lawyers, not because "the liveliest dialogue in this book is a record of the spontaneous feelings and sentiments of whores and vagabonds, thieves and pickpockets, as they stood in the dock or the witness box", but because the accurate recording of talk by shorthand has been most commonly used from its beginning in the sixteenth century in the world of lawyers and the law. Dialogue perhaps less lively, but coming from the other extreme of the social scale, is provided from the records of the trials of notables, including Sir Walter Raleigh (the editor observes that "the trial was marked by the venomous and intemperate way in which the Attorney General, Sir Edward Coke, conducted the case for the Crown"), the Earl of Stafford, Charles I and the Duke of Monmouth.

Not all Mr. Sutherland's selections are as authentic as those purporting to be verbatim transcripts of the witnesses' words may be. He has occasionally taken conversations from the works of writers, most of them novelists, who described their contemporaries and who are today generally regarded as having caught, if not

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the precise words, at least the spirit of the talk of their day. Included in this group are Bunyan, Fielding, Boswell, Austen, Dickens, Thackeray, Trollope, Eliot, Hardy, Jerome and Kipling, to name the most familiar. Each is represented only once, and the larger part of the book is taken from less familiar but probably more authentic sources. Lawyers interested in evidence will find the editor's preface an interesting discussion of the problems of obtaining reliable examples. In very recent times B.B.C. broadcasts have made available some fairly natural talk, although one may wonder just how natural an amateur is on a national broadcast. Among these is a broadcast talk by the late Professor John Hilton, entitled (by the editor) "Calculated Spontaneity", a piece well worth reading by anyone called upon to deliver a radio talk.

The subject matter covers a wide range, from early treason trials and witch-hunting (sounding painfully modern, somehow) to town planning (part of a broadcast in which a planning consultant, Mr. Thomas Sharp, attempts to explain to the inhabitants of the hamlet of Letcombe Bassett why further developments for their needs should take place in the neighbouring village of Letcombe Regis, a mile away, and an indignant Mr. John Betjeman replies for the villagers). The arrangement is chronological with such unrelated titles as "Commonwealth Gestapo" (1658), "Country Copulatives" (1658), "Cavalier" (1664) and "Colonel Turner Tells his Story" (1664, shortly before he was hanged for robbery) appearing in succession.

Mr. Sutherland has exercised great skill in selecting rich examples of English thought and talk. The book may easily be picked up at any point, but most readers will find it harder to put down. The rather short explanatory notes appearing before some selections are the only interruptions in the text; a table of notes and references at the back identifies the selection and the author. The notes in both places are welcome and could have been even more informative without detracting from the book. All in all a most enjoyable work for lawyer's leisure reading.

J. B. MILNER*

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A History of English Law. By SIR WILLIAM HOLDSWORTH, O.M., K.C., D.C.L., Hon. LL.D. Volume XIII. Edited by A. L. GOODHART, K.B.E., K.C., D.C.L., LL.D., and H. G. HANBURY, D.C.L. London: Methuen & Co. Ltd. Toronto: British Book Service (Canada) Ltd. 1952. Pp. xlviii, 803. ($14.00)

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By giving us knowledge of the past, history gives us (if we will but use it) power over the present and confidence in the future. It is thus the best solvent of the fears that beset us as we study the contemporary scene. Legal history (now a respectable member of the history family) offers solid ground for optimism to students of law. Certainly, the best antidote to doubts about the future of English law is a journey back over the long road it has travelled since the days when the early Britons first began laying down rules to govern their social conduct. And, certainly, the best guide for that journey is Sir William Holdsworth. For those who must make a hurried journey, there is his *Some Makers of English Law*. For those who can travel at a more leisurely pace, there is his magnum opus, *A History of English Law*, of which the volume under review is the thirteenth of a proposed total of fourteen.

One important fact will be brought home to anyone who undertakes the journey: the law cannot look back to a Golden Age, it cannot sing the praises of the good old times. Its Golden Age lies ahead in the distant future. When we take a full view of the picture, we see that by a process of gradual evolution, assisted by men of large and liberal sympathies, the law has been improving all the time. Its present is better than its past and its future will be better still. Today the law permits the common man to live more in harmony with the dignity of humanity than in any previous age. Two brief references to Holdsworth's text will suggest some idea of the improvement during the period of forty years covered by his present volume. In 1819 Parliament decreed that "no child under nine was to be employed in a cotton mill, and no person under sixteen was to be employed for more than twelve hours a day" (p. 213); and "in 1823 the rule that the body of a suicide was to be buried in the highway with a stake driven through his body was repealed" (p. 395).

Maitland once referred to history as a seamless web whose pattern is too large for any man's eye. Holdsworth saw more of that large pattern than any other legal historian. He set himself the task of writing a history of English law from its Anglo-Saxon beginnings until the marriage of law and equity in 1875. When he died in 1944, his thirteenth volume was almost ready for publication. It has been completed by his literary executors, Professors Goodhart and Hanbury, to whom all students of history must acknowledge their debt—a debt which will be multiplied when the editors redeem their promise to complete the fourteenth and last volume.

"The history of what man has accomplished in this world", said Carlyle, "is at bottom the History of the Great Men who have worked here." Holdsworth inclined to this view of history. He regarded the history of law as largely the essence of innumerable legal biographies. Lord Atkin, with his usual insight and literary

grace, once summed up this interpretation of legal history thus: "Myriads of rivulets contribute to the deep water of our system of jurisprudence. . . . Many represent general tendencies, political, economical, religious. But as is inevitable in a system such as ours, English law principally owes the actual course it takes to individual English lawyers: who direct the new streams of thought into the main current."[1]

This great-lawyer theory has not received universal approval among legal scholars. Dr. John M. Zane firmly repudiates it. "Legal history teaches that the science of jurisprudence [said Zane], without which progress would have been impossible, is not the work of the few but of the many, not the work of lawgivers or of great men, but the steadily and silently built structure of voiceless millions, 'who bravely led unrecorded lives and dwell in unvisited tombs' ".[2] Dr Roscoe Pound gives the theory a qualified acceptance: "I would not urge the great-lawyer interpretation for a moment as the one explanation of legal phenomena, the one method of writing legal history. What I do urge is the importance of looking at the events of legal history in terms of the men who took part in them and of the personalities and characters and prejudices of these men as a factor in the results."[3]

Whatever may be our opinion on the subject, it cannot be seriously argued that Mansfield or Jessel, or Holdsworth himself, did not have a greater impact on the development of English law than many thousands of the "voiceless millions" who lived under the law but not for it. And Holdsworth's method of tracing the growth of law through the lives of great men of the law served him to excellent purpose.

The present volume covers the period from 1793 to the Reform Act of 1832—an act which, says Holdsworth, "made as great a constitutional revolution as the Revolution of 1688". This period is an interesting and significant one in the history of English law, for it was a seed-time of legal reform. Over the greater part of the period, as the editors say in their brief preface, brooded the figure of Jeremy Bentham, whom Professor Goodhart has characterized elsewhere as "the greatest law reformer the world has ever known".[4] Bentham not only focused attention on the urgent need for law reform but offered a yardstick by which proposed reforms should be measured. "Nature has placed mankind", he contended, "under the governance of two sovereign masters, pain and pleasure." Insisting that the laws are made for man, not man for the laws, he argued that every law should be tested by its utility:

[1] Foreword to Holdsworth's Sources and Literature of English Law (1925).
[2] The Story of Law (1927) p. 17.
[3] Interpretations of Legal History (1923) p. 140.
[4] English Contributions to the Philosophy of Law (1948) p. 36.

did it contribute to the greatest happiness of the greatest numbers by enabling them to escape from the domination of the sovereign master, pain? If not, it could not justify its existence and should be repealed. Bentham died the day before the Reform Act of 1832 received the royal assent, leaving the ideas he had scattered so lavishly as his legacy to the future. So fertile did these ideas prove that Sir Henry Maine once declared that he did not know of a single legal reform since Bentham's day that could not be traced to his influence.

Since the beginning of recorded time, two parties—the party of change and the party of stability—have disputed dominion over the world. Sir William Holdsworth instinctively favoured stability. He was not, unlike Bentham, a great questioner of things established. With him an innate conservatism was strengthened by his allegiance to the law. As Edmund Burke, an inspired amateur of the law, once said: "The law is, in my opinion, one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very happily born, to open and to liberalize the mind exactly in the same proportion".[5] Or, as Dr. Johnson, another layman-lawyer, put it more forthrightly: "The law will make of an arch-radical a hide-bound conservative almost over night".[6]

For the most part Holdsworth subdued his personal convictions in the presentation of his facts, but occasionally they broke through the web of his narrative, as for example, when speaking of modern death duties, he says: "They penalize and indeed make it impossible for the most prudent and industrious citizens to have large families, and so the best stocks are not bred from. At the same time our socialistic legislation hands over some part of the produce of these duties to the most needy, who are often the most shiftless and stupid. They see no objection to large families for which the state, i e the industrious members of the state, will provide. and so the worst stocks are bred from. Much of this socialist legislation will in time have the same effect as religious persecution had in some continental countries in the sixteenth and seventeenth centuries. In the future as in the past the elimination of the most independent and progressive minds in a nation will permanently lower its moral and intellectual standards." (p. 98)

Again, in speaking of the rapid spread of democracy after 1832, he said: "That it was increased in so short a time was due, as we shall see, to the tacit acceptance of ill-digested democratic theories as to the presumptive right of every man to a vote, to fanciful and mistaken views, as to the effects of lowering the property quali-

[5] Quoted, Burke, by John Morley (English Men of Letters) p. 8
[6] Quoted, The Life of Blackstone, by Lewis C. Warden (1938) p. 300.

fication for a vote, to the exigencies of party politics, and to the defects of the rule of a middle class dominated by the principles of free trade and laissez faire". (p. 257)

Holdsworth does not belong in the company of lawyers whose writings are contributions to literature as well as law. But though his style is not distinguished, it should not discourage any true seeker after knowledge. There is a flow in his narrative: if sometimes the water is muddy, it is a running stream, not a stagnant pool. But, in plain truth, in his major work he is not an inspiring writer. He does not stir the imagination of his readers, or communicate to them the excitement of discovery and the satisfaction of accomplishment, to the same degree as Maitland or Pollock — or as do the editors of the present volume in their own writing.

Mr. Justice Holmes once called the law a magic mirror wherein we see reflected not only our own lives but the lives of all men that have been. In the mirror of English law may be seen glimpses of the past of value not only to legal students but to all students. Legal history helps to fill many gaps in the story of human society. As Holdsworth said: "Legal history, in fact, sheds a brilliant light upon all sides of the national life. The light is shed, it is true, from a single, and that a technical standpoint. But it is an important standpoint; for if legal rules reflect the general course and the general tendencies of national life, those legal rules, when firmly established, give a permanent concrete shape to these tendencies, and thus, in the long run, have had no small share in the creation of distinct national characteristics."[7]

Though the legal profession has first claim upon him, Holdsworth's strenuous labours benefit all who seek knowledge of human affairs. When a final assessment of his achievements can be made, what place will be assigned to him? He will have a safe seat, that much is assured; but, perhaps, it will not be in the very first rank. The law reserves its highest honours, not for the man whose days are spent in digging among the ashes of other times, but for him who helps it on its slow laborious way; not for him whose wish is to preserve the past but for him whose hope is to improve the future—for him, to paraphrase Mr. Justice Holmes' memorable words,[8] who in hope and in despair has trusted to his own unshaken will and gained the secret isolated joy of the thinker, knowing that when he is dead and forgotten men will be moving to the measure of his thought.

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[7] Essays in Law and History (1946) p. 22.
[8] Collected Legal Papers (1920) p. 32.
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