

# BOOK REVIEW

## *MEN AND BOOKS FAMOUS IN THE LAW*

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**H**amilton Odell, a distinguished member of the New York Bar, who died a few weeks ago in his eighty-eighth year, is said to have found keen enjoyment during his last years in reading the Advanced Sheets of the New York State Reports. But it takes a long life devoted to the law to enable a man to find enjoyment and relaxation in such a pastime. A taste for law literature is a cultivated taste. The flood of new law literature, which is overwhelming to a practicing lawyer of to-day, has made the task of keeping up with even the latest decisions an immense one, and discourages lawyers, young and old, from seeking general improvement or relaxation in the reading of reports. I have no doubt Mr. Odell had read Coke's Reports, but I doubt if there are half a dozen of his survivors practicing in New York City who have done so. Except for selected cases, there are probably few lawyers to-day who have any precise familiarity with the ancient literature which instructed the able lawyers who distinguished our profession in the early half of the last century.

Professor Hicks has performed a great service to the legal fraternity, and indeed to the educated public at large, in giving us this thoroughly entertaining little volume. We have here an easy and pleasant means of obtaining a little knowledge of certain legal writings which are monuments in the history of the law. And the sketches of the seven great lawyers whose fame has been perpetuated to our time because of their authorship of these historic documents supplies a need of the profession. This book will fit into a fair

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sized pocket. It contains interesting and human facts about the men and books it tells about. It will shorten a railroad journey for any educated person, even if he has not had the advantages of pursuing the law as a calling, and will make a lawyer during a quiet evening forget about a dissatisfied female client or the lack of intelligence displayed by a jury.

The great men whose famous books have led Professor Hicks to draw them to our attention were not closet students remote from the great world. Indeed the writings of three of the four Englishmen he treats of, got them into considerable political trouble.

The prerogatives of the King; a disposition in some quarters to extoll the excellence of the Civil Law in comparison with the Common Law of England; the powers of the Court of Chancery to take jurisdiction of cases which had already been decided by the Court of King's Bench; and the "liberties of Parliament" aroused violent feeling among politicians as well as among lawyers during the seventeenth century. It involved some personal peril to write law books in those times.

John Cowell wrote a book on the Common Law of England which won for him some fame. He then proceeded to write another work called *The Interpreter* which was a law dictionary. It is reported that this book gave great offence because of a few statements therein contained. It was brought up in Parliament and received the attention of the King, the Lords Spiritual, the House of Lords, and the House of Commons during a considerable period in 1609 and 1610. All the fuss resulted in the King issuing a proclamation from which we quote a few clauses expressing in the quaint wording of the period sentiments which are not unfamiliar at the present day. After reciting the disposition of "this later age and times of the world wherein we are fallen," "such an itching in the tongues and pens of most men, as nothing is left unsearched to the bottom, both in talking and writing"; "whereupon it cannot otherwise fall out, but that when men go out of their element, and meddle with things above their capacity, themselves shall not only go astray and stumble in darkness, but will mislead also diverse others with themselves into many mistakings and errors; the proof whereof we have lately had

by a book written by Dr. Cowell called "The Interpreter." Wherefore, to prevent the said errors and inconveniences his Majesty "resolved to make choice of Commissioners, that shall look more narrowly into the nature of all those things which shall be put to the press."

But it was not much easier to suppress a published book in 1610 than it is to-day. While Cowell was put under technical arrest during the investigation of his work, he was not actually restrained of his liberty. "Like a wise man he took his leave of the press, and retired to his colledge, and his private studies." A generation later his book figured in the trial of Archbishop Laud, it being charged that Laud had connived at its being printed in 1637.

Lord Coke's character and stiff-necked defiance of the King and his Lord Chancellor have made his career as a judge and politician as famous as his reports and his annotations of Littleton. When the King asked him whether if at any time in a case depending before the judges which his Majesty conceived to concern him, either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the meantime, they ought not to stay accordingly, the Lord Chief Justice of the King's Bench said for answer that "when that case should be, he would do that which should be fit for a Judge to do."

In a land where we have so many elected judges who receive their positions on the bench from some powerful politician, this famous story cannot be repeated too often or made too familiar.

But Coke was removed from his office as chief justice. He suffered for his judicial courage and integrity, just as judges in our own time have been refused a re-election, because of their unwillingness to yield to the demand of some powerful politician. It is pleasant to learn, however, that having been retired as a judge he was elected to Parliament and immediately became a leader and an advocate of the "liberties of Parliament." That it was as dangerous to incur the disfavor of the King in Parliament as on the bench is shown from the fact that at the dissolution of Parliament he was arrested and confined in the Tower for nine months.

Blackstone's reputation was based on his *Commentaries*, first is-

sued in 1765, and still largely used by law students. Yet he too had his human side. Professor Hicks tells us that the Commentaries were written late in the evening with a bottle of wine before him "in order to correct or prevent the depression sometimes attendant upon close study." He acknowledged and lamented his bad temper.

Kent's *Commentaries* were but a small part in the busy life of the judge. We are told that the lectures upon which they were based were delivered to a very small assemblage of a few students and lawyers. In the winter of 1794-5 he delivered twenty-six lectures, two a week, to seven students and thirty-six gentlemen, chiefly lawyers and law students who did not belong to Columbia College, where he was Professor of Law. The next year only two students put in an appearance and to these he read thirty-one lectures.

Our author has given us a few pages of Kent's notes written upon his copy of Edward Livingston's *Penal Code* which show how Kent annotated what he read. This is both interesting and instructive.

Edward Livingston occupied many distinguished positions. As a young man he was elected to Congress. Shortly afterward at the age of thirty-seven he became Mayor of New York City, and United States Attorney for the District of New York by appointment of President Jefferson, and he held two of these offices, if not all three of them, at the same time. Later he became again a member of Congress and a United States Senator from Louisiana. President Jackson appointed him Secretary of State in 1831, and two years later he was appointed American Minister at Paris. He attained all this recognition notwithstanding the fact that his career was burdened through the defalcation of a subordinate in his office as Mayor of New York. He resigned his office of Mayor and accepted responsibility although none of the missing funds had passed through his hands. The debt was finally paid, principal and interest, but not until within a few years of his death. This misfortune led to his removal to New Orleans where his abilities were promptly recognized. While there he found time to prepare a Civil Practice Act which was adopted by the legislature in 1805. He was a member of a Commission to revise the Civil Code of the state, whose work for the most part was adopted by the legislature. But his great interest which oc-

*BOOK REVIEW*

cupied him during his whole life was in the preparation of a penal code. This work challenged the attention of the foremost thinkers of the world and is his great monument. Although his penal codes were never formally adopted in the United States “they constitute a thesaurus from which the world has ever since been drawing ideas and principles.”

Professor Hicks’ book serves to remind us that the law offers fame of an enduring sort for scholarly and literary talent as well as for judicial eminence and brilliant advocacy. ❶