

sufficiently well to allow the colter to cut it clean, the man behind the plow was very likely to turn a somersault.

The work performed by the Howell plow, and many others like it, was hard on both the man and the team, but it had to be done in order that the ground might be suitably prepared for the crop the next spring. Yet, though the process of carving a farm out of the prairie was a hard and trying matter, Iowa as an agricultural state is indebted to the labors of these men who in years gone by "broke" her prairie.

OLD LAW REPORTS

One of the finest gifts that this department has received in many years is a gift of eighteen volumes in the field of law, given to this department by the Grant Law Library, Incorporated, at Davenport.

Sixteen of these volumes are reports of the English courts, two of which were published in 1656, one in 1657, two in 1658, two in 1659, one in 1661, one in 1675, one in 1677, one in 1681, one in 1682, two in 1688, one in 1689, and one in 1741, although the cases that were published in some of these are much older than the years of publication.

Some of these were originally written in Latin, as for example, one that was published in 1656; namely, REPORTS and CASES taken in QUEEN ELIZABETH'S, KING JAMES' and KING CHARLES' COURTS. An eminent English lawyer, William Noy, made these reports from the written arguments that were filed by the lawyers and the judges.

In their foreword, the translators make the following statement about William Noy: "That he was a person that hated anything of prolixness; he was a man that writ *multum parvo*, or if you'll have that near home, all languages in 24 letters." And further, "That in the translation of apt and significant words, you'll have them as he writ 'em."

There are annotations and handwriting of years long ago on the margins. A study of the cases shows that the decisions, though using legal terms strange to us now, are based on the same lines of reasoning now followed by our courts; for ex-

ample, in the case Parrey against Chauncey, the following is the report:

"Prescription by a parishioner to pay the tenth part of corn for *modus decimandi*, for the hay also that grows upon the Headlands, is not good, because the tenth part is due for the corn. But such prescription for the corn and after rakeings is good, with an averment that they are not *sparsae manus voluntarie* so prescription of the tenth part of hay and the after grasse, See H. 15 lac. C. B. by Hubbard Chief Justice, prescription to make up the first crop is good, *modus decimandi* for the after crop, and Note M. 29. 30. El. B. R. rot. 250. Bayard against Adams prescription as in the first case is good. But note that Judgment was given against the party because he had not well pleaded the prescription."

Here the plaintiff lost because the pleadings for him were not correctly drawn although his cause was just. Moral was then and is now, "In a lawsuit hire a good lawyer."

Bateman against the Hundred of ———

In these days when one hears much argument that nothing in the history of the past has merit now, and that the past has nothing to teach us, let us examine the case of Bateman against the Hundred of ———, a Hundred in those days designated a certain territorial division of the English County, having its own local court. "Stanton Bateman brought an action against the Hundred of ——— in the County of Gloucester upon the Statute of Hue and Cry, and upon the general issue pleaded, it was found by the verdict that he was robbed and that he took his oath before Mr. Seamer, a Justice of the peace that he did not know the parties: and because the Jury did not find moreover that the oath was that he did not know the parties which robbed him, nor any of them, according to the letter of the Statute, It was mov'd that the Plaintiff should not recover. Walmesly was of the opinion that it was well enough founded, and sufficient; for an oath shall be taken simply and they need not observe that precise form as in pleading that oath. Warbarton for the Defendant said because the oath was not precise according to the Statute, it may be he swore in that manner upon subiltie; For upon such an uncertain deposition a man cannot be impeach't of perjury. Kingsmille likewise said, that upon that default the

action may well fail. Anderson of the same opinion, for that the Statute is the ground of the action, which ought to be observed. Walmsley said when he shewed that 2 men did rob him and that he did not know them that amounts to as much by common intendment, that he did not know any of them, then if it amounts to as much, it is sufficient enough. Anderson said If it be of the same sense, see the Statute, but that itself denotes a difference between the cases, for it prescribes that he ought to shew that he did not know them or any or them.

“Walmsley argued, That’s only proper where there are 3 or more that robb’d him, but where there are but 2, it is not a part nor proper speaking to say, them, or any of them, but, or either of them. And in this case it may be it was the cunning of the Justice that examin’d him, who peradventure liv’d within the same Hundred that would be judged, too as himself and his neighbors, but if the oath was in another manner and that can be prov’d, although the Justice certifies in another manner, yet the proof shall be allowed. To which Kingsmille agreed, and the court urged the Defendants to give to the Plaintiff 40s. And so to make an end which motion both parties agreed to.”

In plain English, this was a case of robbery in a community presumed to be policed and the man that was robbed recovered in the courts. If each community in the United States were forced either to provide adequate police protection or pay the penalty in money for the crimes committed within their borders, crime would rapidly decrease. It is interesting to note that cases of this kind appear in several of these reports with the same verdicts; namely, that the community must pay.

Students of American History will find an interesting case on Page 21 of REPORTS of CASES concerning the REVENUE argued and determined in the court of ExChequer from Easter Term 1743 to Hillary Term 1767. This case was in Trinity Term, 16 and 17 George 2, 1743, and is entitled “*William Scott (who prosecutes for His Majesty and himself) Plaintiff, against David A’Chez Defendant.*” The case is outlined as follows:

“An English built Ship, importing French Wines and Vinegar from France is forfeited by the Navigation Act though such Ship became French Property before the Importation and the Master and 3/4 of the Mates were Frenchmen.”

This case came to trial under the so-called Navigation Acts which were so objectionable to our colonial forefathers, especially to those in New England. The case is reported at length and covers fourteen pages. The plaintiff, of course, won the suit.

Despite its age the paper on which these sixteen books are printed is in admirable condition though there is evidence to show that the bindings have been renewed.

For those who have reason to see these books, they may be found in the office of the Curator.

The eighteenth volume of this gift is entitled *REPORTS OF CASES DETERMINED* in the *GENERAL COURT OF VIRGINIA* from 1730 to 1740; and from 1768, to 1772. The author was Thomas Jefferson, the volume was published in Charlottesville, Virginia, in 1829. It was not published in Jefferson's lifetime and the editor's preface says as follows:

"At the suggestion of several professional friends, who thought that the publication of this volume of Reports, would be generally interesting on account of its source and the period to which it refers, and useful from the explanation which many of the cases afford, of the peculiar laws of this state, and of the modification which they have undergone, the Legatee of Mr. Jefferson's manuscript papers, has been induced to give it to the public. He hopes that to gentlemen of the bar, particularly in Virginia, it may not be altogether unacceptable."

Quoting from the preface written by Jefferson himself:

"When I was at the bar of the General Court there were in the possession of John Randolph Attorney General three volumes of MS. Reports of cases determined in that court, the one taken by his father, Sir John Randolph, the second by Mr. Barradall, and a third by Hopkins. These were the most eminent of the council in that bar and give us the measure of its talent in that day. . . . The volumes comprehended decisions of the General Court from 1730 to 1740, as well on cases of English law, as on those peculiar to our own court. The former were of little value, because the Judges of that court, consisting of the King's Privy Counsellors only, chosen from among the gentlemen of the court for their wealth and standing, without any regard to legal knowledge, their decisions could never be quoted, either as adding to or detracting from, the weight of

those in the English courts, on the same points. Whereas, [those] on our peculiar laws and judgments, whether formed on correct principles of law, or not, were of conclusive authority as precedents, they established authoritatively the construction of our own enactments, and gave them the shape and meaning, under which our property has been ever since transmitted, and is regulated and held to this day. These decisions, therefore, were worthy of preservation and constitute the earlier part of this volume. . . ." The last paragraph of this preface is as follows: "I have added, also a disquisition of my own of the most remarkable instance of Judicial legislation, that has ever occurred in English jurisprudence or perhaps in any other. It is that of the adoption en masse of the whole code of another nation and its incorporation into the legitimate system, by usurpation of the Judges alone without a particle of legislative will having ever been called on or exercised toward its introduction or confirmation."

This "disquisition" appears as the appendix of this small volume by Thomas Jefferson and is entitled *Whether Christianity is a Part of the Common Law*.

Jefferson then states a case which arose under ecclesiastical law which was brought before the common law courts, in which the plaintiff demurred to the pleadings of the defendant. One of the questions was how far the ecclesiastical law was to be respected in this matter by the common law court. From Jefferson's statement of the case it appears that the judges "declared at once that the whole Bible and Testament in a lump, make a part of the common law of the land. . . . And thus they incorporated in the English code laws made for the Jews alone, and the precepts of the Gospel, intended by their benevolent author as obligatory only in *foro conscientiae*; and they arm the whole with the coercions of municipal law. They do this, too, in a case where the question was, not at all whether Christianity was a part of the law, but simply how far the ecclesiastical law was to be respected by the common law courts of England in a special case, of a right of presentment. Thus identifying Christianity with the ecclesiastical law of England."

The members of the bar and laymen as well will be interested in a case which Jefferson quotes, decided in October, 1740, en-

titled *Knight v. Triplet*, wherein the defendant made a purchase of some lands "of part whereof the plaintiff had a lease for years, which was in the court. The defendant had notice of this lease for its purchase; yet he brought an ejectment and had judgment at law, and this bill was brought to be relieved against that judgment and to establish the lease against the defendant; reported he had notice of it and so he was not deceived, but with respect to him it was the same as if it had been recorded. To this bill the defendant demurred; and to support the demurrer it was argued that, by the act of the assembly, 8 George 2. c. 6, this lease not being recorded was void as to the purchaser. The words of the act are to this purpose, 'All deeds etc. whether for passing freehold or lease for years not recorded, shall be void as of creditors and subsequent purchasers.' The court sustained the demurrer because 'It is a rule that equity never decrees against an act of Parliament which indeed would be transferring the legislative power.' 'The act has made all deeds not recorded void, and there is no exception where the purchaser has notice; and as the act makes no exception neither can the court of equity.' "

The case was skillfully argued.

Last Friday, on our way to Fairfield Township, we counted along the road thirty teams engaged in the, at present, popular movement of turning the sod of Grundy County toward the sun. The fact is the whole county is just swarming with breaking teams, and we venture the prediction, that 50,000 acres of cereals will be added to our next year's report.—*The Grundy County Atlas*, quoted in the *Daily State Register*, Des Moines, Iowa, June 4, 1868. (In the Newspaper Division of the Historical, Memorial and Art Department of Iowa.)

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