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978-1-107-64294-2 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume I

Edited by H. A. L. Fisher

Frontmatter

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THE COLLECTED PAPERS
OF
FREDERIC WILLIAM MAITLAND

IN THREE VOLUMES
VOLUME I

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INTRODUCTION

WITH one important exception the three volumes here published practically represent the whole mass of Maitland's scattered writing. A few very short notices have been omitted, but wherever an article, however brief, contains a new grain of historical knowledge or reveals Maitland's original thought upon some problem of law or history, it has been included in this collection. We begin with a philosophical dissertation submitted by a young Cambridge graduate to the examiners for a Trinity Fellowship and end with the tribute to the memory of a pupil composed only a few days before his last illness by a great master of history, by one of the greatest scholars in the annals of English scholarship. These papers cover a wide surface. Some are philosophical, others biographical, but for the most part they belong to Maitland's special sphere of legal and social history. Some pieces are confessedly popular, such as the brilliant outline of English legal history which concludes the second volume; others, and of such is the bulk of the collection, are concerned with problems the simplest terms of which are not apprehended without special study. It would have

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been tempting to separate the more technical essays from the work of a simpler and larger pattern with which they are here intermingled; but there were valid reasons against adopting such a course, and perhaps the convenience of the young student or general reader will be adequately consulted if the papers of a more popular character are marked by an asterisk in the table of contents. In any case it is well to remember that Maitland was both a great discoverer in history and an incomparable populariser of his own and of other men's knowledge. The size of the frame seemed to make little difference to him. Whether he worked in miniature or on a large canvas, his strokes were bold, certain and effective. 'The gladsome light of Jurisprudence' shone upon his toil.

We have noted an important exception. Maitland contributed eight prefaces to as many volumes of the Selden Society as well as an introduction to the Memoranda de Parlamento or Records of a Parliament holden at Westminster in 1305, a volume published under the direction of the Master of the Rolls. These treatises, which are sufficient in themselves to furnish a substantial volume, are not included in this collection. They are easily accessible to students and could not without injury be wrenched from the texts which they are intended to introduce. Nor is there any fear that these masterly contributions to historical science will be neglected by those who are concerned with the study of our legal antiquities. The student who would know something of medieval law-reporting, or of the

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Anglo-French language, or of the early history of the King's Court, or of the growth, extent and decline of manorial jurisdiction must have recourse to the learned and subtle discourses of the first literary Director of the Selden Society. And constitutional history in a wider sense is deep in his debt. If we would really understand our medieval parliamentary life, we must go first to the collection of records which Maitland edited for the Rolls series and out of which, placing ourselves at the threshold of the fourteenth century, we may apprehend the multitudinous clamours of medieval men, the form and shape of a medieval parliament and the course and conduct of its public operations.

Save where a slight displacement might secure a convenient continuity of subject, the papers in this collection are arranged in the chronological order of their appearance. The first volume concludes with the Inaugural Lecture delivered upon Maitland's appointment to the Downing Chair of the Laws of England in October, 1888, the second contains the scattered work of the Downing Professor previous to the appearance of the *History of English Law* in 1895, the third collects the gleanings of the last eleven years.

As we leave the great *History* behind us we observe the flowering of fresh interests out of the massive fabric of the older knowledge. The third volume exhibits the full span of Maitland's versatile energy. Now he is handling the delicacies of the Elizabethan Church-

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settlement, a subject far removed from his ordinary studies into which he was drawn by the seductions of Lord Acton; now he is deep in the metaphysics of the Corporation; now he appraises the latest achievements of Germany either in the codification of her own modern law or in the editing of our neglected Anglo-Saxon dooms. There is no annotation either here or elsewhere on the part of the Editor, for though much has been written on social and legal history during the last thirty years, it does not in any appreciable degree affect the permanent value of Maitland's work. He wrote little, perhaps nothing, in early manhood which he would have cancelled in later years. He was always learned, always original, and in ninety-nine cases out of a hundred he was transparently right.

With two exceptions the pieces here given have been previously published. The thanks of the Editor are due to the courtesy of Messrs Methuen who have kindly permitted the re-publication of the Deacon and the Jewess, a paper which forms part of *Roman Canon Law in the Church of England*, and to Messrs Cassell for their generous permission to make use of Maitland's contributions to *Social England*. He would also desire to express his gratitude to Messrs Longman, the publishers and to Mr R. L. Poole the editor of the *English Historical Review*; to Messrs Stevens the publishers and to Sir Frederick Pollock the editor of the *Law Quarterly Review*, to Messrs Chapman and Hall the publishers and to Mr W. L. Courtney, the

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editor of the *Fortnightly Review*, to Mr C. R. Buxton, the editor of the *Independent Review*, to Mr J. Sidney Stone, the editor of the *Harvard Law Review*, to Professor Munroe Smith, the editor of the *Political Science Quarterly*, to Mr John Murray the publisher of the *Quarterly Review*, to the editors of the *Athenaeum*, of the *Law Magazine and Review*, of the *Westminster Review*, to the Council of the British Archaeological Association, to the Executive Committee of the Society of Comparative Legislation, and to Messrs Sweet and Maxwell, the publishers of the *Encyclopedia of the Laws of England* for their kind permission to republish articles which appeared in the periodicals or books with which they are respectively connected.

Finally, kind help has been received from Sir Frederick Pollock, and much assistance from the useful bibliography of Maitland's works appended to Mr A. L. Smith's two Oxford lectures. For the crimes of the Index the editor is solely responsible.

H. F.

February 1911.

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