Institutes of American law

Bouvier John
INSTITUTES

OF

AMERICAN LAW.

BY

JOHN BOUVIER.

NEW EDITION

BY DANIEL A. GLEASON.

In Societate civili, aut lex aut vis volet.—BACON
Ce qui est bien classé, est à moitié vu.—DUVAL.

IN TWO VOLUMES.

VOL. I.

PHILADELPHIA:
J. B. LIPPINCOTT & CO.
1882.
TO THE HONORABLE

ROGER B. TANEY, LL.D.

CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,

This Work

IS, WITH HIS PERMISSION,

MOST RESPECTFULLY DEDICATED,

AS A TOKEN OF THE GREAT REGARD ENTERTAINED FOR HIS INTEGRITY AS A JUDGE,

HIS LEARNING AS A JURIST, AND HIS VIRTUES AS A MAN

By the Author.
In preparing the present edition of this work, the editor has not had the vanity to suppose that he could improve the general arrangement and classification of subjects. He has endeavored to apprehend thoroughly the plan of the author, and to make such additions only as in the lapse of time have become necessary to fully carry out the original design. The increase in size which would have resulted from this cause, however, rendered an increase of space necessary, which has been gained by placing a complete analysis at the commencement of the work and removing the titles of the various sub-divisions to the head of the chapters into which the books are divided. The very full and accurate list of abbreviations given in Bouvier's Law Dictionary seemed to render the reproduction of such a list here unnecessary. The system of citation of text-books and reports adopted in that work has been adhered to in the present book. By the adoption of a smaller-sized type and a closer arrangement, each page of the new edition is made to contain a much larger amount of matter than the old, without any sacrifice of clearness and convenience. The more perceptible changes are rather in mechanical details than in matters of substance, and have been intended to secure economy of space without loss of convenience in perusal. Such subjects as, from their increasing importance, seemed to demand a fuller consideration than they formerly required, have been more fully developed; and it is hoped that the great aim of the author, that of usefulness to the reader, and especially to students of the science of law, may be more fully secured by the work in its present form.
ADVERTISEMENT TO THE SECOND EDITION.

In presenting the second edition of the Institutes of American Law to the profession, every effort has been made to render it worthy of the patronage which has already been so liberally bestowed upon it, by correcting every little inaccuracy, and also by supplying an omission which was not noticed by the author until after it was too late to remedy it—"The manner in which easements may be extinguished."

The family of the author would do violence to their feelings did they not return their sincere thanks to the Bench and Bar for the many encomiums which they have been pleased to award the work. To the Hon. Joel Jones they feel much indebted for his kindness in furnishing the head omitted in the first edition.

PREFACE TO THE FIRST EDITION.

WHENEVER a writer submits a literary work to the public, he tacitly declares that it is his conviction such work deserves to be examined and read, and that it will place the objects of inquiry in a new light; for unless such are the views he entertains, he will not trouble himself to write, nor others to read, what can be of no use. The author has, therefore, no apology to make, nor motive to offer, as an inducement for publishing this work, but the one which has influenced him throughout in the course of his labor, that of being useful. He hopes he has not labored in vain.

Most lawyers have felt the want of a preliminary work to serve the young American student as a guide in the labyrinth of jurisprudence; as an instructor to give him a general view of the several parts of this judicial science; to mark the objects of each, and to point out the natural dependence which unites them; a work tending to establish a method which should be adopted in the study of the law; to point out the numerous links of the chain which unites the ancient with the modern law, which binds the past with the present, and which by its nature must for ever remain indestructible. A work which would thus elevate the science of the law in the sight of youth, and impress a character of unity upon it, would exercise a happy influence on the minds of the students, develop their moral and intellectual faculties, and be a blessing to them.

But it is far less difficult to describe what the legal edifice should be, and to state what is required for its construction, than to select the materials of which it should be composed, and to make such a disposition of them in the building as would render the structure at once solid, elegant, and every way fitted for the purpose for which it is intended.

On entering on his profession, the American student is discouraged by being obliged to study laws which are not his own, and which do not belong to the present age, except as matter of history. It requires an effort to read even the elegant Blackstone, and, when studied, it must be forgotten, because the laws on which that author has so beautifully commented are not the laws which the young aspirant seeks to know—they are not those of his country. It is true, noble efforts have been made by American writers to explain our laws, and to them the profession must be greatly indebted; but the commentaries which have been so liberally bestowed are better adapted to the use of those who are already good lawyers, than to teach one who has every thing to learn.

The author cannot hope to have made a perfect work, and supplied, in this respect, all the deficiencies and the wants of the profession; his aim has been an approximation to what a work should be which might, in some degree, deserve the title of Institutes of American Law. He has endeavored to reduce the whole to a strict method, and, by a correct classification, to impress upon the mind of the student the objects of his inquiry; for, “what is well classified is half known.” It seemed to him that jurisprudence, as much as any other science, required this method; and while all kinds of human knowledge are now taught in this manner the law should not be an exception.

In the execution of this work the author has spared no pains to classify his materials in the most natural manner; he has not followed any known plan, and it
is possible that, with more talents and knowledge, he might greatly improve upon that which he has adopted. He hopes, however, that with a very full table of contents the reader will be at no great difficulty to comprehend it.

While it has been his constant object to show what the law actually is, he has ventured, not unfrequently, to state what it was, and from what source it flows. Whenever a comparison could be made with advantage, the foreign laws within the reach of the author have been consulted, and their agreement or discord with our own pointed out. He has made free use of the Roman or civil law, whenever he found its principles applicable to our own jurisprudence; and by a frank acknowledgment of the source whence so many just rules flow, he has, as far as in his power, done what he could to avoid the reproachful accusation which some continental writers of Europe have, with perhaps too much truth, charged against the English lawyers, of constantly pillaging the Roman law without ever citing it. If all the principles found in Bracton and Fleta, Fortescue and Blackstone, and in the treatises on commercial law and equity, and many of the judgments of our courts which have been borrowed from that system without giving it credit, were expunged from those authors, their works and judgments would be deprived of their greatest ornaments.

In laying down principles and rules, the author has been careful to give correct definitions, and when these rules are subject to exceptions, he has pointed them out in as clear and simple language as it has been in his power to employ. He has not thought it necessary to extend his researches into all the ramifications of the law, nor his inquiries into details which would confuse the reader without enlightening him; when there have been conflicting decisions a reference has been made to authorities, to enable the student to examine the foundation upon which they rest. He has, however, shown the sources of the law, and traced the stream down its current. His chief aim has been to point out its rules and maxims, as principal landmarks to the student, and to enable him, by keeping a constant eye upon these summits of the law, to pursue his onward course, without ever losing himself; for these rules, “after having inspired the law, still remain with it, and in its midst, in some sort, as the lamp in the sanctuary, enlightening the parts where the law applies, and pointing out those which it cannot reach.”

As this is intended as an American work, and for American lawyers, the principal positions laid down have been supported, wherever practicable, by reference to American authorities; and when there has been a difference in the several states of the Union, either in consequence of their statutory provisions or the decisions of their courts, it has been pointed out and explained, whenever the subject was of sufficient importance to require it. Upon an examination, however, it will be found that English precedents have not been overlooked; on the contrary, they have been cited whenever they were important, or when American authorities could not be found applicable to the case.

While it is expected that this work will be useful to the student, it is hoped the practicing lawyer may find it a convenient manual, as a book of reference in practice. To render it useful to this class of readers, the author has spared no pains to make a perfect index, so as to save the time of the practitioner.

PHILADELPHIA, June, 1851.

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