

ADDENDA ET CORRIGENDA

- P. 51, n. 2 Add: Professor Winfield (L.Q.R. xlii 37-44) would put more emphasis on the exceptional cases. I think that this is wrong because the Anglo-Saxon Law, having always in view the need to suppress the blood feud, looks at the matter from the point of view of the feelings of the injured man, and pays much less attention to the circumstances in which the wrong was inflicted or to the intention of the wrong doer. It is quite true that at the end of the Saxon period some attention is paid to the wrong doer's state of mind, owing perhaps to the influence of the church (below 53-35).
- P. 51, n. 8 Add: Professor Winfield's theory that the idea of negligence can be discerned in public law because a man was punished for the neglect of his public duties (L.Q.R. xlii 42-43) is hardly tenable; neglect of such duties was regarded, to use the terms of later law, as a criminal mis-feasance.
- P. 54 *Delete* the last sentence of §2 and substitute the following: But these influences were slow to take effect in English law. They might have taken effect sooner if English law had been developed by men like Bracton who were learned in the civil and canon law.¹ But the fact that English law was developed in the fourteenth and later centuries by men who knew little of any other system of law but their own,² was the reason why these archaic ideas influenced the law of criminal liability for a considerable period,³ and for an even longer period the law of civil liability,⁴ and why even in modern law traces and survivals of them are still dimly discernable.⁵
- P. 67, l. 18 After the word "interpretation" substitute the following: of Lambard and Coke and Spelman in the sixteenth and seventeenth centuries.⁶
- P. 68, n. 2 Add: This view of the nature of folkland and its relation to bookland has been challenged by Mr. G. J. Turner, Essays in Honour of James Tait (1933) 357-386. He holds in effect that folkland is "the land of the State or the Crown land" (p. 381), and that it corresponds to the post-conquest land held in ancient demesne, vol. iii 263-269; and that bookland is land capable of transfer by book or charter with livery of seisin, and corresponds to the post-conquest land held by free tenure. This theory really rests upon a use of the process of reading history backwards which is not sufficiently careful to avoid the danger of reading in ideas of the later period into the earlier period, and upon a process of minimizing

¹ Below 258-259

² Vol. iii 372-375

³ Vol. viii 458-472

⁴ Plucknett, Bookland and Folkland, Econ. Hist. Rev. vi 69.

⁵ Below 318-319, 326

⁶ Vol. iii 375-382; vol. viii 447-458

ADDENDA ET CORRIGENDA xxxvii

the statutes they naturally claimed to be able to put authoritative interpretations upon them, and there was no need to distinguish nicely between adjudication and legislation :¹ and even when the judges were no longer members of the King's Council they still conferred with the Council, and could therefore still claim some knowledge of its intentions. But when in the course of the fourteenth century the courts and the Legislature became separate, so that the judges no longer possessed a first-hand knowledge of its intentions, they did not cease to interpret the statutes as well as the common law.² Two results followed. In the first place, a series of rules as to the manner in which statutes ought to be interpreted gradually emerged. In the second place, the judges consolidated their position as the administrators of a supreme law which determined the relations of all persons, whether rulers or subjects, in the state.³

- P. 316, l. 2. After the words "eo nomine" add: But it is clear from the Curia Regis rolls of John's reign that the word was coming into use shortly after he wrote.⁴
- P. 318, n. 5. Add a reference to Vinogradoff, *Collected Papers* i 245-252; Dunham, *Radulphi de Hengham Summae* xlv-lx.
- P. 321, n. 16 Add: Mr. David Ogg has published a good edition of Selden's *Dissertatio ad Fletam*.
- P. 323, n. 5. Add: The best edition of Hengham's two *Summae* is by W. H. Dunham.
- P. 326, n. 2. Add: See also *L.Q.R.* xl 318-320.
- P. 337, n. 1. Add: See *E.H.R.* xxxix 85 for another suggestion as to their origin and development.
- P. 340, n. 5. Add: For various classes of bills in the Exchequer see *Select Cases in the Exchequer of Pleas (S.S.) cxxviii-cxxxiii*.
- P. 344, l. 2 After the word "sure" add: "Pleaders," says Professor Plucknett, "seem to have found increasing difficulties in persuading judges to grant relief out of the usual course of law."⁵
- P. 363, l. 6. After the word "appeal" add: It was said in 1774 that "there never was an instance wherein the appeal was instituted, that it was not for the sake of obtaining a sum of money."⁶ This was historically true, for Professor Woodbine has shown that this was an old characteristic of the appeal, which dated from the days before the common law knew of any form of action in which damages could be recovered.⁷

¹ Plucknett, *Statutes and their Interpretation*, 21-23; Professor Plucknett tells us that the idea that statutes should be interpreted by their makers was derived from the canon, through the civil law; for instances as late as Edward III's reign of judges assisting in the work of drafting statutes see the early *Statutes L.Q.R.* i 545, n. 19. ² *Ibid.* i 50-52, 165-167.

³ Above 253-254; below 435-436.

⁴ It is pointed out in a review of vol. I of the *Curia Regis Rolls*, *L.Q.R.* xl 249 that at p. 309 in 1199 we get the first use of the word "attornatus" as a substantive.

⁵ *Statutes and their Interpretation* 126.

⁶ *Purit. Hist.* xvii 1293.

⁷ *Yale Law Journal* xxxiii 802-806.

xxxviii ADDENDA ET CORRIGENDA

- P. 365, l. 6. After the word "appeal" add: In fact Professor Woodbine has shown that the most characteristic feature of the action of trespass—the fact that damages could be obtained—is derived, through the assize of novel disseisin, from Roman law.¹ This idea that an action could be brought for damages soon spread to other actions, such as the action of replevin,² the action *quare intrusit*,³ and the action *quare imprisonavit*,⁴ and "finally one form emerged supreme as the action of trespass."⁵ Professor Woodbine therefore regards the action of trespass as primarily a civil action "because it developed out of a civil action."⁶ But I cannot but think that the fact that it was superseding the appeal, and the fact that it was used to remedy serious breaches of the peace, tended to emphasize the fact that it could be used to help the administration of the criminal law, as well as to develop the nascent law of tort.
- P. 368, n. 7. For Edgcombe read Edgcomb.
- P. 370, n. 10. Add: Professor Woodbine has shown, H.L.R. xlili, 1083-1110, that rolls kept by sheriffs and coroners are not rolls kept by the county itself, and that recent discoveries of these rolls in no way contradicts the received view that the county court was not a court of record.
- P. 386, n. 6. Add: A. H. Thomas, Calendar of Mayor's Court Rolls, (1298-1307), xxx, xxxv.
- P. 387, n. 4. Add: A. H. Thomas, op. cit. 14.
- P. 387, n. 6. Add: For the litigation against masters who did not maintain and instruct their apprentices, see A. H. Thomas, op. cit. 166, 190, 222.
- P. 387, n. 7. Add: For an action against a defendant for preventing workmen from entering the plaintiff's service by slanderous statements, see A. H. Thomas, op. cit. 40-41; the ordinances of many trade guilds tried to prevent many forms of unfair competition, see F. I. Schechter, Historical Foundation of Trade Mark Law 41-3.
- P. 387, n. 14. Add: There are numerous cases on the Mayor's Court Rolls, see pp. 87, 113, 119, 162, 178, 221.
- P. 387, l. 8. After the word "survives," add: There are several cases on from the Mayor's Court Rolls which illustrate the use made of bills bottom. of exchange to transport money.⁷
- P. 389, l. 2. After the word "trespass," add: A similar variety of cases occur in the London Mayor's Court Rolls—actions on contracts of sale⁸ and loan,⁹ actions of detinue,¹⁰ actions for defamation,¹¹ for maintenance,¹² and for champerty.¹³ Proceedings are taken against those who annoy their neighbours contrary to the city ordinances, e.g. against Roger de Rous who "makes a great roistering with unknown minstrels, tabor players, and trumpeters to the grave damage

¹ Yale Law Journal xxxiii 806-808, 812-816.

² Ibid. 809.

³ Ibid. 369-370.

⁴ Ibid. 360.

⁵ See the cases cited, vol. viii 130-131.

⁶ A. H. Thomas, Mayor's Court Rolls 9-10, 68, 154, 262-263. ⁷ Ibid. 138.

⁸ Ibid. 72-73, 90-91.

⁹ Ibid. 187-188.

¹⁰ Ibid. xxxiv 349-354.

¹¹ Ibid. 344.

¹² Ibid. 23.

¹³ Ibid. 217-218.