

the legal problems pertaining to the law of Sale to their economic and social environment." Generally, there is much in this book to commend it to the thoughtful student as well as provide an excellent reference work for the busy practitioner in the Commercial field.

Professor Ivamy's casebook is another in the rash of new English case books which have suddenly appeared on the market. This particular book consists of the important excerpts of well known English cases with short explanatory headnotes. It is a pity that the author did not include some of the leading cases from the Commonwealth, but apart from this, the selection is well made and the book should prove a useful student's companion.

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MAITLAND, A Critical Examination and Assessment,
by H. E. Bell, London:
Adam and Charles Black, (1965) pp. 150.

"Not many years ago the Dean of one of our leading law schools," wrote Morris Raphael Cohen, in 1936, "used to address his class as follows: 'If you want to be a 'nut' read Pollock and Maitland but if you want to know the law of New York State, read the cases.'" Great progress has since then taken place in our law schools and the prestige of Maitland's humane scholarship is now very high indeed."¹

This excellent introduction to Maitland's humane scholarship is another proof that its prestige is not on the wane.

H. E. Bell, who died before his book came from the press, did not hesitate to admit that he was under Maitland's spell — that he was too much his pupil to be his critic. In making clear the point-of-view from which his book was written, he said:

"It is not merely that I regard him as the greatest English historian, but also that (as far as these matters can be judged at second hand, from correspondence and the testimony of reliable witnesses) I admire him as a man of notable goodness and nobility of character and of singularly attractive personality."²

A host of competent witnesses may be summoned in support of this high opinion of Maitland. Here are a few. In 1908, A. L. Smith, sometime Master of Balliol College, Oxford, said:

"If all his theories could be overthrown, all his positive results peptonized into textbooks, he would still live as a model of critical

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1. Reason and Law, Collier Books, p. 207.

2. P. 2.

method, a model of style, and a model of intellectual temper. He shall not be shamed, whatever records leap to light. A century hence his name will stand higher still than it does today."³

Sir Maurice Powicke gave his opinion in few words:

"Maitland is one of the immortals. He transcends all boundaries."⁴

Mr. Justice Holmes wrote in a letter to Sir Frederick Pollock:

"I should write to Maitland if I knew him. I wish you would express to him my opinion that his work on legal history is of the truly scientific kind — accurate investigation of details in the interest of questions of philosophical importance."⁵

And Professor Harold Laski wrote to Mr. Justice Homes:

"I've read Gibbon with intense admiration. I saw much more contemporary reference than heretofore but the way in which the judgments have stood and the broad commanding sweep of the whole were, I think, superb. Maitland, I am sure, would have done better work on the same canvas, but I can think of no other English historian in the same universe of discussion."⁶

And finally, Sir Paul Vinogradoff (the friend to whom Maitland wrote, with characteristic generosity, that a chance meeting with him on a 'Sunday tramp' determined the rest of his life), said that Maitland surpassed all predecessors in the domain of legal history and was not likely to be surpassed soon in succeeding generations.

"Lawyers, historians, and sociologists are equally indebted to him — lawyers because of his subject, historians because of his methods, sociologists because of his results."⁷

Law was not Maitland's first choice as a career. He took a first class in Moral Sciences at Trinity College, Cambridge, and applied for a Fellowship in Philosophy. When he failed in this purpose, he read for the Bar; and, as Professor W. W. Buckland once suggested, but for the beneficence of Henry Sidgwick (Maitland had been one of his favorite students), who made available to the university a sum of money to endow a Readership in English Law, Maitland might have ended ignominiously in a large practise at the Bar "and we should have lost the greatest legal historian of our time."⁸ Maitland held this Readership until 1888, when he was elected Downing Professor of the Laws of England at Cambridge — a position he held until his death in 1906, at the age of 56 years.

As Mr. Bell recalls, Maitland's first published article, "a forthright demand for reform of real property law," appeared in the

3. *The Maitland Reader*, edited by V. T. H. Delaney (1957), p. 208.
 4. *Modern Historians and the Study of History* (1955), p. 129.
 5. *Holmes - Pollock Letters*, 2nd edition (1961), p. 31.
 6. *Holmes - Laski Letters*, (1953), p. 407.
 7. *Jurisprudence in Action*, (1953), p. 494.
 8. *Cambridge Law Journal*, vol. I, p. 280.

Westminster Review in 1879.⁹ He was then 29 years of age and ready to begin his life's work. To illustrate the apt way in which he enlisted his ready wit in the service of his scholarship, I quote a brief passage from his first article:

"Then there is that marvellous monument of legislative futility, the Statute of Uses, the statute through which not mere coaches and four, but whole judicial processions with javelin-men and trumpeters have passed and re-passed in triumph. It has been said of this ambitious statute that its sole effect has been to "add three words to a conveyance." This may pass as a contemptuous epigram, but it is far from the whole truth. It has caused innumerable unnecessary lawsuits. This is not an epigram but a fact. It is not a mere Statute of Uselessness but a Statute of Abuses."¹⁰

Maitland never assumed the solemnity of the pulpit. His pages are full of delightful flashes of humour. But he was never witty for wit's sake alone. As H. A. L. Fisher once said, his wit "was a shining segment in the solid masonry of argument."¹¹ This apt remark may be illustrated many times over from Maitland's printed pages. These words from his inaugural address as Downing Professor, "Why the History of English Law is Not Written", will serve:

"It were to be wished that our doctor's degree had all along been reserved for those who had done some considerable thing for law or legal history: — but then what could we have done for potentates and politicians and such? Impossible to convict them of divinity or medicine, it was convenient to fall back on the legal principle that every one must be taken to know the law sufficiently well to be a doctor thereof."¹²

Sir William Holdsworth has high praise, indeed, for Maitland's first contribution to legal history.

"Maitland's paper showed how history, in the hands of a first-rate lawyer and philosopher," he said in his Tagore Lectures, "could suggest practical proposals for law reform, based not only upon a knowledge of existing law, but also upon a knowledge of the ideas which had created it. It showed that a knowledge of legal antiquities could be used not only to teach old law and to explain present law, but also to suggest the changes needed to bring the present law into harmony with its modern environment."¹³

These words may be taken as a commentary on Maitland's life's work. He was no dry-as-dust researcher, divorced from practical life. He delved into the past to understand and explain the present and to make his contribution to the improvement of the future. He appreciated that the new fruit must come from the old seed.

9. P. 10.

10. *The Maitland Reader*, p. 46.

11. *Ibid.* p. 206.

12. This address is most readily available in *Frederic William Maitland Historian*, edited by Robert Livingston Schuyler, (1960).

13. *Some Makers of English Law* (1938), p. 275.

Apart from his great books, Maitland's personal bibliography runs to over a hundred items. He contributed thirty-three book reviews to learned journals, chiefly to the *English Historical Review*, setting "a standard for scholarship in reviewing the work of another author."¹⁴

Adopting a chronological approach to the great historical problems with which Maitland concerned himself, Mr. Bell undertakes a rapid survey of Maitland's great books. He does not turn the critical mill to any great extent, but he does suggest that not all of Maitland's conclusions have stood the close scrutiny of modern historical scholars. But, by and large, he concludes that Maitland's scholarship has worn surprisingly well.

When H. A. L. Fisher, his brother-in-law, edited *Maitland's Collected Papers*, in 1911, he made this statement in an introduction:

"(Maitland) wrote little, perhaps nothing, in early manhood which he would have cancelled in his later years. He was always learned, always original, and in ninety-nine cases out of a hundred he was transparently right."

The years may have proven this statement to be over-enthusiastic, but not by any wide margin. Maitland's books, as Mr. Bell points out, "and especially the *History of English Law*, supply . . . pointers that have been followed to advantage by half a century's historians."¹⁵ And, if some of these historians have attacked his position, and shown it to be untenable, as Miss Helen M. Cam once said, "it is with weapons that he himself has furnished."¹⁶ His work is still a vital influence. An American admirer, Professor James R. Cameron, has put this point neatly: "Thus, while Maitland's conclusions can no longer be accepted as the last word, one should certainly consult him when looking for the first word."¹⁷

Maitland was the most modest of men. Mr. Bell claims that his modesty was almost pathological. He worked, not for personal glory, but in the service of knowledge. If others have been able to carry knowledge a step or two farther than he did, he would be the first to rejoice.

During his lifetime, he welcomed criticism, indeed he sought it. When Professor James Tait contributed a review of *Domesday Book and Beyond* to the *English Historical Review*, in which he questioned two of Maitland's main contentions, Maitland took the unusual step of writing him a note of thanks.

14. James R. Cameron, *Federic(k) William Maitland and the History of English Law* (1961), p. 11.

15. p. 12.

16. Quoted by Bell, p. 33.

17. *Op. cit.* p. 133.

"I have never seen a review of anything that I have written which has taught me so much or gone so straight to the points that are worth discussing. I cannot refrain from telling you of my gratitude."¹⁸

Maitland always welcomed the truth. With the humility of the true scholar, he wrote to Professor James Bradley Thayer about his *History of English Law*: "I am at work on a second edition and . . . the correction of my blunders is to me a pleasure."¹⁹

Mr. Bell puts in a good word for Maitland's *The Constitutional History of England*. This book was edited by H. A. L. Fisher and published posthumously, against Maitland's caveat. Miss Helen M. Cam has lamented that Maitland should be known to so many by this book, which contains "statements and interpretations quite inconsistent with his mature opinions and inadequately represents his genius."²⁰

Why should great scholars, such as Miss Cam, be allowed to claim Maitland exclusively as their own? He belongs, as well, to the humblest student, who approaches the study of law with serious intent. Such a student, who can not hope to raise himself to the level of exact scholarship, must use weapons which do not exceed his grasp. If he cannot know Maitland at his best, then let him have Maitland at his second-best — which is better than many another scholar's best. For one student who will read *Bracton's Note Book* or Maitland's prefaces to the volumes which he edited for the Selden Society, there are a dozen who will read his *Constitutional History*; and in the same spirit in which he himself read *Stubbs' Constitutional History*, when he came upon it in a London Club, not because they are set to read it, or because they are to be examined in it, but because it is interesting.²¹

The crown and flower of Maitland's work is the book which bears the title: *Pollock and Maitland, The History of English Law Before the Time of Edward*. Over the years Pollock's casual connection with this work added greatly to his pocketbook and to his reputation as a legal scholar. His name preceded Maitland's on the title page because he was his senior at the Bar. In actual fact more than nine-tenths of the book was written by Maitland. Pollock once confessed to Holmes that his share in the book consisted of the chapter on Anglo-Saxon law and the bulk of the early history of contract.²² Yet, he added a postscript to the preface of the first addition which suggested that his share had been

18. Powicke, *op. cit.*, p. 56.

19. *Letters of F. W. Maitland*, edited by C. H. S. Fifoot, (1965), p. 150.

20. *Introduction to Maitland's Historical Essays*, (1957), p. lx.

21. P. 123.

22. *Letters*, p. 60.

much more substantial. Mr. Bell quotes a comment of J. H. Round on this postscript. "F.P.'s caveat was quite needless. The hand of Esau was less distinctive than the pen of the Downing Professor."²³

Profits from the book were shared four-fifths to Maitland and one-fifth to Pollock. In a memorandum which he attached to his last will, Maitland explained that Pollock was not a party to the contract for publication, that all royalties were paid to him by Cambridge Press, that he made an arrangement with Pollock to pay him one-fifth share of these royalties, and that he wanted his representative to be bound by that arrangement;

"but in the improbable event of a claim being made on behalf of Sir F. to a larger share, I would rather that my representative yielded to it than resisted it."²⁴

Here is evidence which justifies Mr. Bell in his admiration of Maitland as a man of notable goodness and nobility of character.

It is Mr. Bell's opinion that "the part of (Maitland's) writings that has best stood up to half a century subsequent scholarship was in the legal history of Norman and Angevin England."²⁵ One whose own great work has been in this field confirms this opinion. In the introduction to her Jayne Lectures for 1963, Lady Doris M. Stenton has this to say: "The modern scholar humbly plodding along in his footsteps often feels that he can merely add a footnote to that (Maitland's) tremendous survey."²⁶

No admirer of Maitland can speak of him without a reference to his attractive style. The style was the man, simple, direct, suggestive. He was no squanderer of words. He never smothered his thoughts in a blanket of unnecessary adjectives and adverbs. (In a letter to J. H. Round he tells him that he has been struggling with the unnecessary adjective.)²⁷ His advice to his two daughters was not to study English grammar but "to read, and read, and then write."²⁸ His own style is proof that he took his own advice. Practise with his pen made him a master of apt expression. As witness, this letter to John Chipman Gray, thanking him for a copy of one of his books, *Future Interests in Personal Property*: "For a few days my interest in it must be future, but will be vested, indefeasible, real and not impersonal."²⁹

Mr. Bell, who speaks with great enthusiasm of Maitland's

23. P. 62.

24. *Maitland's Letters*, p. 123.

25. P. 46.

26. *English Justice Between the Norman Conquest and the Great Charter*, (1964), p. 1.

27. *Letters*, p. 168.

28. F. W. Maitland, *A Child's-Eye View*, by Ermengard Maitland, (1957), p. 9.

29. *Letters*, p. 224

style, cites his memorable tribute to medieval common lawyers, a gem of the purest ray:

"No, the clergy were not the only learned men in England, the only cultivated men, the only men of ideas. Vigorous intellectual effort was to be found outside the monasteries and the universities. These lawyers are worldly men, not men of sterile caste; they marry and found families, some of which become as noble as any in the land; but they are in their way learned, cultivated men, linguists, logicians, tenacious disputants, true lovers of the nice case and the moot-point. They are gregarious, clubable men, grouping themselves in hospices, which become schools of law, multiplying manuscripts, arguing, learning and teaching, the great mediators between life and logic, a reasoning, reasonable element in the English nation."³⁰

In a letter to Holmes, Laski makes reference to a tribute to Maitland's style which came from an unexpected source. He gave a birthday party at which H. G. Wells (no admirer of the legal profession) was present. The guests fell into a discussion about some of the great contemporary writers:

"Then to my surprise," reported Laski, "(Wells) told us that he had been studying the art of prose and felt strongly that three English lawyers were among the great artists — Selden, Maitland and Macnaughten — an interesting choice."³¹

Not least of Maitland's services to legal and historical scholarship was the part which he played in the foundation of the Selden Society. This society, which came into being in 1887, had for its declared purpose "to encourage the study and advance the knowledge of the history of English law." No detailed account of its origins has yet been written. When such an account does appear, in Mr. Bell's words,

"it will become apparent just how much the society owed to Maitland . . . he edited four out of the first eight of its annual volumes, wrote an introduction to the fifth, and throughout the remaining years of his life read in proof every page of every volume issued."³²

He also sponsored the Society's Year Book Series, editing three volumes himself, and co-editing a fourth.

All the while he was engaged in this work, he struggled with ill health. When his health permitted he was able to work with concentrated fury and to make each hour yield a full sixty minutes. This was the secret which enabled him to accomplish so much during his short life. In his obituary notice of Bishop Stubbs, he said that his mind was brimming over not merely with facts but with thoughts.³³ He had a similar mind and, when he sat

30. P. 103.

31. *Letters*, p. 1072.

32. P. 58.

33. *Cam*, op cit. p. 270.

down to work, his facts and his thoughts were ready for instant use. No lengthy warming-up period was needed.

Mr. Bell closes his book with an appendix on Maitland as Teacher. This is no lack of evidence that Maitland was an inspiring teacher: for example, Professor H. A. Holland has spoken of the "intensity of feeling for him which has been with me throughout the almost fifty years since I was a member of one of the last classes which heard him lecture."³⁴ Though he kept them pretty much to himself, as Professor T. F. T. Plucknett, who succeeded him, at several removes, as Literary Director of the Selden Society, has made clear, Maitland held firm views on the subject of legal education. He did not think that a university should duplicate, or usurp, the function of the professional bodies whose purpose is to train lawyers for practise, or, to put it on a lower level, to turn out legal tradesmen. "Nobody is bound to come to a university to study law," said Professor Plucknett, in 1951, in his paper *Maitland's View of Law and History*,

"and indeed he must go elsewhere to get the qualification to practise. Does that not indicate an answer? The university can offer something different from a professional qualification, something that will not make (the student) a better lawyer but a better man."³⁵

As these words suggest, Maitland's first concern was not to train legal practitioners, but to stimulate an interest in the law, and its history, for their own sake. As his good friend, W. J. Whittaker, who collaborated with him in editing *The Mirror of Justice*, and who was co-editor of his lectures on *Equity and The Forms of Action at Common Law*, once said:

"Professor Maitland supplied the student with an ideal of law. He gave him an idea of the importance, of the magnificence, of the splendour of the study in which he was engaged, so that it was impossible at any time thereafter for one of his pupils to regard the law merely as a means of livelihood. The law remained something to be loved and studied for itself."³⁶

Maitland's books, which contain so much of his 'precious life-blood' still offer this message to the student. One of the virtues of Mr. Bell's book is that it will lead students back, or, it may be, for the first time, to Maitland's written word.

The work of a master-spirit is as seed cast upon the wind; it travels to the most unlikely places; it sprouts and grows; it reseeds itself and spreads, and sprouts and grows again.

Maitland's influence cannot be weighted in an accurate scale. It was a subtle influence. Starting from its centre, it reached

34. Selden Society - Annual Lecture (1953) p. 4.

35. 67 *Law Quarterly Review*, p. 193.

36. Quoted Buckland, *op. cit.* p. 301.

out in a series of ever widening circles. It was first felt by other legal scholars. It was finally felt by active workers in the legal arena; some of whom, having received the influence at second or third hand, did not recognize the source of their primary obligation. One fact may be stated with assurance: the law has become a more efficient instrument as a result of his work, and his example.

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