AN HISTORICAL OUTLINE

OF THE

SOURCES AND DEVELOPMENTS

OF THE

ROMAN LAW,

AND THE

BEARING OF THAT LAW

ON THE

COMMON LAW OF CEYLON,

BEING A PAPER WRITTEN FOR, AND READ BEFORE, THE CEYLON LAW STUDENTS' UNION

BY

WALTER PEREIRA,

Barrister-at-Law and Advocate of the Supreme Court of Ceylon.

Colombo:

PRINTED AT THE "CEYLON OBSERVER" PRESS.

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With the compliments of

Walter Pereira

These pages, prepared to be read before the Ceylon Law Students' Union, are chiefly a compilation, in historical narrative, of notes made by me when I was myself reading for the bar. The object aimed at has been to give the student a comprehensive view of the sources of the Roman Law, the different stages in its development, the principal writers and commentaries on it, and its relation to the common law of Ceylon. In order to attain this object, a few words, at least, have been devoted to almost every subject of importance in connection with the history of the Roman Law.

W. P.

Colombo, 30th June, 1894.

ANALYSIS.

Early Roman Institutions—Burgesses and Clients—the *Populus Romanus*—the *Comitia Curiata*—the Senate—the *Quaestores Paricidii*—Succession of early Roman Kings—the Patricians and Plebeians—the *Comitia Centuriata*—the *Exercitus*—the *Comitia Tributa*—the Praetors or Judges—the Consuls—the *Praetor Urbanus*—the *Praetor Perigrinus*—the Dictator—the Tribunes of the *Plebs*—the Ædiles—the Twelve Tables—the *Leges*—the *Plebiscita*—the *Senatus-consulta*—the *Mores Majorum*—the Edicts of the Praetors—the *Jus Gentium*—the *Jus Honorarium*—its parallel in English jurisprudence—the *Responsa Prudentum*—Juridical writings—the *Tripertita*—the Imperial Constitutions—Succession of Roman Emperors—the division of the Empire—the Theodosian Code—the Gothic Invasion—the extinguishment of the Eastern Empire—the *Edicta, Decreta* and (*Mandata, Epistolae* and *Rescripta*)—the Proculeian or Pegasian School of Law—the Sabinians or Cassians—the *Lex Julia et Papia Poppaea*—the *Perpetuum Edictum*—Scaevola and Gaius—Questions, Answers and Definitions of Papinian—Fragments of the works of Ulpian and Paul—the Gregorian and Hermogenian Codes—the Theodosian Code—the *Novellae*—the *Fragmenta Vaticana*—the *Mosaicarum et Romanarum et Legum Collatio*—the *Consultatio Veteris Cujusdam Jurisconsulti*—the *Breviarium Alaricianum* or *Aniani*—the Edict of Theodoric—the *Papiniani Responsa* or the Papian Law—Justinian—the Digest or the Pandects—the *Interpolationes* or *Emblemata Triboniani*—the Institutes—the *Codex repetitae praelectionis*—the *Novellae Constitutiones* (Novels)—the *Corpus Juris Civilis*—Commentaries on the Institutes, the Digest, the Code and the Novels—the *Ecloga legum* or the Isaurian Law—the *Prochiron*—the *Epanagoge*—the *Basilicae*—the *Scholia*—the Roman Law in Greece—in Italy—the *Petrus*—the *Brachylogus*—the School of Bologna—the Glossators—the *Authenticae*—in France—the School at Montpellier—Pothier's Commentaries—the Civil Code—in Spain—the *Siete Partidas*—in Germany—the *Leges Barbarorum*—the Humanists—Heineccius—in Scotland—the Influence of Roman on English Law—Opinion of Professor Stubbs—the Study of the Roman Law confined to the Clergy, and that of the Common Law banished from the Universities—the modern Inns of Court—the Roman Law in Holland—the University of Leyden—Doneau—Grotius, Vinnius, Van Leeuwen, Huber, Voet, Westenberg, Schulting, Noodt and Bynkershoek and their works—the Roman Dutch Law in Ceylon—the extent of its authority—the once-suggested introduction of the whole of the English Law of Contract and Tort—its impracticability here—the suitability of Roman Law to Native Institutions—the importance of its study.

C

THE ROMAN LAW AND ITS BEARING ON THE COMMON LAW OF CEYLON.

(AN HISTORICAL OUTLINE.)

THE early stages in the development of the Roman Law are so intimately connected with the history and political institutions of ancient Rome that, in order to gain a correct and comprehensive view of the gradual progress of that law, it is necessary that some events of that history and some details of those political institutions should be somewhat minutely traced. In doing so, however, I shall endeavour, as far as possible, to keep clear of dates and such facts as do not immediately bear upon the subject of this paper, so as to present to you an unencumbered outline of those events and details.

To Romulus, the reputed founder of Rome, are attributed all her early institutions—social, political and military. The whole population was divided into two classes—the burgesses or citizens on the one hand, and their clients or dependents on the other. The burgesses were called, in relation to their clients, patrons, and were expected by law or custom to defend the latter from all wrong and oppression, while the clients, on their part, were bound to render certain services to their patrons. The burgesses engrossed all political rights, and made up what was, at the time, called the *Populus Romanus* or Body Politic of Rome; and their clients were at the mercy of their patrons, and had no place in the State, nor the right of *connubium* or intermarriage with their patrons. The burgesses were divided by Romulus into three classes or tribes corresponding, it is probable, to the three cantons of ancient Rome, of the members of which they are supposed to have been, in fact, an amalgamation. Let me here pause to trace shortly the history of these three cantons.

The earliest wars of the Romans were, as you are aware, with the Sabines. They ended in a peace by which the people of Rome and of Cures, a Sabine city, were united into one community. Titus, the Sabine king, and Romulus were to retain joint authority, and to debate on matters concerning all. During those wars, the Etruscans were powerful by land and sea; and under their chief, Caeles Vibenna, are said to have assisted Romulus against the Sabines; and when peace was made, they were allowed to become members of the new community. The three cantons were, therefore the *Ramnes* or

Romans of Romulus, the *Tities* or Sabines of Titus, and the *Luceres* or Etruscans of Caeles.

The burgesses, to repeat, were divided into three tribes corresponding to these three cantons. Each tribe was subdivided into ten *curiae*, and each *curia* had a chief officer called its *Curio*. In all, therefore, there were thirty *curiae*, and they met in their assembly called the *Comitia Curiata* to vote an all matters of State which the king was bound to lay before them.

Besides this large assembly, there was a select body for advising the king called the Senate or Council of Elders. This consisted, at first, of one hundred members from the Ramnian *curia*, but subsequently two hundred more were added from the Titian and Etruscan, so that, at the time of Tarquinius Priscus, they numbered three hundred.

A short interregnum followed the death or, rather, the sudden disappearance, according to legend, of Romulus, and Numa Pompilius was chosen king. Tullus Hostilius was the next king, and to him is attributed the creation of judges, called *quaestores parricidii*, to try matters of life and death in place of the king. Ancus Martius and Tarquinius Priscus came next in their turns. I must here break off the narrative for a short account of the class of freemen who were now rising to significance, and were called the plebeians.

The plebeians were neither patrons nor clients. They were like clients, in that they had no part in the Government, and were excluded from the patrician houses, and could not intermarry with the patricians; but they were unlike the clients, in that they were quite free and independent, subject to no lord except the king and the laws. How did this *plebs* or body of commons come into being? It is probable, says Mommsen, in his elaborate history of Rome, that, at the first settlement of the city, there were a number of people, previously dwelling about the seven hills, who were made subjects without their becoming clients. These were the original plebeians, that is, freemen without political rights. Their numbers were afterwards much increased in various ways—A patron might marry a client's daughter, or a client might marry a patrician lady, and then the children would be neither patricians nor clients. Again, a patron might die, and leave no heirs, and then all his clients would become independent having no lord. But the third class was mainly formed by the addition of Latins who were not powerful enough to gain admittance into the patrician *gentes* and tribes. King Ancus had peopled the Aventine with Latins, and conquered all the country between Rome and the sea. The new settlers were admitted into the ranks of burgesses, and all the burgesses of conquered towns who continued to dwell at home swelled the number of the plebeians or commons of Rome.

To continue the history—Tarquinius Priscus was succeeded by Servius Tullius who created a new popular assembly—the *comitia centuriata*—which was to include all the citizens—patricians and plebeians alike. The whole form, divisions, and nature of this assembly were originally military. It was called the *exercitus*; it met in the field of Mars outside the city; the members appeared in arms of their respective divisions, and gave their votes in the same manner. The new centuriate assembly slowly but surely assumed to itself all the political rights which belonged to the curiate assembly, and the plebeians were thus, in process of time, made members of the *populus*.

Rome had, by this time, by conquest, gained large acquisitions of territory in Latium, and some, probably, on the Etruscan side of the Tiber. Servius distributed the whole Roman territory, as he found it, into more than twenty tribes according to divisions of the soil, and in these tribes the plebeians only were enrolled; and the plebeians having thus received a constitution of their own, used to meet in the forum on market days to settle their own affairs in the *Comitia Tributa*.

Such then is the outline of the Roman Constitution during the regal Government. The patricians met in their *curiae* in the *Commitia Curiata* at the high or narrow end of the forum; the plebeians met in their tribes in the *Comitia Tributa* at the low or broad end of the same famous piece of land; the whole people—patricians and plebeians alike—met in the field of Mars according to their classes and centuries in the *Comitia Centuriata*.

Servius Tullius was succeeded by Lucius Tarquinius. Tarquin, says the historian, was violent, rapacious and cruel, and was expelled from the country by the people, and the royal dignity at Rome was thus abolished in 509 B.C.

Two magistrates were now appointed to supply the place of the King. They were originally called praetors or judges; but were, in after days, known by the name of Consuls. They were elected yearly at the great assembly of the centuries, and had sovereign power conferred upon them by the assembly of the *curiae*. But about the year 367 B.C., as a consequence of the long dispute for power between the patricians and the plebeians, they were divested of all judicial authority which was put into the hands of a supreme patrician judge called the Praetor of the city—*Praetor Urbanus*—and when Sicily became subject to Rome, and a new court was erected for the decision of cases in which foreigners were concerned, and Spain was constituted a double province, the *praetor peregrinus* and four other praetors were appointed. In time of war a single chief called *dictator* or master of the people was clothed with sovereign power both in the city and out of it, and endowed with great freedom of action, although his authority did not last beyond six months.

Fifteen years after the expulsion of Tarquin the proud, Appius Claudius and Publius Servilius were Consuls. The plebeians were at this time smarting under great grievances. "They consisted entirely of landowners, great and small, and husbandmen; and the mass of them were petty yeomen. Most of them lived in villages and small towns which in those times were thickly sprinkled over the slopes of the Campagna. The patricians resided chiefly within the city, and they had the labour of their clients to till their farms. They had also the exclusive use of the public land paying a very small quit-rent to the Treasury. The necessity of service in the army or, more properly, the militia weighed heavily on the plebeians, as they were obliged to serve in person thus leaving their farms uncared for, whereas the rich patrician rendered his services through clients or hired labourers. The plebeian might at any time be reduced to beggary by a sudden foray of the enemy, whereas wealth always provided the patrician with some means of defence or place of refuge. Though the Consuls were elected by the centuriate assembly, the curiate assembly retained in their own hands the right of conferring the *imperium*, which amounted to a positive veto on the election by the larger body. The Roman laws of debtor and creditor were severe, and they fell heavily upon the plebeians, as the rich patricians were often the lenders, and they the borrowers." The distress of the plebeians led them to demand and obtain political protectors. The army chose their own leaders, and of their own accord marched northward, and occupied the hill which commands the junction of the Tiber and the Anio. Here they determined to settle, and form a new city leaving Rome to the patricians and their clients. The patricians having lost the best of their soldiery and the cultivators of the greater part of the Roman territory, sent repeated embassies to treat with them, and terms were ultimately agreed upon, the chief of which were that two of themselves should be appointed to protect the plebeians against the patrician magistrates, if they acted cruelly or unjustly towards the debtors. The two officers were to be called the Tribunes of the Plebs; and their persons were to be sacred and inviolable during their year of office, whence their office was called *Sacrosancta Potestas*. Their number was subsequently increased.

At the same time with the appointment of these protective officers, the plebeians were allowed the right of having two Ædiles chosen from their own body, whose business was to preserve order and decency in the streets, and to provide for the repair of all buildings and roads. They had also other functions partly belonging to Police Officers and partly to Commissioners of public works.

One more so-called historical event I have to trace to complete the category of political institutions, whence sprang what are now known as the sources of the Roman Law until, at least, the time of the Empire.

Notwithstanding the concessions to the plebeians above referred to, their position was still unsatisfactory. An Agrarian law, manifestly in their favour, proposed by Consul Spurius Cassius, and passed after much opposition by the patricians, began to be evaded with impunity by the latter who also contrived to renew most of the former laws that operated unfairly towards the plebeians. In the year 462 B.C. Terentilius Hersa, one of the sacred college, came forward with a bill to appoint ten men to draw up constitutional laws to regulate the future relations of the patricians and the plebeians. It is needless to pursue the different stages of the bill, but suffice it to say that it was vehemently opposed by the patricians, and a compromise was made to appoint three men who were to travel to Greece, and bring back a copy of the laws of Solon and the laws and institutes of Greek States, which they might deem good and useful. These were to be the groundwork of a new code of laws such as should give fair and equal rights to both orders, and restrain the arbitrary power of the patrician magistrates. The three men who were thus sent returned in the third year (B.C. 452). Moderate counsels now prevailed among the particians, and, after some delay, they agreed to suspend the ordinary government of the Consuls and their officers, and in their stead to appoint a council of ten who were to exercise all the functions of Government, and to draw up a Code of laws by which equal justice was to be dealt out to the whole Roman people. Before the end of the first year of their office, they drew up a Code of Ten Tables which was posted in the forum, that all citizens might examine it, and suggest amendments for the consideration of the decemvirs. In due time, the Ten Tables were confirmed, and made law at the *comitia* of the centuries, and two more were subsequently added, thus completing the Twelve Tables which have played so great a part in all subsequent Roman jurisprudence.

Only fragments and historical notices of the Twelve Tables now remain, and as the result of the labours of James Godefroy, Haubold and Dirksen, we have an intelligible and systematic arrangement of them which, however, I venture to say, can hardly be supposed to be a fair representative of the old Code which so many authors have made the basis of their writings. In Mr. Mears's translation of Gaius and in the Introduction to Dr. Hunter's Treatise of the Roman Law you will find so much of the Twelve Tables as have come down to us.

Such then, as I have described, are the traditional legends—I have not the authority of such historians as Mommsen, Niebuhr and Ihne to call them historical facts—such, I say, are the traditional legends from which is traced the evolution of the different sources of the Roman law, with which I shall now come into closer contact.

What then were those sources? In the first place we have the decrees called *leges*. These were laws proposed by a magistrate presiding at the Senate, and adopted by the Roman people in the

Comitia Centuriata. They related more particularly to public than to private law. Then come the *plebiscita* which were resolutions passed in the *Comitia Tributa* on the motion of the plebeian tribunes. Originally, they were binding only on the plebeians, but the Consuls, Horatius and Valerius, extended their operation to the whole people. In the third place there are the *Senatus-consulta* which were decrees of the Senate without the concurrence of the people. Like the *leges*, they, generally, had reference to the public law. The *leges* and the *plebiscita* continued to be enacted until about the time of Emperor Nerva (96-98 A.D.) when they were superseded by the *senatus-consulta* which, in their turn, about the time of Emperor Septimus Severus, (206 A.D.) completely disappeared, the Imperial Constitutions, to be spoken of presently, having gradually taken their place. As the fourth source of Roman Law I shall take "Custom" which was principally the *mores majorum* or law which was founded on the manners and customs of ancestors, and transmitted to their descendants. As the fifth source may be mentioned the edicts of the praetors—those magistrates about whom I have already spoken —and these call for a more extended notice.

The proper Roman Law (*jus civile*) was formerly applicable to Roman citizens only. But when the Romans extended their dominion over all Italy, and many countries beyond it, their frequent intercourse with non-Romans caused them to institute, in addition to their old national law, a law adapted to the litigation of non-Romans in Rome. This was extracted in part from proper Roman Law, in part from positive laws, and in part was new law; and this law the praetors proclaimed by edicts at the beginning of their official year, each successive praetor adopting in the main the rules of his predecessors; and about 67 B.C. the people's tribune, Cornelius, procured the passage of a law, that every praetor should be bound to administer justice according to his own pre-declared edicts. The law thus instituted was called the *jus honorarium*. It is also called by some authors the *jus gentium* of the Romans; but there is so much difference of opinion as to this name, that I shall say no more about it than give its two definitions. It is defined as comprising the principles of right and wrong recognised in the laws of all peoples or bodies of men politically organised; it is defined as a collection of rules governing the intercourse of Roman citizens with the members of foreign nations, reduced to subjection to Rome.

The *jus honorarium* is said by authors to be the parallel, among the Romans, to the jurisprudence of the old Court of Chancery in England, but I have to submit that there appears to me to be difference between the two in nature and origin. To indicate that difference, I shall here pause to inquire into the origin of the Court of Chancery. At common law, every species of civil

wrong was supposed to fall within some particular class, and for every such class of wrong *one* appropriate remedy existed, which always assumed the form of a writ. If a man suffered an injury, he could not, as now, bring to the notice of a court of law the facts of the case in a simple and rational manner by merely stating them, but he had first to determine within what class of wrong his case fell, and then to apply for the appropriate remedy or writ. If the alleged wrong did not fall within any recognised class of writ, the plaintiff was absolutely without any remedy at all. The only course open to him was to petition the King in Parliament or in Council, when the Sovereign generally referred the matter to the keeper of his conscience, the Chancellor, until, in the reign of Edward III., the Chancellor came to be recognised as a permanent judge, and the Court of Chancery as a permanent institution with jurisdiction over such matters as the administration of the estates of deceased persons, the dissolution of partnerships, the redemption of mortgages, the execution of trusts, and the like. But the *jus honorarium* of the Romans was extracted, in part, from proper Roman Law, and, in part, from other positive laws, and was instituted in addition to the old national law of the Romans, to regulate mainly their intercourse with non-Romans who had become their subjects. The edicts of the praetors were in fact one of the constitutional sources of positive law among the Romans. Of course, equity in its most general sense, namely, "that quality in the transactions of mankind which accords with natural justice, which is equivalent to honesty and right, and which is popularly said to arise *ex aequo et bono*" enters liberally into the composition of the Roman law as, indeed, it pervades all laws of civilised communites; but equity meaning anything like the jurisdiction and jurisprudence of the old English Court of Chancery is foreign to other systems of jurisprudence; and in this connection I might remark that it appears to me that our Courts in Ceylon cannot correctly be called, as is sometimes done, courts of law and equity. Our courts are courts of law, and if Chancery jurisprudence has crept into them, we administer it, not as equity, but as law.

To return to the sources of the Roman law—I would take the *Responsa Prudentum* as the sixth source. These were, generally speaking, responses given by jurisconsults or those learned in the law to magistrates who applied to them in doubtful cases. The jurists were always held in high esteem by the Romans. Every jurisconsult had the right to give his opinion on the law, and before the time of Augustus, all such *responsa* were of equal authority. They had not the force of law, but were regarded as the opinions of jurists. Augustus was the first to allow, by special grant, several distinguished jurists to respond in his name, the natural consequence of which was that the opinions given by those specially authorised jurists acquired greater weight and had indeed the full force of law.

The seventh source of the Roman Law, according to my classification, would be juridical writings. From the Twelve Tables up to the time of Cicero, that is, from 450 to 100 B.C., there are but few traces of a strictly scientific treatment of the law. A certain Cneius Flavius, a clerk to the jurist Appius Claudius, seems to have published two works. The *Tripertita*, termed by Pomponius the cradle of the *jus civile*, was published by Sextus Ælius Cato. Marcus Porcius Cato, Publius Mucius Scaevola and Manilius were among the other writers. The scientific treatment of the law, however, attained its highest excellence, particularly owing to the connection of law with philosophy and Greek literature, during the period between the time of Cicero and that of the Emperor, Alexander Severus—100 B.C. to 250 A.D. In this period lived the most distinguished jurists that ever flourished among the Romans—"men whose clear and penetrating judgment advanced jurisprudence to a high state of perfection and cultivation, and who are therefore usually called the classical jurists. Their writings contained excellent elucidations and developments of the sources of law, and soon obtained a decisive authority in the courts, partly because the authors themselves often occupied the highest dignities of the State, and partly because the assistance of learned interpreters was indispensable in the practical application of the law of the Twelve Tables and the Edicts." Justinian's Pandects were compiled from the writings of these jurists. I shall treat of the Roman Law under the Emperors separately further on, and shall here merely mention a few of the most familiar names of authors before the time of Augustus—Quinctus Mucius Scaevola, Aquilius Gallus, Alfenus Varus, Ofilius Trebatius Testa, Ælius Gallus, and Granius Flaccus.

As the eighth and last source of Roman Law, I take the Imperial Constitutions. This takes me to the time of the Emperors, and let me now recall to your minds a few historical facts necessary to a ready conception of my remarks.

From the time of Romulus to that of Tarquin the Proud (753 to 509 B.C.) Rome was an elective monarchy. From Tarquin to Augustus (509 B.C. to 30 A.D.) she was a Republic, and from Augustus onwards she was the centre of the vast though ill-fated Roman Empire.

It is unnecessary to examine, in connection with the history of the Roman Law, the various struggles for power and changes in the empire from Augustus to Constantine who was acknowledged its lord in 323 A.D. Suffice it to say that during that time there were no less than twenty-six Emperors, of whom may be mentioned the names of Tiberius, Claudius, Vespasian, Domitian, Nerva, Trajan, Marcus Aurelius, Severus, Valerian, Diocletian and Galerius as of those who contributed towards the development of the Roman Law. Constantine the Great built a new capital on the banks of the Bosphorus

where the Greek city of Byzantium once stood, and called it Constantinople or New Rome, and transferred thither the seat of Government. Valentinian, who was Emperor about 363, divided the empire, keeping Rome for himself and giving Constantinople to his brother Valens. The empire became re-united under Theodosius I. who died in 395, giving the eastern half to his son, Arcadius, and the western half to his son, Honorius. Arcadius, it may be here noted, was the father of Theodosius II., in whose reign the Theodosian Code was compiled. The Goths who were at this time ravaging divers parts of Europe entered Italy, and advanced against Honorius. They were at first repulsed, but on the 24th of August, 410, they re-advanced under their Chief Alaric, and entered Italy, and Honorius fled to Ravenna, and in 476, Romulus Augustus, the last Roman Emperor, was deposed by Odoacer, the Gothic King of Italy. Constantinople was now the capital of the remaining part, called the Greek empire, of the Roman empire; and Justinian was Emperor there in 527. During the 8th and 9th centuries, Constantinople was a scene of rebellions and conspiracies. In the reign of Emperor Leo, the Turks, a new race of barbarians of Scythian or Tartarian breed, began to make effectual inroads into its territories. The empire, however, languished until the 14th century, when the Turkish Sultan, Mahomet II., assailed Constantinople. The then Emperor, Constantine, was slain, and the city, after a seige of forty-nine days, surrendered, and thus the Eastern empire of the Romans was finally extinguished; A.D. 1453, which, from the building of its capital by Constantine the Great, had subsisted 1123 years.

The Imperial Constitutions, of which I had begun to speak, were the last and, ultimately, only source of Roman Law. The term, *Constitutiones*, embraced all the acts of the Emperor, but these were divisible into three distinct classes—1st, the *edicta* or general ordinances promulgated by the Emperor; 2ndly, *decreta*, judgments rendered by him in cases which he decided in his tribunal; and 3rdly, *mandata*, *epistolae* and *rescripta* which included all acts addressed by him to various persons—to his Lieutenants, the inferior Magistrates, the Praetor or Proconsul who questioned him on doubtful points of law and to private individuals who petitioned him in any circumstance whatever.

It was in the time of Augustus that the two rival jurists Ateius Capito and Antistius Labeo flourished. Capito is said to have been a man fond of rank, wealth and influence, and attached to the Emperor and existing institutions, while Labeo is credited with great learning, originality and confidence in his own opinions, and a desire to introduce innovations. In course of time, when the students of these two jurists had themselves become jurists, and succeeded their masters, the teachings of the latter were divided into two distinct schools deriving their names, not from them, but from their disciples. The disciples of Labeo were Nerva, Proculus

and Pegasus, and his school of law was called the Proculeian or Pegasian; and the pupils of Capito were Sabinus and Cassius, and his followers hence obtained the name of Sabinians or Cassians. These two schools of law continued for nearly two centuries.

Before leaving the reign of Augustus, I must allude to those legislative measures frequently to be met with in the writings of Roman jurists under the name of the *Lex Julia et Papia Poppaea*. These were a considerable Code of laws supposed to be the most extensive after the Twelve Tables, and to have produced a great impression upon society. Writing on this subject, "the last days of the Republic," says Ortolan, "were marked by an astonishing depravity in morals; the marriage of citizens had been abandoned or transformed into libertinism through annual divorces. It could then be said of the Roman ladies, 'they do not reckon years by the Consuls but by their husbands.' Celibacy was in fashion. Civil wars and proscriptions had left great voids in families; and under an inundation of slaves, of freed men and of foreigners, the race of citizens was disappearing." The *Lex Julia* was a former *plebiscitum* proposed, and ultimately passed, to remedy that state of things, and the *Lex Papia Poppaea*, with the same object, was added to it in the time of Augustus in the year 9 A.D., and the two laws came to be commonly known as the *Lex Julia et Papia Poppaea*, and treated on not only the subject of marriage, but everything even remotely connected with it, as betrothal, divorce, dower, inheritance, legacies and their devolutions, *dies cedens* and the like.

From Augustus to Adrian who became Emperor in 117 I can find no fact connected with the history of the Roman law of sufficient importance to be inserted within the narrow compass of a paper like this, except that it was during that time that such jurists as Sabinus, Nerva, Proculus and Cassius lived and taught. In the reign of Adrian was composed the *perpetuum edictum* which is a methodical arrangement of the practorian law, that is to say, the various edicts published up to that time. All that have come down to us of that edict are some scattered fragments in the Pandects of Justinian. Adrian was the first Emperor who gave the full force of law to the decisions of authorised jurists in case they were unanimous.

"The period of the Emperors was that in which the study of the civil law made the greatest strides; jurists multiplied, and numerous works on law were developed and connected together; and jurisprudence became a great science studied in every branch." I was afraid that I would trespass upon your time far too much, if I commented upon these jurists and their works as fully as their importance to the student of Roman law deserved. As I had to write somewhat at length upon the law in and after the time of Justinian, I thought that the expression of a few words on the most eminent jurists and their works until, at least, that time would be my most judicious course.

An abridgement of the history of law, which is included in the Digest or Pandects, was written by Sextus Pomponius during the reign of Antoninus Pius. Under the Emperor, Marcus Aurelius, (A.D. 169) flourished Scaevola and Gaius. The full, or I might with reason say the real, name of this latter illustrious jurist is not known to us. Gaius which, it is surmised, is a corruption of the common Roman name Caius was, according to many authors, only his praenomen. He belonged to the school of Capito, and composed numerous works, and took a deep interest in legal history. The subjects upon which he wrote were the Twelve Tables, certain of the Edicts, the Lex Papia and the works of Quintus Mucius Scaevola. His work on the Twelve Tables, is prefaced with a short introduction giving a prècis of the history of Roman Law from the foundation of the city. Very little indeed of these works was known until 1816, when Niebuhr discovered in the library at Verona a palimpsest which, with considerable difficulty, was deciphered by certain scholars appointed for the purpose by the Academy of Berlin, and published in 1820 as the Institutes of Gaius. These words of mine you may suppose to be a rather droll compliment to the authenticity of the book, but my excuse is that we are told by authors that the manuscript was of a date anterior to Justinian; that three of the middle sheets were wanting; that the parchment had been scraped upon one side, and washed on the other; that the leaves were arranged indiscriminately for writing upon them the letters of St. Jerome; and that it bore neither the title *Institutiones* nor the name Gaius. There are several English translations of this book. It is an elementary work, and is only a digest of the jurisprudence of the time of Antoninus Pius and Marcus Aurelius.

Æmilius Papinianus, otherwise known as Papinian, came after Gaius. He lived in the reign of Septimus Severus. He was the most celebrated of all the Roman Jurists. The most remarkable of his works is his "Questions, Answers and Definitions," of which there are a number of fragments in Justinian's Digest.

Domitius Ulpianus, commonly called Ulpian, and Julius Paulus commonly known as Paul, lived in the time of Papinian. The former was a native of Tyre, the latter of Padua. They were rivals in talent and fame, and composed several works, of which 2,462 fragments by the former and 2,083 by the latter have been preserved.

Gregorianus and Hermogenianus were two jurists of whom and whose works very little is known. They were the authors of the two Codes known as the Gregorian and the Hermogenian Code, which were collections of imperial rescripts arranged in a certain methodical order. These Codes had no legislative authority, but were treated as merely private collections made by two jurists. Neither of these Codes has been preserved in a complete form. The fragments of the Gregorian Code which have come down to us extend from the Emperor

Septimus Severus—A.D. 196—to the Emperors, Diocletian and Maximian—A.D. 296. It is therefore after this date, probably from 296 to 385, that this Code was composed. The fragments of the Hermogenian Code extend from A.D. 287 to A.D. 304. It is to these two collections that the term, Code, was first applied—a word which has since, with the Romans, borne the technical signification of a collection of Imperial Constitutions.

Theodosius II. who became Emperor in the West in 480 directed a collection, similar to the Gregorian and Hermogenian Codes, of all the constitutions of Constantine and the succeeding Emperors including himself, commencing from the period when those Codes left off, to be drawn out by two successive Commissions under the superintendence of Antiochus, ex-Consul and ex-Praetorian Prefect. The work was completed after nine years' labour, and it received the Imperial sanction, and was published in the East in the February of 438 under the name of the Theodosian Code with the injunction that from the calends of January, 439, it was to be the sole source of Imperial Law. The Code, however, was followed by new constitutions designated by the general name of *novellae*. Of the Theodosian Code we do not possess the whole of the original text.

Before passing on to the Roman Law under the German Kings in the West and Justinian in the East, I must briefly notice three documents, the precise dates of which are unknown, and which respectively bear the Latin names of *Fragmenta Vaticana, Mosaicarum et Romanarum et Legum Collatio*, and *Consultatio veteris cujusdam Juris consulti*. The first, supposed to be anterior to the Theodosian Code, was discovered by a librarian of the Vatican, and originally published at Rome in 1823. It consists of a collection of fragments from the works of Roman jurists and from the Imperial Constitutions. The second is a comparison between the Mosaic and the Roman Law, made by an unknown author, at an uncertain date. It was discovered in the sixteenth century, and first published at Paris in 1573. The third is a solution of various legal points by a jurist of the Lower Empire, written after the time of Theodosius, and discovered and published by Cujas in 1577.

I have said that Theodosius the Great, under whom the Empire had become re-united, was succeeded by his son, Honorius, at Rome, and his son, Arcadius, at Constantinople. I have also detailed how Alaric, the Goth or German, entered Italy, and Honorius fled to Ravenna, and how the whole of Italy ultimately came under the Gothic or German Kings. Gaul, Spain, and some other Roman provinces now fell into the hands of the Germans. They, however, brought into their new territory their own laws, manners and national customs, but allowed the Romans to retain their own. It soon thus became necessary for the immigrated Germans

to commit to writing both their own laws and those of the Romans. I am not just now concerned with the former. Alaric II. who became King of the Visigoths of Gaul published in 506 a Code for the government of the Romans in his Empire, which had been collected by a Commission out of the Gregorian, Hermogenian and Theodosian Codes, the later Novels, and the writings of Gaius, Paul and Papinian. This compilation has usually been termed the *Breviarium Alaricianum* or *Aniani* from Anian, the private referendary of Alaric. Theodoric, King of the Ostrogoths in Italy, issued his edict, commonly called the Edict of Theodoric, in 500. The entire substance of the Edict was extracted from the Roman Law; and between 506 and 534 a *Lex Romana* was published for the Roman subjects in the Burgundian Empire, which became known as *Papiani*—a corruption of *Papiniani—responsa* or the Papian Law.

Justinian became Emperor at Constantinople in 527. He is represented by many historians as a cruel tyrant, and if we are to believe the accounts of his persecutions against all who were not orthodox Christians, of his orders to massacre all the Samaritan Jews who had revolted in Palestine, and of his treatment of his own General Belisarius who had won for him so many victories, he would appear to deserve richly that epithet. But Justinian was wise in the selection of his generals and advisers. He devoted his attention principally to legislation and the promotion of the study of the law, and he was so fortunate as to find men who possessed the knowledge and abilities necessary for realising his plans. He first undertook a new collection of the Imperial Constitutions, which was intended as a substitute for the previous collections, and he appointed in the year 528 a Commission of ten jurists with very extensive powers, at the head of which he placed the *ex-quæstor sacri palatii* Johannes, to select all that was useful from the writings of the most authoritative of the older jurists, and to arrange them according to their matter under proper titles. They were given full power to make all such alterations in the writings of the older jurists as were adapted to the times. Full advantage was taken of this power, and large portions of the older writings were suppressed, added to, or re-arranged. The work was completed in three years, and the whole compilation, consisting of extracts from no less than thirty-nine jurists in fifty books, was called the Digest or the Pandects, and the changes in the writings of the older jurists introduced into it, the *interpolationes* or *emblemata Triboniani*.

The Pandects were published by Justinian on the 16th December, 533, and were to have legal authority from the 30th of that month. He, at the same time, forbade the further use of the writings of the older jurists, so as to prevent jurisprudence again becoming

diffuse and uncertain, and he prohibited the writing of commentaries on the new compilation.

Even before the compilation of the Digest, Justinian had entrusted to Tribonian, Theophilus and Dorotheus, professors of law, the duty of collecting together the different elementary treatises left by the ancients, and constructing a treatise for students with a simple abridgement of the principles of the laws. The book was extracted chiefly from the elementary treatises of Gaius, Paul and Marcian, and published at about the same time as the Pandects under the title of the *Institutiones*. Although it was originally intended for students, it soon acquired the full force of law.

After the publication, in 529, of the old Code of which I have already spoken, Justinian had issued a number of new Constitutions, and had given fifty decisions on contested points of law. He therefore ordered Tribonian to revise the old Code, and to add to it the new Constitutions. In this work Tribonian was to be assisted by the jurists, Dorotheus, Menna, Constantinus and Johannes. The new edition of the Code (*Codex repetitae praelectionis*) was confirmed by Justinian on the repeal of the old Code on the 16th November, 1534. This Code has come down to us.

Justinian, during the long continuance of his government, after the publication of the new Code, issued at different times, a number of new Constitutions whereby frequently entire doctrines of the law were changed. These were issued partly in Greek and partly in Latin under the name of the *Novellae Constitutiones*—called by us the Novels—and collections of them, the largest numbering 168, have been published at different times.

These four works—the Pandects or Digest, the Code, the Institutes and the Novels are what are now called the *Corpus Juris Civilis*. This term, *Corpus Juris Civilis*, strictly speaking, signifies the whole body of the Roman Law as opposed to the Canon Law, but when we now speak of the *Corpus Juris Civilis*, it is well to bear in mind that we would be understood as referring to only the compilations of Justinian, namely, the Pandects, the Institutes, the Code and the Novels.

Such were the results of Justinian's labours in the department of legislation, and the *Corpus Juris Civilis* has been of the utmost value in subsequent ages to the lawyer, the legislator, the historian and the archæologist as the most complete and satisfactory monument of the Roman Law.

After the death of Justinian, the Eastern empire continued for about nine centuries, that is to say, until the year 1453, and with the exception of the *novellae* of his successors, his legal compilations maintained their authority, until about the end of the 11th century, when they ceased to be regarded as the governing law. The Latin

language, however, in which Justinian's books were chiefly written, was not the vernacular of the Byzantines, and translations and commentaries in Greek, hence, began to be published even in the time of Justinian himself. Of these translations and commentaries I cannot now do more than merely refer to the works of Theophilus, Dorotheus and Stephen on the Institutes; the commentaries of the same authors and of Isidorus, Anastasius and an anonymous author, supposed to have been Julian, on the Digest; the writings of Anatolius, Isidorus, Thalleleo, Stephen and Phocas on the Code, and the abridgements by Athanasius and Theodorus of the Novels.

The publication, by Imperial authority, in the Eastern empire, of works on law after the time of Justinian may be summed up thus:—Leo the Isaurian with his son, Constantine Copronymus, published in 740 a manual of the law now known by the names of *Ecloga legum* and the Isaurian Law. Basil the Macedonian with his son, Constantine, and Leo the philosopher produced a hundred years later—870—a second Imperial Manual known by the different names of the Prochiron, the Constitution of Basil, and the Constitution of the three Emperors. Basil in conjunction with his sons, Leo the philosopher and Alexander, between 879 and 886, issued a revised edition of the Prochiron under the title of *Epanagoge* (*repetita praelectio*) and, finally, Leo the philosopher, probably when associated with his brother Alexander, and his son Constantine (906-911) terminated a work which had been partly executed by his father and which, then known as the *Repurgatio veterum legum* or Revision of the Ancient Laws, has been handed down to us under the title of the *Basilicae*. These works were, more or less, as, indeed, it is stated in their prefaces, derived from the Institutes, the Digest, the Code and the Novels; and for the sake of brevity, and in order to indicate solely the directing Emperor are said to belong to Leo the Isaurian, to Basil of Macedonia, and to Leo the philosopher, respectively. Either immediately after its compilation, or shortly thereafter, probably as an official comment, notes were added to the Basilikon which are termed *scholia*.

The Greeks, after they were subjugated by the Turks in 1453, were permitted to be governed by their own laws. The Basilics continued to be of great authority with them, although, now, the French law has a preponderating influence on the legislation of the Kingdom of Greece.

In the West, during the anarchy and confusion of the Middle Ages, law, in common with literature and science, may be said to have made no advance. Two elementary manuals upon the text of Justinian, however, are ascribed to this period—one composed in Italy, the other at Valencia in Dauphiny. The latter is known under the title of *Petri exceptiones legum Romanorum* or, by contraction, the *Petrus*, from its supposed author of that name; and

Savigny is of opinion that it is anterior to the school of Bologna to be presently spoken of. The former is generally known under the title of *Brachylogus totius juris civilis* or, briefly, *Brachylogus*, signifying a short discourse or précis. This is a name arbitrarily given to it in an edition of 1553, its author being unknown. Savigny, however, is of opinion that it was composed at the commencement of the 12th century, and is disposed to ascribe it to Irnerius, the founder of the school of Bologna.

The school of Bologna may be said to have been established at the very beginning of the 12th century. Pepo, a magistrate of Bologna, had given a course of public lectures there, but Irnerius who followed him is regarded as the true founder of the once flourishing school. He illustrated the text of Justinian's books by brief annotations on their matter and language, and these annotations were termed glosses from *glossa* or *glosa*, an obscure word signifying "explanation." In this method of illustration Irnerius was followed by his pupils and successors in office, whence they were given the name of Glossators.

The Glossators sought to facilitate the study of law by inserting extracts from Justinian's novels in such parts of the Code and the Institutes as were subsequently altered by the Novels. These extracts were termed authentics (*authenticae*) but should not be confounded with the complete Novels to which the Glossators applied the same name.

So much for Italy. In France, as I have already observed, the law which governed the Romans was the *Breviarium Alaricianum*. The Roman Law was used there throughout the whole of the Middle Ages; and as early as the middle of the 11th century Lanfranc, Archbishop of Canterbury, is said to have taught Roman Law while Abbot of Bec in Normandy. Placentius who belonged to the school of Bologna founded the first French school of Law at Montpellier in 1180, and introduced the writings and the methods of the Glossators, and among the subsequent French jurists, who have written mostly in Latin, the names of Doneau, Godefroi, Cujas, Domat, and Pothier are prominent. Pothier's commentaries on the Pandects of Justinian were the result of twelve years' unremitting labour, and were published from 1748-1752. The Civil Code, the present law of France, is, I need not say, based upon the Roman Law.

Spain, or a very large portion of it, formed a part of the Roman empire for nearly six centuries, and during that time, there can be little doubt, the Roman Law was the law of the land there. After the conquest of Spain by the Visigoths in 412, Germanic laws began to displace the then existing laws, and during the Middle Ages, the former were predominant. The School of Bologna, however, spread its influence as far as Spain, and the *Siete Partidas*, the present law, which

was promulgated, and generally adopted as the law of Spain in the reign of Alonzo XI in 1348, is very largely derived from the Roman Law.

In Germany, until some time after the establishment of the University of Bologna, the law administered was of purely German origin, now commonly known as the *leges barbarorum*. The fame of the Professors of Bologna soon extended to Germany, and the Italian Universities began to be frequented by the German youth who, to use the words of Mackeldey, "there learned a system of law which was unequalled for copiousness, coherence, acuteness and conciseness." On their return, they naturally endeavoured to introduce into use, and apply in the German tribunals, the Roman Law which they had learned and admired. The German Emperors and territorial lords soon discovered that the Roman Law was more suited than their own to their interests of absolute sovereignty; the then existing laws and customs of the country were inadequate for the condition of the people, changed, as it was, by cultivation, commerce and growth of towns; universities began to be established on the Italian model, in which Professors of the Roman Law were appointed; and the Roman Law, hence, became gradually and generally introduced into the German courts where it has continued to be administered as the common law of the land to the present day. "The authority of the Roman Law in Germany," says Mackeldey, "is not based on a formal recognition, by command of the legislative power, but on its gradual adoption as a law of custom, since the beginning of the 13th century. Its authority and general use were long established by custom before a formal confirmation was thought of. An express legal authorisation of it was never made." The German school of students of Roman Law was founded by Zaze who was a humanist. The humanists, I should have observed while dealing with the Roman law in France, were a school of jurists in France, established at the beginning of the 16th century, who extended their studies, beyond the legislation of Justinian, to the whole history of the Roman law from the earliest times, and carried their researches beyond legal documents into all the works of classical literature. Most of the distinguished Professors in Germany in the 16th century were foreigners. Among them were Wesembeck, Gilfarius and Gothofredus. In the 18th century, works were written on the philosophy of natural law and legal history by several eminent men, but the one great name of the century was that of Heinoccius whose writings were for a whole century the decisive authority on the external and internal history of law. The historical school of the 19th century was founded by Hugo and Savigny who have been followed by such authors as Niebuhr, Haubold, Mackeldey, Klenze, Muhlenbruch, Zacharia, Puchta, Keller, Warnkonig, Dirksen Rudorff and Vangerow.

In Scotland, the teaching of the civil law commenced at the Reformation in 1560. Scotland, by reason of the close alliance which

had subsisted long between her and France, had already borrowed many of the institutions of the latter country, and imported a large portion of Roman jurisprudence to supply the deficiencies of her own Municipal law. The law of Scotland up to the present day is largely made up of the Roman law; and such Scottish lawyers and authors as Stair, Barnston, Erskine and Bell were able civilians.

These are about all the countries in Europe, with the exception of Holland, in which the Roman Law, directly or indirectly, is yet administered, or has left indellible traces of a past administration.

Before proceeding to speak of the Roman Law in the Netherlands, a word on the influence of Roman on English Law may not be out of place. As Blackstone informs us, about the year 1138, Vacarius from the school of Bologna was brought over to England by Theobold, a Norman abbot, who had been elected to the See of Canterbury, and placed in the University of Oxford to lecture on the civil law. The civil law did not, however, receive general approval in England, and its study soon became confined to the clergy who entirely abandoned that of the common law, and banished it from the Universities. The study of the common law, however, was about the same time taken up by the laity who, on their part, entertained a most hearty aversion to the civil law, and made no scruple to profess their contempt for, and even ignorance of, it in the most public manner.

It is difficult to say how much of the common law of England was influenced by the Roman Law. Professor Stubbs would have us believe that England has inherited no portion of the Roman legislation, except in the form of scientific or professional axioms introduced at a late period, but the opposite extreme has been expressed by equally eminent writers. Judging, however, from the works of Glanville in the 12th century and Bracton and Fleta in the 13th, it is clear that, as in Germany, by a long process of custom and not acts of legislation, great portions of the civil law have been imported into English jurisprudence.

I have shewn how almost immediately after the introduction of the Roman Law into the University of Oxford, the two laws—the civil and the common—were taken up by the clergy and the laity respectively, and how the study of the common law was banished from the universities. These occurrences led to an important event, namely, the establishment of the modern Inns of Court, upon the origin of which, although I may be digressing, addressing as I do a body of law students, I should like to say a word.

By the great Charter of Liberties of King John and the Charter of Henry III., the Court of Common Pleas was to be held at one certain place—the palace of Westminster—instead of following the King's person as it did before. This brought together the Professors of the common or municipal law who formed

themselves into a kind of collegiate order, and being, as I have explained, excluded from Oxford and Cambridge, found it necessary to establish a new "university" of their own. This they did by purchasing certain houses between the city of Westminster and the city of London, which began to be called the Inns of Court and of Chancery. "Here," says Blackstone, "exercises were performed, lectures read, and degrees conferred in the common law as at other universities in the canon and civil." The degrees were those of Barristers and Sergeants. The latter have recently been abolished. The Inns of Court were so named from the ancient usage of the several masters receiving the scholars to board and reside with them. The Inns of Chancery, which were no less than nine in number, have disappeared, and all that now remain of these new "universities" are the four well-known Inns of Court.*

From what I have said, the Roman Law would appear to be out of place at the Inns of Court. It is evidently a comparativley recent introduction, and forms one of the subjects of study and examination there. The lectures on it, in connection with the four Inns, have for some time past been delivered in the ancient hall of the honorable Society of the Middle Temple.

To resume—In Holland, the University of Leyden was founded in 1575, and Donellus (Doneau) who had been expatriated from France for embracing Protestantism occupied the Chair of law there. More universities were soon established, and the study of the law advanced. The Dutch universities were so high in reputation that students from Bourges and Toulouse began to be drawn to Leyden and Utrecht, but as time passed on, political vicissitudes crippled the schools of law, and the lead passed over to Germany. Grotius, Vinnius, VanLeeuwen and Huber lived in the 17th century. Hugo de Groot (Grotius) is a great name in Dutch biography. The history of his life is interesting and highly romantic. He was born at Delft in 1583, and was sent to Leyden, where he obtained his doctor's degree in civil law at the age of twenty-one. His book, *De jure belli et pacis*, is the chief among his legal works. In somewhat tardy recognition of the merits of a great man, it is only in the year 1886 that a nation's gratitude took the form of a monument to his memory in his native place of Delft. Vinnius was born in Holland in 1588. He studied at Leyden, and soon became Professor of law there. His chief works are, *Jurisprudentia Contractata*, *Quaestiones Juris selectae*, and *Tractatus de Pactis*. The *Institutiones Historiae civiles* is the chief work of Huber.

* Of the two "Temples," the Inner is so called by reason of its being within the city of London, and the Middle (situated opposite the Temple Bar memorial, almost on the confines of the city), in consequence of its being nearly midway between the Inner and the now-abolished Outer Temple which stood immediately outside the city.

Voet, Westenberg, Schulting, Noodt and Bynkershoek flourished in the 18th century. Voet, born at Utrecht in 1847, was professor of law at Leyden. His chief work is the Commentary on the Pandects in two volumes.

The chief works of Bynekershoek who was born at Middelburg in Holland, in 1673, are his *Observationes Juris Romani* and *Quaestiones Juris Publici.*

It is to be noted that all these authors lived and wrote before the 16th February, 1796, a date of importance to us as that of the final cession by the Dutch of their possessions in Ceylon to the English, so that their writings are of full authority in the interpretation of so much of the Dutch law as is in force in the Island. The Roman Dutch Law, I may here remark, has no place now in Holland itself, as, in 1811, it was wholly superseded by the Code Napoleon which is yet the law of the land there.

It was in 1638 that the conflict of the Dutch with the Portuguese in Ceylon commenced, which terminated twenty years after in the retirement of the latter from the Island. The Dutch thus held nearly all the most important maritime stations in the Island until 1796 when Colombo, according to the Dutch Historian, was betrayed by Governor Van Angelbeck to the English. The Dutch hence remained in the Island about 146 years, and their most important bequest to it is the Roman-Dutch Law, the operation of which has evidently been extended by the English far beyond the precincts within which it prevailed during the time of the Dutch themselves. It is not likely that, during the Dutch rule, the Dutch Law prevailed all over the Island with the exception only of such places as now come under the Kandyan Law, the Thesawaleme and the laws of the Mukkuwas. As Sir Emerson Tennant observes, "from the commencement to the conclusion of the Dutch dominion in Ceylon, their possession of the Island was a military tenure, not a civil colonisation in the ordinary sense of the term," and the probability is that the Dutch Law applied to the Dutch themselves and a very limited number of the Sinhalese—those who were part of the urban population in the centres of their possessions—and that the bulk of the Sinhalese had their own special customs and customary law. It must be remembered that the Portuguese held nearly all the possessions subsequently occupied by the Dutch, also during about 146 years, and that some law must have then prevailed among the Sinhalese—a law based on their special customs—and if so, that law must have continued under the Dutch rule. However, I am not, at the present moment, in a position to give my conclusions on this point more than a merely speculative form. "The laws of a conquered or ceded country remain in force, until altered by the conqueror or acquisitor"; and, rightly or wrongly, the Roman-Dutch Law has long since been considered, and acted upon as the law of the land. But what is the Roman-Dutch Law, and

how much of it is in force in Ceylon? According to Burge, "the Roman-Dutch Law is composed of the Civil law and of such ordinances and edicts as the supreme authority in Holland, from time to time, enacted." These ordinances and edicts, as says Thompson in his Institutes on the Laws of Ceylon, related in a large measure to the feudal tenure, the regulation of dyke rights, and other matters which can have no application in Ceylon, and the Roman-Dutch Law, as administered here, approaches more nearly the Civil law than it did when administered in Holland, and so much only of the Roman-Dutch Law as was in force before the 16th February, 1796 —the date of the capitulation—is applicable to Ceylon, subject, of course, to the various local ordinances and rules of court.

I have but few words more. Such as I have described is the whole history of the Roman Law, and such its bearing on the common law of this Island. It would be foreign to the subject of this paper to discuss the law itself, but I might say that, considering its influence, as shewn already, upon the modern legislation of civilised countries, the study of that law, any more than that of its eventful and interesting history, cannot be over-estimated. Suggestions were at one time made to repeal the Roman-Dutch Law administered in Ceylon, and to introduce the English Law of contract and tort. Upon the short-sightedness of such suggestions I need not dwell long. Contracts and Torts arising from modern institutions and even contracts adapted to old institutions in their modernised forms may and must be governed by modern legislation, and such indeed is the case in Ceylon, although an improvement might yet be effected by the further introduction of the English law of libel and slander, inasmuch as most of the modern *media* through which such torts are committed were unknown to the ancients; but the English Law as to such contracts and torts, for instance, as are even remotely connected with real property cannot have place in Ceylon. The English Law of real property, in which words I include the law of contract and tort arising from right to such property, is so warped up with the ancient feudal tenure of land in England, with her religious and other old institutions, with her social customs and, nay, with even the domestic habits, affections, prejudices and idiosyncracies of the English people, and further, with the variations of climate, the seasons and the products of the earth and times for cultivation of the soil and reaping of harvests in England, that any attempt to administer it in Ceylon must end in hopeless confusion.

It is further a law, as administered now, of a comparatively modern date, a law full of inconsistencies and conflicting elements—the result, sometimes, of the crafty practitioner striving to render abortive, for particular purposes, the efforts of the legislator, and the legislator endeavouring to browbeat the practitioner by meeting his devices with fresh legis-

lative enactments. For instance, a certain state of things appears to call for legislation; a statute is passed to meet it, but the practitioner, by the ingenious device of some formula renders the statute inoperative. Law is thus multiplied with no practical result. Need I refer in this connection to the well-known statute of uses. It was remedial legislation, but both the thing sought to be remedied, and the attempted remedy are, up to this day, for all practical purposes, equally operative.

But such is not the Roman Law. It has, in addition, the recommendation of being a truly ancient system, perhaps not so old as the archaic laws of the Hindoos, but for aught I know, better arranged and codified, and well adapted to the manners and customs of all sections of the natives of Ceylon; and, so long as the Roman Law is in force in Ceylon, either in it present form, or in the form of a future Ceylon Civil Code, we, as students of law, may congratulate ourselves that, not as a mere labour of love, but as a task to which we might look for practical results, ours is the lot to study a law which, to use the stately language of Chief Justice Tindal, is "the fruit of the researches of the most learned men, the collective wisdom of ages, and the ground-work of the municipal law of most of the countries of Europe."