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COMMENTARIES.
James B. Williams
LAWSON
LAWS OF ENGLAND:
IN FOUR BOOKS;

WITH

AN ANALYSIS OF THE WORK.

BY

SIR WILLIAM BLACKSTONE, KNT.

ONE OF THE JUSTICES OF THE COURT OF COMMON PLEAS.

IN TWO VOLUMES,

FROM THE NINETEENTH LONDON EDITION.

WITH A

LIFE OF THE AUTHOR. AND NOTES:

BY

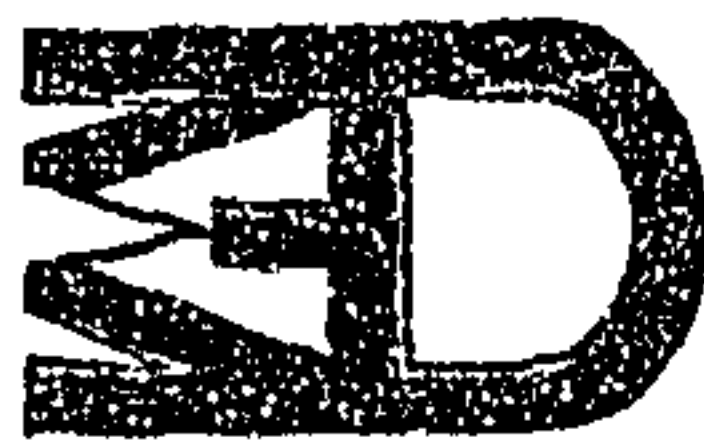
CHRISTIAN, CHITTY, LEE, HOVENDEN, AND RYLAND:

AND ALSO

REFERENCES TO AMERICAN CASES,

BY A MEMBER OF THE NEW-YORK BAR.

VOL. I.—BOOK I. & II.



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PREFACE

BY THE AMERICAN EDITOR.

THE COMMENTARIES OF BLACKSTONE continue to be the text book of the student and of the man of general reading, notwithstanding the alterations in the law since the time of their author. The great principles which they unfold remain the same, and are explained in so simple and clear a style, that, however much the details of the law may be changed, they will always be read with interest. It is no small commendation of Blackstone, that many of the modern improvements adopted in England and in the United States were suggested by him: and that the arrangement which he used in treating the different subjects, has been followed in a great degree by the Revisers of the Statutes of New-York.

This edition shows the late alterations of the law in England, as furnished by the notes of Lee, Hovenden, and Ryland, in the last London edition. Notes have also been added, briefly explaining the difference between the law of England and of New-York. Those not engaged in the practice of law find it difficult, while reading the Commentaries, to make this distinction: this difficulty, it is hoped, is now in some degree removed. It was deemed inconsistent with the original object of the work to introduce any other than brief notes. The American notes are therefore generally short, leaving those who wish an extended knowledge of the subject, to the statutes and authorities. But as the English statutes or authorities may not be accessible to the general reader, the English notes are generally retained without any abbreviation. This is done, because it is considered that the readers of Blackstone generally wish to know, not only what the law of England was, but also what it is.

In the abbreviations and in these volumes, R. S. refers to the Revised Statutes of New-York, of 1830; U. S. is used for an abbreviation of the United States; N. Y. for New-York.

New-York April 8, 1832.

P R E F A C E

THE following sheets contain the substance of a course of lectures on the Laws of England, which were read by the author in the university of OXFORD. His original plan took its rise in the year 1753; and, notwithstanding the novelty of such an attempt in this age and country, and the prejudices usually conceived against any innovations in the established mode of education, he had the satisfaction to find, and he acknowledges it with a mixture of pride and gratitude, that his endeavours were encouraged and patronised by those, both in the university and out of it, whose good opinion and esteem he was principally desirous to obtain.

The death of Mr. Viner in 1756, and his ample benefaction to the university, for promoting the study of the law, produced about two years afterwards a regular and public establishment of what the author had privately undertaken. The knowledge of our laws and constitution was adopted as a liberal science by general academical authority; competent endowments were decreed for the support of a lecturer, and the perpetual encouragement of students; and the compiler of the ensuing Commentaries had the honour to be elected the first Vinerian professor.

In this situation he was led, both by duty and inclination, to investigate the elements of the law, and the grounds of our civil polity, with greater assiduity and attention than many have thought it necessary to do. And yet all, who of late years have attended the public administration of justice, must be sensible that a masterly acquaintance with the general spirit of laws and principles of universal jurisprudence, combined with an accurate knowledge of our own municipal constitutions, their original, reason, and history, hath given a beauty and energy to many modern judicial decisions, with which our ancestors were wholly unacquainted. If, in the pursuit of these inquiries, the author hath been able to rectify any errors which either himself or others may have heretofore imbibed, his pains will be sufficiently answered: and if in some points he is still mistaken, the candid and judicious reader will make due allowances for the difficulties of a search so new, so extensive, and so laborious.

Nov. 2, 1765.

P O S T S C R I P T.

NOTWITHSTANDING the diffidence expressed in the foregoing Preface, no sooner was the work completed, but many of its positions were vehemently attacked by zealots of all (even opposite) denominations, religious as well as civil; by some with a greater, by others with a less degree of acrimony. To such of these animadvertisers as have fallen within the author's notice, (for he doubts not but some have escaped it), he owes at least this obligation: that they have occasioned him from time to time to revise his work, in respect to the particulars objected to; to retract or expunge from it what appeared to be really erroneous; to amend or supply it when inaccurate or defective; to illustrate and explain it when obscure. But, where he thought the objections ill-founded, he hath left and shall leave the book to defend itself: being fully of opinion, that, if his principles be false and his doctrines unwarrantable, no apology from himself can make them right; if founded in truth and rectitude, no censure from others can make them wrong.

LIFE OF THE AUTHOR.

SIR WILLIAM BLACKSTONE was born on the 10th of July, 1723, in Cheapside, in the parish of St. Michael le Querne, at the house of his father, Mr. Charles Blackstone, a silk-man, and citizen and bowyer of London; who was the third son of Mr. John Blackstone, an eminent apothecary in Newgate-street, descended from a family of that name in the west of England, at or near Salisbury, and who died some months previous to the birth of William, the author of these justly esteemed Commentaries. His mother was Mary, eldest daughter of Lovelace Bigg, Esquire, of Chilton Foliot, in Wiltshire; she died before the learned commentator attained his twelfth year.

Sir William had three brothers, Charles, John, and Henry. John died an infant, Charles and Henry were educated at Winchester, under the care of their uncle Dr. Bigg, who was warden of that society, and were afterwards both fellows of New College, Oxford; Charles became a fellow of Winchester, and vicar of Wimering in Hampshire: Henry, after having practised physic some years, went into holy orders, and died in 1778, vicar of Adderbury in Oxfordshire, a living in the gift of New College.

The being early in life deprived of both parents proved, in its consequences, the reverse of misfortune to our author: to that circumstance probably he was indebted for his future advancement, and that high literary character and reputation in his profession, which he has left behind him; to that circumstance the public too is probably indebted for the benefit it has received, and will receive, as long as the law of England remains, from the labours of his pen. For, had his father lived, it is most likely, that the third son of a London tradesman, not of great affluence, would have been bred in the same line of life, and those parts, which have so much signalized the possessor of them, would have been lost in a warehouse or behind a counter.

But, even from his birth, the care both of his education and fortune was kindly undertaken by his maternal uncle, Mr. Thomas Bigg, an eminent surgeon in London, and afterwards, on the death of his elder brothers, owner of the Chilton estate, which is still enjoyed by that family.

The affectionate, it may be said the parental, care this worthy man took of all his nephews, particularly in giving them liberal educations, supplied the great loss they had so early sustained, and compensated in a great degree for their want of more ample fortunes. And it was always remembered, and often mentioned by them all, with the sincerest gratitude.

In 1730, being about seven years old, William was put to school at the Charter-House; and in 1735 was, by the nomination of Sir Robert Walpole, on the recommendation of Charles Wither, of Hall, in Hampshire, Esquire, his cousin by the mother's side, admitted upon the foundation there.

In this excellent seminary he applied himself to every branch of youthful education, with the same assiduity which accompanied his studies through life. His talents and industry rendered him the favourite of his masters, who encouraged and assisted him with the utmost attention; at

the age of fifteen he was at the head of the school, and, although so young, was thought well qualified to be removed to the University; and he was accordingly entered a commoner at Pembroke College in Oxford, on the 30th of November, 1736, and was the next day matriculated.

At this time he was elected to one of the Charter-House exhibitions by the Governors of that foundation, to commence from the Michaelmas preceding, but was permitted to continue a scholar there till after the 12th of December, being the anniversary commemoration of the founder, to give him an opportunity of speaking the customary oration, which he had prepared, and which did him much credit.

About this time also he obtained Mr. Benson's gold prize medal of Milton, for verses on that poet.

Thus, before he quitted school, did his genius begin to appear, and receive public marks of approbation and reward. And so well pleased was the Society of Pembroke College with their young pupil, that, in the February following, they unanimously elected him to one of Lady Holford's exhibitions for Charter-House scholars in that house.

Here he prosecuted his studies with unremitting ardour; and although the classics, and particularly the Greek and Roman poets, were his favourites, they did not entirely engross his attention: logic, mathematics, and the other sciences were not neglected; from the first of these (studied rationally, abstracted from the jargon of the schools,) he laid the foundation of that close method of reasoning he was so remarkable for: and from the mathematics he not only reaped the benefit of using his mind to a close investigation of every subject that occurred to him, till he arrived at the degree of demonstration the nature of it would admit; but he converted that dry study, as it is usually thought, into an amusement, by pursuing the branch of it which relates to architecture.

This science he was particularly fond of, and made himself so far master of it, that, at the early age of twenty, he compiled a treatise, entitled *Elements of Architecture*, intended for his own use only, and not for publication, but esteemed by those judges who have perused it, in no respect unworthy his maturer judgment, and more exercised pen.

Having determined on his future plan of life, and made choice of the law for his profession, he was entered in the Middle Temple on the 20th of November, 1741. He now found it necessary to quit the more amusing pursuits of his youth, for the severer studies to which he had dedicated himself, and betook himself seriously to reading law.

How disagreeable a change this must have been to a young man of brilliant parts, and a fine imagination, glowing with all the classical and poetical beauties he had stored his mind with, is easier conceived than expressed: he alone, who felt, could describe his sensations on that occasion; which he did in a copy of verses, since published by Dodsley, in the 4th volume of his *Miscellanies*, intitled, *The Lawyer's Farewell to his Muse*; in which the struggle of his mind is expressed so strongly, so naturally, with such elegance of sense and language, and harmony of versification, as must convince every reader, that his passion for the Muses was too deeply rooted to be laid aside without much reluctance, and that, if he had pursued that flowery path, he would not perhaps have proved inferior to the best of our English poets.

Several little fugitive pieces, besides this, have at times been communicated by him to his friends, and he has left (but not with a view of publi

cation) a small collection of juvenile pieces, both originals and translations, which do him no discredit, inscribed with this line from Horace,

"Nec lusisse pudet, sed non incidere ludum."

Some notes on Shakespeare, which, just before his death, he communicated to Mr. Steevens, and which that gentleman inserted in his last edition of that author, shew how well he understood the meaning, as well as the beauties of his favourite among the English poets.*

In November, 1743, he was elected into the Society of All-Souls College; and, in the November following, he spoke the Anniversary Speech in commemoration of Archbishop Chichele, the founder, and the other benefactors to that house of learning, and was admitted actual fellow.

From this period he divided his time between the University and the Temple, where he took chambers, in order to attend the courts. In the former he pursued his academical studies, and on the 12th of June, 1745, commenced Bachelor of Civil Law; in the latter he applied himself closely to his profession, both in the Hall and in his private studies, and, on the 28th of November, 1746, was called to the Bar.

The first year of a counsel's attendance on the Courts afford little matter worthy to be inserted in a narrative of this kind; and Mr. Blackstone, not possessing either a graceful delivery or a flow of elocution (both which he much wanted) nor having any powerful friends or connexions to recommend him, made his way very slowly, attracting little notice and still less practice: he, however, availed himself of the leisure thus left him in storing his mind with that knowledge of the law, which he has since communicated to the world, and contracted an acquaintance with several of the most eminent men in that profession, who saw, through the then intervening cloud, that great genius, which afterwards broke forth with so much splendour.

At Oxford, his active mind had more room to display itself, and, being elected into the office of Bursar soon after he had taken his degree, and finding the muniments of the College in a confused irregular state, he undertook and completed a thorough search, and a new arrangement, from whence that Society reaped great advantage. He found also, in the execution of this office, the method of keeping accounts, in use among the older Colleges, though very exact, yet rather tedious and perplexed; he, therefore, drew up a dissertation on the subject, in which he entered minutely into the theory, and elucidated every intricacy that might occur. A copy of this tract is still preserved for the benefit of his successors in the Bursarship.

But it was not merely the estates, muniments, and accounts of the College, in which he was so usefully employed during his residence in that Society. The Codrington Library had for many years remained an unfinished building. He hastened its completion, rectified several mistakes

* The error, published in the name of J. Clitherow (the editor of Sir W. B.'s Reports,) in the Oxford Collection, on the death of the Prince of Wales, in 1751, and which were justly esteemed one of the best compositions in that collection, were written by Mr. Blackstone, who at that time exacted a promise of secrecy; which promise Mr. Clitherow considering himself absolved from by the death of the learned judge, felt a sensible satisfaction in restoring to the right owner that applause he

had so long received without any pretensions; and in making this acknowledgement, Mr. Clitherow also, in a note in his edition of Sir W. B.'s Reports, expressed a hope that it might atone for his having so long permitted it to have remained generally unknown, particularly as, on those occasions, it was by no means unusual, or reckoned a discredit to a young man, to have his name prefixed to the production of another person.

in the architecture, and formed a new arrangement of the books under their respective classes.

The late Duke of Wharton, who had engaged himself by bond to defray the expense of building the apartments between the Library and Common Room, being obliged soon after to leave his country, and dying in very distressed circumstances, the discharge of this obligation was long despaired of. It happened, however, in a course of years, that his Grace's executors were enabled to pay his debts, when, by the care and activity of Mr. Blackstone, the building was completed, the College thereby enabled to make its demand, and the whole benefaction recovered.

In May, 1749, as a small reward for his services, and to give him further opportunities of advancing the interests of the College, he was appointed Steward of their Manors. And, in the same year, on the resignation of his uncle, Seymour Richmond, Esq., he was elected Recorder of the borough of Wallingford, in Berkshire, and received the King's approbation on the 30th of May.

The 26th of April, 1750, he commenced Doctor of Civil Law, and thereby became a member of the Convocation, which enabled him to extend his views, beyond the narrow circle of his own society, to the general benefit of the University at large.

In this year he published *An Essay on Collateral Consanguinity*, relative to the claim made by those who, by a pedigree, proved themselves of kin to the founder of All-Souls College, of being elected, in preference to all others, into that society.

Those claims became now so numerous, that the college, with reason, complained of being frequently precluded from making choice of the most ingenious and deserving candidates.

In this treatise, being his first publication, he endeavoured to prove, that, as the kindred to the founder, a popish ecclesiastic, could not but be collateral, the length of time elapsed since his death must, according to the rules both of the civil and canon law, have extinguished consanguinity; or that the whole race of mankind were equally the founder's kinsmen.

This work, although it did not answer the end proposed, or convince the then Visitor, yet did the author great credit, and shewed he had read much, and well digested what he had read. And, most probably, the arguments contained in it had some weight with his Grace who succeeded to the see of Canterbury, and who, a few years afterwards, on application to him as Visitor of the College, formed a new regulation, which gave great satisfaction, limiting the number of founder's kin, whereby the inconvenience complained of was in a great measure removed, without annihilating a claim founded on the express words of the college statutes. And it must be observed, that, in forming this new regulation, his Grace made choice of Mr. Justice Blackstone, as his common-law assessor, together with that eminent civilian, Dr. Hay, well knowing how much he was master of the subject then under consideration.

After having attended the Courts in Westminster-hall for seven years, and finding the profits of his profession very inadequate to the expense, in the summer of the year 1753, he determined to retire to his fellowship and an academical life, still continuing the practice of his profession, as a provincial counsel. He had previously planned, what he now began to execute, his Lectures on the Laws of England; a work which has so justly signalized his name, and rewarded his labours.

In the ensuing Michaelmas Term he entered on his new province of reading these lectures; which, even at their commencement, such were the expectations formed from the acknowledged abilities of the lecturer, were attended by a very crowded class of young men of the first families, characters, and hopes.

In July, 1755, he was appointed one of the Delegates of the Clarendon Press. Upon his entering on the duties of this office, he discovered many abuses, which required correction; much mismanagement, which demanded new and important regulations. In order to obtain a thorough insight into the nature of both, he made himself master of the mechanical part of printing; and to promote and complete a reform, he printed a letter on the subject, addressed to Dr. Randolph, at that time Vice-Chancellor.

This and his other endeavours produced the desired effect, and he had the pleasure of seeing, within the course of a year, the reform he had proposed carried into execution, much to the honour, as well as the emolument of the University, and the satisfaction of all its friends. While engaged in these pursuits, he drew up a small tract relative to the management of the University press. This he left for the use of his successors in that office: and it was held in high esteem, and regarded by them as the ground-work, not only of the improvements then made, but of those also which were in contemplation.

About a year before this he published *An Analysis of the Laws of England*, as a guide to those gentlemen who attended his lectures, on their first introduction to that study; in which he introduced that intricate science to a clear method, intelligible to the youngest student.

In the year 1757, on the death of Dr. Coxed, Warden of Winchester, he was elected by the surviving visitors of Michel's new foundation in Queen's College into that body. This new situation afforded fresh matter for his active genius to exercise itself in; and it was chiefly by his means that this donation, which had been for some years matter of contention only, became a very valuable acquisition to the college, as well as an ornament to the University, by completing that handsome pile of building towards the High-street, which, for many years, had been little better than a confused heap of ruins.

The engrafting a new set of fellows and scholars into an old established society could not be an easy task, and, in the present instance, was become more difficult, from the many unsuccessful attempts that had been made, all of which had only terminated in disputes between the members of the old, and the visitors of the new foundation; yet, under these circumstances, Dr. Blackstone was not disheartened, but formed and pursued a plan, calculated to improve Mr. Michel's original donation, without departing from his intention; and had the pleasure to see it completed, entirely to the satisfaction of the members of the old foundation, and confirmed, together with a body of statutes he drew for the purpose, by act of Parliament, in the year 1769.

Being engaged as counsel in the great contest for knights of the shire for the county of Oxford, in 1764, he very accurately considered a question then much agitated, Whether copyholders of a certain nature had a right to vote in county elections.

He afterwards reduced his thoughts on that subject into a small treatise; and was prevailed upon by Sir Charles Mordaunt, and other members of Parliament, who had brought in a bill to decide that controverted point,

to publish it in March, 1758, under the title of *Considerations on Copyholders*. And the bill soon after, receiving the sanction of the Legislature, passed into a law.

Mr. Viner having by his will left not only the copyright of his *Abridgment*, but other property to a considerable amount, to the University of Oxford, to found a professorship, fellowships, and scholarships of common law, Dr. Blackstone was, on the 20th of October, 1758, unanimously elected Vinerian Professor. In this situation he was (he informs us in his introduction to the Commentaries) led, both by duty and inclination, to investigate the elements of law, and the grounds of our civil polity, with greater assiduity and attention than many have thought it necessary to do; and, on the 25th of the same month, read his first introductory lecture; one of the most elegant and admired compositions which any age or country ever produced: this he published at the request of the Vice-Chancellor and Heads of Houses, and afterwards prefixed to the first volume of his Commentaries.

His lectures had now gained such universal applause, that he was requested by a noble personage, who superintended the education of our late Sovereign, then Prince of Wales, to read them to his Royal Highness: but, being at that time engaged to a numerous class of pupils in the University, he thought he could not, consistently with that engagement, comply with this request, and therefore declined it. But he transmitted copies of many of them for the perusal of his Royal Highness; who, far from being offended at an excuse grounded on so honourable a motive, was pleased to order a handsome gratuity to be presented to him.

It is more than probable that this early knowledge of the character and abilities of the Professor laid the foundation in his late Majesty's royal breast of that good opinion and esteem, which afterwards promoted him to the Bench; and, when he was no more, occasioned the extension of the Royal bounty, in the earliest hours of her heavy loss, (unthought of and unsolicited,) to his widow and his numerous family.

In the year 1759, he published two small pieces merely relative to the University: the one intitled *Reflections on the Opinions of Messrs. Pratt, Morton, and Wilbraham, relating to Lord Litchfield's Disqualification*, who was then a candidate for the Chancellorship; the other, *a Case for the Opinion of Counsel on the Right of the University to make new Statutes*.

Having now established a reputation by his Lectures, which he justly thought might entitle him to some particular notice at the Bar, in June, 1759, he bought chambers in the Temple, resigned the office of Assessor of the Vice-Chancellor's Court, which he had held for about six years, and, soon after, the Stewardship of All-Souls College: and, in Michaelmas Term, 1759, resumed his attendance at Westminster; still continuing to pass some part of the year at Oxford, and to read his lectures there, at such times as did not interfere with the London Law Terms. The year before this he declined the honour of the Coif, which he was pressed to accept of by Lord Chief Justice Willes, and Mr. Justice (afterwards Earl) Bathurst.

In November, 1759, he published a new edition of the Great Charter and Charter of the Forest; which added much to his former reputation, not only as a great lawyer, but as an accurate antiquarian and an able historian. It must also be added, that the external beauties in the printing, types, &c., reflected no small honour on him, as the principal reformer of

the Clarendon Press, from whence no work had ever before issued equal, in those particulars, to this.

This publication drew him into a short controversy with the late Dr. Lyttelton, then Dean of Exeter, and afterwards Bishop of Carlisle.—The Dean, to assist Mr. Blackstone in his publication, had favoured him with the collation of a very curious ancient Roll, containing both the Great Charter and that of the Forest, of the 9th of Henry the 3d, which he and many of his friends judged to be an original. The Editor of the Charters, however, thought otherwise, and excused himself (in a note in his Introduction) for having made no use of its various readings, “as the plan of his edition was confined to Charters which had passed the Great Seal, or else to authentic entries and enrolments of record, under neither of which classes the Roll in question could be ranked.”

The Dean upon this, concerned for the credit of his Roll, presented to the Antiquarian Society a vindication of its authenticity, dated June the 8th, 1761; and Mr. Blackstone delivered in an answer to the same learned body, dated May the 28th, 1762, alleging as an excuse for the trouble he gave them, “that he should think himself wanting in that respect which he owed to the Society and Dr. Lyttelton, if he did not either own and correct his mistake, in the octavo edition then preparing for the press, or submit to the Society’s judgment the reasons at large, upon which his suspicions were founded.” These reasons, we may suppose, were convincing, for here the dispute ended.*

About the same time, he also published a small treatise on *The Law of Descents in Fee Simple*.

A dissolution of Parliament having taken place, he was, in March, 1761, returned burgess for Hindon, in Wiltshire; and, on the 6th of May following, had a patent of precedence granted him to rank as King’s Counsel, having a few months before declined the office of Chief Justice of the Court of Common Pleas, in Ireland.

Finding himself not deceived in his expectations in respect to an increase of business in his profession, he now determined to settle in life, and, on the 5th of May, 1761, he married Sarah, the eldest surviving daughter of the late James Clitherow, of Boston House, in the county of Middlesex, Esquire; with whom he passed near nineteen years, in the enjoyment of the purest domestic and conjugal felicity, (for which no man was better calculated,) and which, he used often to declare, was the happiest part of his life. By her he had nine children, the eldest and youngest of whom died infants; seven survived him, viz. Henry, James, William, Charles, Sarah, Mary, and Philippa; the eldest was not much above the age of sixteen at his death.

His marriage having vacated his fellowship at All-Souls, he was, on the 28th of July, 1761, appointed by the Earl of Westmoreland, at that time Chancellor of Oxford, Principal of New Inn Hall. This was an

* It may be here mentioned, that, as an Antiquarian, and a member of this Society, into which he was admitted February the 5th, 1761, he wrote “A Letter to the Honourable Daines Barrington, describing an antique seal, with some observations on its original, and the two successive Controversies which the discussion of it afterwards occasioned.”

This Seal, having the royal arms of England

on it, was one of those which all persons having the exercise of ecclesiastical jurisdiction, were obliged by the statute of the 1 Edw. VI. ch. 2, to make use of. This letter is printed in the 3rd volume of the *Archæologia*; but his discussion of the merits of the Lyttelton Roll, though containing much good antiquarian criticism, has not yet been made public.

agreeable residence during the time his lectures required him to be in Oxford, and was attended with this additional pleasing circumstance, that it gave him rank as the head of a house in the University, and enabled him, by that means, to continue to promote whatever occurred to him, that might be useful and beneficial to that learned body.

An attempt being made about this time to restrain the power given him, as Professor, by the Vinerian statutes, to nominate a deputy to read the solemn lectures, he published a state of the case, for the perusal of the Members of Convocation, upon which it was dropped.

In the following year, 1762, he collected and republished several of his pieces under the title of *Law Tracts*, in two volumes, octavo.

In 1763, on the establishment of the Queen's family, he was appointed Solicitor-General to her Majesty; and was chosen about the same time a Benchman in the Middle Temple.

Many imperfect and incorrect copies of his lectures having by this time got abroad, and a pirated edition of them being either published, or preparing for publication in Ireland, he found it necessary to print a correct edition himself; and accordingly, in November, 1765, the first volume appeared, under the title of *Commentaries on the Laws of England*, and in the course of the four succeeding years the other three volumes; which completed a Work, that will transmit his name to posterity among the first class of English authors, and will be universally read and admired, as long as the laws, the constitution, and the language of this country remain.

In the year 1766, he resigned the Vinerian Professorship, and the Principality of New Inn Hall; finding he could not discharge the personal duties of the former, consistently with his professional attendance in London, or the delicacy of his feelings as an honest man.

Thus was he detached from Oxford, to the inexpressible loss of that University, and the great regret of all those who wished well to the establishment of the study of the law therein. When he first turned his views towards the Vinerian Professorship, he had formed a design of settling in Oxford for life: he had flattered himself, that, by annexing the office of Professor to the Principality of one of the Halls (and perhaps converting it into a college), and placing Mr. Viner's fellows and scholars under their Professor, a society might be established for students of the common law, similar to that of Trinity-Hall in Cambridge, for civilians.

Mr. Viner's will very much favoured this plan. He leaves to the University "all his personal estate, books, &c., for the constituting, *establishing*, and endowing one or more Fellowship or Fellowships, and Scholarship or Scholarships, *in any College or Hall* in the said University, as "to the Convocation shall be thought most proper for Students of the "Common Law." But, notwithstanding this plain direction to establish them in *some* College or Hall, the clause from the Delegates which ratified this designation, had the fate to be rejected by a negative in convocation.

By this unexpected, and, as was assumed by his friends, unmerited rejection, Mr. Blackstone's prospects in Oxford had no longer the same allurements to make him think of a lasting settlement there. His views of an established society for the study of the common law were at an end, and no room left him for exerting, in this instance, that ardour for improvement which constituted a distinguishing part of his character.

In the new Parliament, chosen in 1768, he was returned burgess for Westbury in Wiltshire.

In the course of this Parliament, the question, "whether a member expelled was or was not eligible in the same Parliament," was frequently agitated in the House with much warmth, and what fell from him in a debate being deemed by some persons contradictory to what he had advanced on the same subject in his Commentaries, he was attacked with much asperity in a pamphlet supposed to be written by a baronet, a member of that House*. To this charge he gave an early reply in print†.

In the same year, Dr. Priestly animadverted on some positions in the same work, relative to offences against the doctrine of the Established Church, to which he published an answer.

The Compiler of this memoir, desirous of avoiding all controversy, contents himself with the bare mentioning these two publications, without giving any opinion concerning their respective merits. As the works of the author whose life he is writing, it is his duty not to omit the mention of them : but how far the charges of his antagonists were founded in reason, and supported by argument ; or whether he by his answers sufficiently exculpated himself from those charges, must be left to the determination of those who have been, or may become readers of them. The Compiler's only intent is to write a faithful narrative, not a professed panegyric.

Mr. Blackstone's reputation as a great and able lawyer was now so thoroughly established, that, had he been possessed of a constitution equal to the fatigues attending the most extensive business of the profession, he might probably have obtained its most lucrative emoluments and highest offices. The offer of the Solicitor-Generalship, on the resignation of Mr. Dunning in January, 1770, opened the most flattering prospects to his view. But the attendance on its complicated duties at the Bar, and in the House of Commons, induced him to refuse it.

But though he declined this path, which so certainly, with abilities like Mr. Blackstone's, leads to the highest dignities in the law, yet he readily accepted the office of Judge of the Common Pleas, when offered to him on the resignation of Mr. Justice Clive, and kissed his Majesty's hand on that appointment, February 9th, 1770 ; and was called to the degree of a Serjeant at Law on the 12th of the same month, being the last day of Hilary Term, 10 Geo. 3, and chose for a motto on the rings distributed on that occasion, "*Secundis debiisq. rectus.*" Previous, however, to the passing his patent, Mr. Justice Yates expressed an earnest wish to retire from the King's Bench into the Court of Common Pleas. To this wish Sir W. Blackstone, from motives of personal esteem, consented ; and, on the 16th February, kissed his Majesty's hand on being appointed a Judge of the Court of King's Bench, and also received the honour of knighthood ; and was on the evening of the same day sworn into office before the Lords Commissioners Smythe and Aston, at the house of the former, in Bloomsbury Square. But, upon the death of Mr. Justice Yates, which happened on the 7th of June following, Sir William was appointed to his original seat in the Court of Common Pleas, and on Friday the 22nd kissed his Majesty's hand on the appointment. On the 25th he executed a resignation of his office of Judge of the King's Bench ; his patent was sealed, and he was sworn in before the Lords Commissioners Smythe, Bathurst, and

* Sir William Meredith.

† A Letter to the Author of, *The Question Stated : by another Member of Parliament.* Small 8vo. 1s. 1769. This pamphlet drew from

Junius several letters addressed to the learned Commentator. See *Junius*, Vol. i. Letter 25, &c.

Aston, at the house of the former. He was succeeded in the King's Bench by Sir W. H. Ashhurst.

On his promotion to the Bench he resigned the Recordership of Wallingford.

As it has been before remarked, that this is not intended as a panegyric, but purely as a faithful, though unadorned narrative, nothing is here said of his conduct as a Judge. The lawyer will, no doubt, duly appreciate his worth in that character whenever he has occasion to consult his Reports, the second volume of which is composed entirely of cases determined whilst he sat on the Bench.

He seemed now arrived at the point he always wished for, and might justly be said to enjoy *otium cum dignitate*. Freed from the attendance at the Bar, and what he had still a greater aversion to, in the Senate, "where," to use his own expression, "amid the rage of contending parties, a man of moderation must expect to meet with no quarter from any side," although he diligently and conscientiously attended the duties of the high office he was placed in, yet the leisure afforded by the legal vacations he dedicated to the private duties of this life, which, as the father of a numerous family, he found himself called upon to exercise; or to literary retirement, and the society of his friends, at his villa called Priory Place, in Wallingford, which he purchased soon after his marriage, though he had for some years before occasionally resided at it.

His connection with this town, both from his office of Recorder, and his more or less frequent residence there from about the year 1750, led him to form and promote every plan which could contribute to its benefit or improvement. To his activity it stands indebted for two new turnpike roads through the town, the one opening a communication, by means of a new bridge over the Thames at Shillingford, between Oxford and Reading, the other to Wantage, through the vale of Berkshire*. What substantial advantage the town of Wallingford derived from hence will be best evidenced from the gradual increase of its malt trade between the years 1749 and 1779, extracted from the entries of the Excise-Office during that period, as contained in the note below†.

To his architectural talents, his liberal disposition, his judicious zeal, and his numerous friends, Wallingford likewise owes the rebuilding that handsome fabric, St. Peter's church.

These were his employments in retirement. In London his active mind was never idle, and when not occupied in the duties of his station, he was ever engaged in some scheme of public utility. The last of this kind in which he was concerned, was the act of Parliament for providing detached houses of hard labour for convicts, as a substitute for transportation.

Whether the plan did, or did not succeed to the extent of his wishes and expectations, it is yet an indisputable proof of the goodness of his heart, his humanity, and his desire of effecting reformation, by means more bene-

* He was ever a great promoter of the improvement of public roads. The new western road from Oxford over Botely Causeway was projected, and the plan of it chiefly conducted by him. He was the more earnest in this design, not merely as a work of general utility and ornament, but as a solid improvement to the estate of a nobleman, in settling whose affairs he had been most laboriously and beneficially employed.

† An average account of the number of net bushels of malt made in Wallingford, from Midsummer 1749 to Midsummer 1779, inclusive:

Average of 5 yrs. ending Mid. 1754	49,172
Do. . . . of do. . . . 1759	58,676
Do. . . . of do. . . . 1764	97,370
Do. . . . of do. . . . 1769	101,086
Do. . . . of do. . . . 1774	113,135
Do. . . . of do. . . . 1779	107,254

ficial to the criminal and the community, than severity of punishment. All human schemes, like all mechanical inventions, generally in practice fall short of the theory; and although this may have failed, yet who can read the following quotation from one of his charges to a country grand jury relative to that act, without applauding the intention, and reverencing the public virtue of those who planned it:—

“In these houses,” says he, “the convicts are to be separately confined during the intervals of their labour, debarred from all incentives to debauchery—instructed in religion and morality—and forced to work for the benefit of the public. Imagination cannot figure to itself a species of punishment in which terror, benevolence, and reformation are more happily blended together. What can be more dreadful to the riotous, the libertine, the voluptuous, the idle delinquent, than solitude, confinement, sobriety, and constant labour? Yet, what can be more truly beneficial? Solitude will awaken reflection; confinement will banish temptation; sobriety will restore vigour; and labour will beget a habit of honest industry: while the aid of a religious instructor may implant new principles in his heart; and, when the date of his punishment is expired, will conduce to both his temporal and eternal welfare. Such a prospect as this is surely well worth the trouble of an experiment.”

It ought not to be omitted, that the last augmentation of the Judges' salaries, calculated to make up the deficiencies occasioned by the heavy taxes they are subject to, and thereby render them more independent, was obtained in a great measure by his industry and attention.

In this useful and agreeable manner he passed the last ten years of his life, but not without many interruptions by illness. His constitution, hurt by the studious midnight labours of his younger days, and an unhappy aversion he always had to exercise, grew daily worse: not only the gout, with which he was frequently, though not very severely, visited from the year 1759, but a nervous disorder also, that frequently brought on a giddiness or vertigo, added to a corpulency of body, rendered him still more unactive than he used to be, and contributed to the breaking up of his constitution at an early period of life.

About Christmas, 1779, he was seized with a violent shortness of breath, which the Faculty apprehended was occasioned by a dropsical habit, and water on the chest. By the application of proper remedies, that effect of his disorder was soon removed, but the cause was not eradicated; for, on his coming up to town to attend Hilary Term, he was seized with a fresh attack, chiefly in his head, which brought on a drowsiness and stupor, and baffled all the art of medicine; the disorder increasing so rapidly, that he became at last for some days almost totally insensible, and expired on the 14th of February, 1780, in the 57th year of his age. To the public his loss was great; to his family and friends irreparable.

A few weeks before he died, he was applied to by the trustees for executing the will of the late Sir George Downing, Baronet, who had bequeathed a large estate for the endowing a new College in Cambridge, to give his assistance in forming a proper plan for this society, and framing a body of statutes for its regulation.

This was a task to which his abilities were peculiarly adapted; and it may be difficult to determine whether the application reflected more honour on the trustees or on him. He had mentioned to some of his most intimate friends his undertaking this business with great pleasure, and seem-

ed to promise himself much satisfaction in the amusement it would afford him : but alas ! his disorder was then coming on with such hasty strides, that, before any thing could be done in it, death put an end to this, and all his labours, and left the University of Cambridge, as well as that of Oxford, to lament the loss of Mr. Justice Blackstone.

He was buried by his own direction in a vault he had built for his family in his parish church of St. Peter's in Wallingford. His neighbour and friend Dr. Barrington, Bishop of Llandaff, at his own particular request, performed the funeral service, as a public testimony of his personal regard, and highest esteem.

Having now given a faithful, and it is hoped not too prolix, detail of the life of this great man, from his cradle to his grave, it will be expected that it should be followed by the outlines, at least, of his character. To do justice to the merit of such a character, without incurring the imputation of flattery, is as difficult as to touch on its imperfections (and such the most perfect human characters have), with truth and delicacy.

In his public line of life he approved himself an able, upright, impartial Judge ; perfectly acquainted with the laws of his country, and making them the invariable rule of his conduct. As a Senator, he was averse to party violence, and moderate in his sentiments. Not only in Parliament, but at all times, and on all occasions, he was a firm supporter of the true principles of our happy Constitution, in Church and State ; on the real merits of which few men were so well qualified to decide. He was ever an active and judicious promoter of whatever he thought useful or advantageous to the public in general, or to any particular society or neighbourhood he was connected with ; and having not only a sound judgment, but the clearest ideas, and the most analytical head that any man, perhaps, was ever blessed with, these qualifications, joined to an unremitting perseverance in pursuing whatever he thought right, enabled him to carry many beneficial plans into execution, which probably would have failed, if they had been attempted by other men.

He was a believer in the great truths of Christianity, from a thorough investigation of its evidence ; attached to the Church of England from conviction of its excellence, his principles were those of its genuine members, enlarged and tolerant. His religion was pure and unaffected, and his attendance on its public duties regular, and those duties always performed with seriousness and devotion.

His professional abilities need not be dwelt upon. They will be universally acknowledged and admired, as long as his works shall be read, or, in other words, as long as the municipal laws of this country shall remain an object of study and practice. And though his works will only hold forth to future generations his knowledge of the law, and his talents as a writer, there was hardly any branch of literature he was unacquainted with. He ever employed much time in reading ; and whatever he had read, and digested, he never forgot.

He was an excellent manager of his time, and though so much of it was spent in an application to books, and the employment of his pen, yet this was done without the parade or ostentation of being a hard student. It was observed of him, during his residence at college, that his studies never appeared to break in upon the common business of life, or the innocent amusements of society ; for the latter of which few men were better calculated, being possessed of the happy faculty of making his own com-

pany agreeable and instructive, whilst he enjoyed without reserve the society of others.

Melancthon himself could not have been more rigid in observing the hour and minute of an appointment; during the years in which he read his lectures at Oxford, it could not be remembered, that he had ever kept his audience waiting for him, even for a few minutes. As he valued his own time, he was extremely careful not to be instrumental in squandering or trifling away that of others, who, he hoped, might have as much regard for theirs, as he had for his. Indeed, punctuality was in his opinion so much a virtue, that he could not bring himself to think perfectly well of any who were notoriously defective in it.

The virtues of his private character, less conspicuous in their nature, and consequently less generally known, endeared him to those he was more intimately connected with, and who saw him in the more retired scenes of life. He was, notwithstanding his contracted brow (owing in a great measure to his being very near-sighted,) a cheerful, agreeable, and facetious companion. He was a faithful friend; an affectionate husband and parent; and a charitable benefactor to the poor; possessed of generosity, without affectation, bounded by prudence and œconomy. The constant accurate knowledge he had of his income and expenses (the consequence of uncommon regularity in his accounts) enabled him to avoid the opposite extremes of meanness and profusion.

Being himself strict in the exercise of every public and private duty, he expected the same attention to both in others; and, when disappointed in his expectation, was apt to animadvert, with some degree of severity, on those who, in his estimate of duty, seemed to deserve it. This rigid sense of obligation, added to a certain irritability of temper, derived from nature, and increased in his latter years by a strong nervous affection, together with his countenance and figure, conveyed an idea of sternness, which occasioned the heavy, but unmerited, imputation, among those who did not know him, of ill-nature; but he had a heart as benevolent and as feeling as man ever possessed.*

A natural reserve and diffidence, which accompanied him from his earliest youth, and which he could never shake off, appeared to a casual observer, though it was only appearance, like pride; especially after he became a Judge, when he thought it his duty to keep strictly up to forms, (which, as he was wont to observe, are now too much laid aside,) and not to lessen the respect due to the dignity and gravity of his office, by any outward levity of behaviour.

In short, it may be said of him, as the noble historian† said of Mr. Selden: "If he had some infirmities with other men, they were weighed down with wonderful and prodigious abilities and excellences in the other scale."

His Reports, in two volumes, reach down to the end of Michaelmas Term, 1779, the last in which he regularly attended his Court; his illness

* The author of *The Biographical History of Sir Wm. Blackstone* relates the following anecdote of the learned Commentator: "I was perfectly well acquainted with a certain bookseller, who told me, that upon hearing Mr. Blackstone had commenced Doctor of Civil Law, the next time he did him the honour of a visit, he (the bookseller) in the course of conversation, and out of pure respect, called the

new made Civilian 'DOCTOR.' This familiar manner of accosting him (as he was pleased to term it) put him in such a passion, and had such an instantaneous and violent effect, and operated on him to so alarming a degree, that the poor bookseller thought he should have been obliged to send for a doctor from St. Luke's.

† The Earl of Clarendon.

confining him at home the greatest part of Hilary Term, 1780. And as there is no doubt of their being genuine, neither can there be any of his intention that they should be published; for, by a clause in his will he directs, "That his Manuscript Reports of Cases determined in Westminster Hall, taken by himself, and contained in several large Note-books, be published after his decease.—And that the produce thereof be carried to, and considered as part of, his personal estate."

The reader must not expect in the first book a regular series of reports of the determinations of any one Court, or without breaks and interruptions in respect to time. They seem to be only such, as he had selected out of many from his rough notes, either as being of a more interesting nature, or containing some essential point of law or practice, or perhaps such only (particularly for the first few years) as he had taken the most accurate notes of. Far the greatest part of those contained in the first book, are of the Court of King's Bench; but there are some of the Courts of Chancery, Exchequer, and Exchequer Chamber on appeal.

They begin with Michaelmas Term, 1746, in which he was called to the Bar; and there are some of every Term, except two, to Michaelmas, 1750, from whence there is an interval to Michaelmas, 1756, without one. The reason of this, most probably, is, that during that period he resided chiefly at Oxford, and had much of his time taken up in composing his Lectures, which he began to read in 1753, and in preparing for which he had been for some years before principally employed. This accounts for his want of leisure to revise such rough notes as he might have taken during that period, and to fit them for publication, while they were fresh in his memory. In the three following years he attended the Bar only in Michaelmas and Hilary Terms, on account of his Lectures; consequently there are, among his Reports, none of the Easter and Trinity Terms of those years; but from thence they continue in a regular series, except one Term, when he was indisposed, and the two Terms immediately preceding his being promoted to the Bench, when he attended the Court of Exchequer only. Which circumstances sufficiently evince that those Reports were all (except one) taken by himself. That one is of the arguments of Sir Thomas Clarke, Master of the Rolls; Lord Mansfield, Chief Justice of the King's Bench; and the Lord Keeper Henley; delivered in the Court of Chancery, in Hilary Term, 1759, on determining the interesting cause of *Burgess v. Wheate*, and which, as appears by a remark subjoined to it, was communicated to him by that great and able lawyer, Mr. Fazakerly; but was all transcribed in his own hand.

Mr. Malone, in an Advertisement to a Supplement to his edition of Shakespeare, says, "Sir W. Blackstone is one of the most eminent literary characters that the present age has produced;" and, in the preface to a *Fragment on Government*, we find the following:—"He it is, in short, who first of all institutional writers, has taught jurisprudence to speak the language of the scholar and the gentleman; put a polish upon that rugged science; cleansed her from the dust and cobwebs of the office; and if he has not enriched her with that precision that is drawn only from the sterling treasury of the sciences, has decked her out, however, to advantage from the toilette of classical erudition, enlivened her with metaphors and allusions, and sent her abroad in some measure to instruct, and in still greater to entertain, the most miscellaneous, and even the most fastidious societies."