

**A SKETCH OF
ENGLISH LEGAL
HISTORY; PP. 5-225**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649064724

A Sketch of English Legal History; pp. 5-225 by Frederic W. Maitland & Francis C. Montague
& James F. Colby

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

FREDERIC W. MAITLAND & FRANCIS C. MONTAGUE & JAMES F. COLBY

**A SKETCH OF
ENGLISH LEGAL
HISTORY; PP. 5-225**

A Sketch
of
English Legal History

By

Frederic W. Maitland, LL.D., D.C.L.

Late Downing Professor of the Laws of England in the University of Cambridge

and

Francis C. Montague, M.A.

*Professor of History, University College, London
Lecturer in Modern History, Oriel College, Oxford*

Edited with Notes and Appendices by

James F. Colby

Parker Professor of Law in Dartmouth College

STANFORD LIBRARY

G. P. Putnam's Sons

New York and London

The Knickerbocker Press

55

COPYRIGHT, 1915
BY
G. P. PUTNAM'S SONS

296132

STANFORD LIBRARY



Printed in the United States of America

EDITOR'S NOTE

THE following pages contain a reprint of a series of articles upon the chief epochs in the history of English law which were contributed to *Social England*, edited by H. D. Traill, D.C.L. (G. P. Putnam's Sons, New York, 1899), by the late Prof. Frederic W. Maitland of Cambridge University, and Prof. Francis C. Montague of University College, London. These articles supplied what long had been needed for general readers and for law students—a brief but comprehensive, accurate but untechnical account of the origin and growth of English law. Despite the publication in 1912 of what, by comparison with the voluminous histories of Pollock and Maitland and of Holdsworth, is properly entitled *A Short History of English Law*, by the eminent scholar, Edward Jenks, this series of articles now forms the best available introduction to English legal history. Their original appearance, scattered through the large volumes of *Social England*, has lessened if not barred their use by many persons, and it is hoped that their reprint in this compact form will insure their wider use.

For the benefit of general readers, and particularly

of law students, various explanatory notes have been added. The length of a few such notes, which are extracts from the histories of English law by Pollock and Maitland or by Jenks, has required their insertion in the text, but they always appear within brackets.

A list of recommended readings upon the different topics treated has been appended to each chapter. The references to Pollock and Maitland's *History of English Law* are to the second edition which is cited as "P. and M." *Select Essays in Anglo-American Legal History* is referred to as "Anglo-Am. Legal Hist." The other abbreviations are self-explanatory.

Grateful acknowledgment is hereby made to the several authors specified and to their publishers for their courteous permission to reprint extracts from the volumes below cited:

To Cassell & Co. and the University Press of Cambridge, Eng., for the articles by Maitland and Montague in Traill's *Social England*.

To Little, Brown & Co. of Boston for extracts from *History of English Law* by Pollock and Maitland; *Elements of American Jurisprudence and Elementary Law*, by W. C. Robinson; *A Short History of English Law*, by Edward Jenks.

To Henry Holt & Co. of New York for extracts from *Law and Politics in the Middle Ages*, by Edward Jenks.

Editor's Note

v .

To the Clarendon Press of Oxford, London, and New York for extracts from the monograph by Sir Courtenay Ilbert on *Legislative Methods and Forms*.

The Appendices are designed as supplementary readings upon their several important subjects which are briefly treated in the text, and show the variety of forms which English law has assumed at different epochs during its almost unbroken history from 600 A.D. to the present century.

J. F. C.

HANOVER, N. H.,
August, 1915.

A Sketch of English Legal History

tive enough. The emperor at Byzantium, could he have seen them, would assuredly have denied that they had any points in common with the Roman law-books, save that they were laws, and were in writing. Nevertheless, we cannot call them primitive in any absolute sense of that term. They are Christian.

Let us look at the first sentence, the first recorded utterance of English law: "God's fee¹ [property] and the church's, twelve-fold; bishop's fee, eleven-fold; priest's fee, nine-fold; deacon's fee, six-fold; clerk's fee, three-fold." Churches, bishops, priests, deacons, clerks—these are no archaic German institutions; they are Latin, they have Latin names which must be taken up bodily into the Teutonic speech of the new converts. Unfortunately (so we may now think) Germanic law has no written memorials of the days of its heathenry. Every trace, but the very faintest, of the old religion has been carefully expurgated from all that is written, for all that is written passes under ecclesiastical hands. Thus we may guess that a new force is already beginning to transfigure the whole sum and substance of barbaric law, before that law speaks the first words that we can hear. It is a wild plant that has already been

¹The Anglo-Saxon word, *feoh*, *fee* (property), sometimes is rendered cattle. For explanation of this doom so translated, see Jenks, *Law and Politics in the Middle Ages*, 191-4.