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SIR WILLIAM BLACKSTONE.¹

Sir William Blackstone was born 10th July, 1723, and it is fitting that the 200th anniversary of his birth should not pass without comment upon his life and service.

William Blackstone is a famous, but was not a remarkable man; famous because he was the first Englishman who gave a stimulus to extended legal education; not remarkable, because he lacked the masculine and rugged qualities without which he was undistinguished from the ordinary or commonplace among his colleagues at the university, at the Bar or on the Bench.

He was the son of a silk merchant of Cheapside. His mother came of a good family of Wiltshire. The father having died a few months before the birth of William and the mother when he was twelve years old, his education and care were undertaken by his maternal uncle, an eminent surgeon. If he had not been orphaned it is not unlikely that he would have been bred to the silk trade instead of entering the professional grade of society. He was put to school at the Charterhouse at twelve; was head of the school at fifteen and entered Pembroke College, Oxford, in November of 1738. His bent of mind was toward literature and poetry, but his production of verses before entering on the study of the law, while creditable, has not attained any prominent reputation, and one of his poems, "The Lawyer's Farewell to His Muse," indicates the amount of enthusiasm with which he contemplated entry to the profession of the law:—

"Then welcome business, welcome strife,
Welcome the cares and thorns of life,
The visage wan, the pore-blind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate."

¹ Read before the members of the Canadian Bar Association at the eighth Annual Meeting.

His course was then divided between the university and the Temple, and he was called to the Bar, November, 1746. His early career was dull and uneventful. He does not appear to have had friend-making qualities. He lacked graceful delivery, and greatly hesitated in his elocution. Under these circumstances his practice was meagre, and only twice in his own common law reports does his name appear in the eleven years.

His mind in early youth had also drifted to the study of architecture, and he wrote a treatise on that science which he was able to put to good use at Oxford, and in his own church at Wallingford. His surplus time after attendance at the Courts at Westminster Hall in making notes for his reports, was spent at Oxford, which he had never abandoned for the Temple. He assisted in completing the Codrington Library, became Bursar and then Steward of the Manors of his College—he had become a fellow of All Souls—and as such used his excessive love of order and regularity by making records of the college property and re-arranging its archives; and this in permanent form. He then wrote several legal tracts relating to university affairs; one on the limits of collateral consanguinity and its reasonable limitation, which he declared to be the seventh degree. He also in an electoral dispute in Oxford wrote a tract regarding the right to vote on tenure of copyhold as well as freehold. This close association with the university and these writings led to the chief work of his life. Lord Mansfield had recommended him for the professorship of civil law, but on account of his hesitating to promise political support to the Chancellor, the Duke of Manchester, he failed to get the appointment. Five years later Dr. Blackstone became professor of English common law in the chair founded by Mr. Viner, whose "Abridgement of Law and Equity" had already started a new interest in the study of law. He had taken Lord Mansfield's advice to write and read lectures on English law. These were received with favour—his style was clear and his statements accurate and precise, and in addition the subject was novel. These lectures both voluntary and under his professorship increased his reputation as a lawyer; so that returning to Westminster his practice commenced to increase.

In the meantime he had published an edition of *Magna Charta* and the Charter of the Forest together with the Statute of Marlebridge, tracing the history of the Charters, and with an account of the various manuscripts. Blackstone then entered Parliament for a rotten borough in Wiltshire. In Parliament he was by no means a success, being unadapted to return the sharp knocks there occasionally received. In one instance Mr. Grenville quoted against him a statement in his own Commentaries of the law as to disqualification of a member of

the House, which seems to have given him such disquietude that he resigned from Parliament and, although not admitting his error, yet in the next edition of the Commentaries revised his statements, which made them consistent with his speech.

His name having been mentioned as likely to be appointed to the Bench, he at first refused the Solicitor-Generalship to the Queen, who had established a household, and in 1770 was appointed a Justice of the Court of Common Pleas, exchanging this in a short time for the Queen's Bench and then returning to the Common Pleas. Apart from the case of *Perrin v. Blake*,² in which he discussed the rule in *Shelley's* case, it is unlikely that any other judgment has attracted attention, and he, being of somewhat diffident nature, did not support in term the judgments of his own in which a new trial was moved for. His trial judgments, therefore, fared badly in appeal.

Outside his regular judicial work he seems to have devoted much time to advocating a reform of criminal punishment; in municipal work in his own town of Wallingford; in church work there, and in procuring an increase in the remuneration of Judges.

He died in February, 1780, and of his nine children only one seems to have attained scholarship and a university renown.

Sir William Blackstone was said to be a man of excessive orderliness, and of scrupulous punctuality. His features were handsome, and he had that moderate frontal gibbosity which many think to be becoming in a judge. Physically he was languid and never took any exercise. In writing his great work he required a bottle of port to be beside him so that he could be invigorated and supported in his fatigue.

[In a divergence from his written paper the essayist here remarked that if this custom of Professor Blackstone was to be hallowed into a decision as to the potency of potation, and if drinking port during composition had been determined to be an essential or *sine qua non*, then it must follow that the writing of law books would be confined to the Province of Quebec, with perhaps a tract or two from British Columbia or an article occasionally in the CANADIAN BAR REVIEW, from Manitoba. He suggested that the point involved would be depressing regionally, and that the lawyers in Provinces which had voted to impose Prohibition on themselves might well apply for leave to appeal *nunc pro tunc*, and notwithstanding the general acceptance of the apophthegm in *vino veritas*.]

Strangely enough, Blackstone was also hot tempered, but Lord

² (1770), 4 Burr, 2579; 1 Hargraves Law Tracts, 487 (Cam. Seacc.).

Stowell said he was the only man he had ever known who acknowledged and lamented his temper.

Professor Blackstone had a persistent critic in the person of Jeremy Bentham, and John Austin, his friend and pupil. Bentham, a youth of great precocity, went to Oxford when thirteen years of age. He attended Blackstone's Vinerian lectures two years later and it must be attributed to his youth that he should have been guilty of the impudent description of his professor as "a formal, precise and affected lecturer; cold, reserved and wary—exhibiting a frigid pride" and we have John Austin's not less severe statement that "the arrangement of the Commentaries is a slavish and blundering copy of Hale's with not a single particle of original or discriminating thought." Yet Bentham later admits that "of all institutional writers he has taught jurisprudence to speak the language of the scholar and the gentleman." But, although the author did not impress the profession as having made an authoritative or exhaustive compendium, his work has continued in edition after edition, and has been edited and annotated with minute and almost tender care by the most eminent authors in the law including the learned Mr. Story in America. And it must be remembered that Sir William Blackstone made no claim to infallibility. The object of his lectures and commentaries was to instruct the young gentlemen — chiefly squires and not lawyers—in attendance at the university in the laws of their own country, a thing which had never before been attempted; the books of Matthew Hale, Charles Viner and Sir John Fortesque not being suitable for that purpose, and it was the instant success of his work which stirred the critical faculties of his detractors who unwarrantably elevated a work intended for popular instruction into one of professional authority. Lord Ellenborough said that Blackstone had made himself a great lawyer by writing his books; and, Coleridge, J., declared that "only an editor could understand fully the whole extent of praise to which the author is entitled before his learning, judgment, taste and above all his total want of self-display could be justly appreciated." Dr. Blackstone never asserted that his work contained originalities. He was an historian rather than a philosopher. "Like a bee among the flowers he has abstracted the sweet essence of all former writers and left their grosser matter; the copious learning of Coke, the methodical arrangement of Hale, Gilbert and Foster, combined with the smooth and pleasing style of Addison and Pope" (Welsby's *Lives*). The financial return yielded the author £14,000, a vast sum in the eighteenth century, and his last years were comfortable and care-free. It may be that included in this estimate of earnings are the emoluments from his lectures which are

the basis of the Commentaries; but there is no doubt about the profits of the books to his publisher or, as in the eighteenth century he was called, his "bookseller," being an additional £10,000.

The first volume of the Commentaries on the Laws of England was published in 1765, a year before the author resigned his professorship, of which he had become tired, and the succeeding volumes followed in 1766, 1768 and 1769.

Our own country has some local connection with Sir William Blackstone because his eldest son, Henry, who graduated at Oxford, B.A., in 1783, came to Canada in 1797, at the age of 34, as Comptroller of Customs at St. Johns in the County of Richelieu, where he was utterly neglectful of his duties as well as insolent to his confrères, and being removed he was appointed Sheriff of Three Rivers where, after removal from that office, he lived for many years upon a small annuity.

Having married in Lower Canada, in 1801, the widow of Pierre André Godefroi de Tonnancour, they had one child, Henry William Blackstone, who removed to Upper Canada, and was admitted a student in 1831, and called to the Bar in 1837. He settled at Newmarket, and removed to Holland Landing, both in the county of York. He does not appear to have attained any eminence in the profession although there is no reason to doubt that he was a popular character, and he was a fine musician. H. W. Blackstone died in 1852.

HERBERT M. MOWAT.

LEGAL EDUCATION IN ONTARIO.

As Legal Education is now exciting some attention, a reference to its history and present position in Ontario may help. Changes made without adequate knowledge of the object to be improved may be dangerous, and the comparative novelty of the subject here has led to a discussion which takes but little account either of what is now going on or of what is practicable.

Education has always been one of the aims of the Law Society. Its creation in 1797 was in part:—

"For the purpose of securing to the Province and the Profession a *learned* and honourable body to assist their fellow subjects as occasion may require and to support and maintain the Constitution of the Province."

For many years, however, the facilities for learning were meagre. There existed between 1822 and 1825 an Advocates' Society in the Town of York, which provided some unofficial legal instruction.