THE LAW AND LAWYERS OF SIR
WALTER SCOTT.

"If it isna weel bobbit
We'll bob it again."

Walter Scott occupies a unique position in literature. His fame rests on his poems and novels, but he was also an historian, an antiquarian, a lawyer, a judge and a clerk of the highest Court in Scotland. No less a man than Emerson said that Scott, in the number and variety of his characters, approached Shakespeare, and Scott's flatterers were fond of making a closer comparison, but Scott, himself, with the natural modesty of a Scotchman, and the true self appreciation of a genius, said he was not fit to tie Shakespeare's brogues. He surely could not have written Hamlet, nor indeed could he have written Rabbi ben Ezra, nor yet, In Memoriam; but the Lady of the Lake, Marmion and the Lay of the Last Minstrel, with their smooth verse and charming ballads, have never been equalled. His novels are wonderful. No writer has produced so much that is so uniformly good. He hits the gold every time. Stevenson, no mean critic, called him, "out and away the king of the Romantics" and "the best of novelists," but maintains that Scott was wrong in his history, and picks the Lady of the Lake and Guy Mannering to tatters, for their "bad English, bad style, and abominably bad narrative." Macaulay, on the other hand, was amazed by Scott's skilful use of history in his novels. "Scott has used," says Macaulay, "those fragments of truth which historians have scornfully thrown behind them, in a manner which may well excite their envy. He has constructed out of their gleanings works which, considered as histories, are scarcely less valuable than theirs."—yet

Macaulay adds with his usual snarl, "there are in Waverley and Marmion Scotticisms at which a London apprentice would laugh." This London apprentice doubtless is elder brother to Macaulay's celebrated school boy; but Walter Scott, when Lockhart kindly pointed out some little slips, merely said, "I never learned grammar." De Quincey alleged that Scott utterly failed in depicting the English peasantry, nor would this be surprising for Scott never lived among them, and so, according to other critics he has not been absolutely correct in reproducing the colloquial Scotch of the Highlands.

We can afford to pass over his slips in grammar, his errors in style, his occasional mistakes in history for the sake of the vivid humorous narrative and stirring verse. But vivid and stirring as they are, there is not a visible trace in the whole series that their author was conscious (though Stevenson says all Scots are thus conscious) of the fragility and unreality of that scene in which we all play our uncomprehended parts. He looked at this strange world so infinitely pathetic, so irresistibly comic as substantial and necessary. No doubt of its reality ever entered his mind.

As Taine said, Scott paused on the threshold of the soul. Carlyle said there was nothing spiritual in him; the Mystery of Existence (with capitals) was not great to him. He quietly acquiesced and made himself at home in a world of conventionalities. But, as Carlyle graciously concludes, "when he departed he took a Man's life along with him"—which upon the whole is not very remarkable.

As Scott took the world as he found it, so we must take Scott as we find him, and acknowledge what Emerson calls, "the exceptional debt which all English speaking men have gladly owed to his character and genius." He is indeed "the delight of generous boys." He who wrote that fateful tragedy, The Bride of Lammermoor,—"worthy of Aeschylus;" and the Heart of Mid-Lothian, also wrote those rattling romances, Guy Mannering, Quentin Durward, Ivanhoe and The Talisman, and who-
soever reads them, old as he may be, may become for the time a boy again.

Scott was a worshipper of the God-of-things-as-they-are, a rank Tory, a valiant Jacobite from a boy, perhaps something of a toady withal; but he was upright, modest and fair-minded, he was gentle and generous and truthful, (except in one egregious instance), good humor streamed from every pore, he was thoroughly in sympathy with everybody, including himself, he was sane, cool and courageous, he was born under a dancing star; and when that fateful day arrived of threatened insolvency, he wrote in his journal *Venit illa suprema dies* and without a whimper sat down at his desk. He wrote a volume of *Woodstock* (there were three of them) in fifteen days and said he could have done it in ten, were it not for his Court of Sessions work. The motto on his sun dial was “Work for the night is coming,” and in his books he often says “To-morrow is a new day.”

“The sun set, but set not his hope;  
Stars rose, his faith was earlier up;  
He spoke, and words more soft than rain,  
Brought the Age of Gold again;  
His action won such reverence sweet,  
As hid all measure of the feat.”

But I have no desire to don the waxen wings of criticism or biography. The subject of this paper is the Law and Lawyers of Scott, and our purpose is to portray Walter Scott as a lawyer and to trace the influence of his legal training and study upon his writings. No one reading his novels and poems without this thought in mind can realize how much of their interest, learning and humor is derived from this source. It is safe to say that had not Scott been a lawyer his writings would have lost much of their characteristic flavor.

Walter Scott the son of Walter, was born August 15, 1771. He died September 21, 1832. In his fifteenth year he became an industrious apprentice in the office of his father, a Writer to the Signet, and in the little back room, underwent the toilsome, but beneficial, drudgery
of an attorney's clerk, learning, what he never forgot, the value of work,—

"That grips together the rebellious days."

He says that he disliked the monotony of the office, detested its confinement, and reviled the "dry and barren wilderness of conveyances," but he was ambitious and said of himself that when actually at the oar, no man could pull harder than he. He made his extra pocket money for books and the theatre by copying papers, and once wrote 120 folios without stopping. He then decided to adopt the advocate's profession, and from 1789 to 1792, pursued the regular course of study, including Heineccius' Analysis of the Pandects and Erskine's Institutes. The Scots law formed a complete and interesting system, dating as a whole from the institution of the Court of Session in 1532, by James V, having its composite origin in the Civil, Canon and Feudal laws, English, French and Scottish customary law, with statutory modifications, a tangled skein of many colored threads, woven into a picturesque and serviceable tartan plaid by men inferior to none in legal ability and learning, for as Scott himself said, although Heaven did not form the Caledonian for the gay world a Scotchman is a born lawyer. The Court of Session by the way was originally modelled after the Parliament of Paris and the Scottish lawyers frequently studied in Paris and Leyden.

Scott, himself, describes Scottish law as a fabric formed originally under the strictest influence of feudal principles, but renovated and altered by the change of times, habits and manners, until it resembles some ancient castle, partly entire, partly ruinous, partly dilapidated, patched and altered during the succession of ages, by a thousand additions and circumstances—a comparison reminding one of Blackstone's similar description of the common law in his third book.

Scott with his friend and fellow student, William Clerk, was called to the bar on July 11, 1792, in his 21st
year. With characteristic humor and at the same time exhibiting his fondness for the history of the law, he wrote his thesis (which apparently has never been printed) on the title, De Cadaveribus Punitorum, (Concerning the disposal of the dead bodies of Criminals.) Dig. xlviii, c. 24, and dedicated the same to Lord Braxfield, the "hanging judge," or, as Scott used to allude to him, "Old Braxie." He was a well-known figure on the Scottish Bench, curious stories are told of him, and he was the original of Stevenson's Weir of Hermiston.

In Redgauntlet Scott introduces himself as Alan Fairford, his father as Alexander or "Saunders" Fairford and his friend William Clerk, as Darsie Latimer, the hero of the story. In the novel old Fairford writes to a friend, as Scott senior may well have done,—"Alan has passed his private Scots law examination with good approbation—a great relief to my mind. His public trials, which are nothing in comparison, save a mere form, are to take place by order of the Honorable Dean of Faculty on Wednesday first; and on Friday he puts on the gown and gives a bit chack of dinner to his friends and acquaintances, as is the custom." In the novel Alan's thesis does not concern the dead bodies of criminals, but is upon the title "De periculo et commodo rei venditae," and according to the story, Alan studied law to please old Fairford who regarded as the proudest of all distinctions the rank and fame of a well-employed lawyer, and would have laughed with scorn at the barren laurels of literature. Scott's description of Alan was true of himself; "He had a warmth of heart which the study of the law and of the world could not chill, and talents which they had rendered unusually acute."

In Scott's first criminal case, he defended a poacher, and whispered to his client, as he heard the verdict,—not guilty—"You're a lucky scoundrel." "I am just of your mind," was the reply, "and I'll send you a hare in the morn."

But when retained in a more important case, he was not so fortunate. The General Assembly of the Kirk
of Scotland sat in judgment in the case of a clergyman whose name was M'Naught, though it should have been M'Naughty, for he was accused of habitual drunkenness, celebrating irregular marriages, singing of profane songs and dancing with a "sweetie wife," that is a lassie who sold gingerbread, or "sweeties" at a country frolic.

On account of the personnel of the Court, Scott could not have prudently made the obvious defence that the reverend gentleman had at the most been guilty of mere clerical errors, so he was unfortunately obliged to defend the case upon its slender merits. As he quoted more at large from his client's convivial ditties than was agreeable to the General Assembly, one of that venerable court called him sternly to order, while his chums, who filled the gallery, encouraged him with shouts of "encore."

Disconcerted by these inconsistent suggestions, Scott made somewhat of a fizzle, at any rate, Mr. M'Naughty was convicted, and his youthful advocate walked out of court feeling as we have all sometimes felt, that the whole azure canopy had suddenly shrivelled into a blackened scroll. He was greeted by his cronies with shouts of laughter, and dragged off to a neighboring tavern where they spent the evening in a High Jinks, with which the Scottish lawyers were wont to drive away dull care.

In *Guy Mannering* Scott describes a High Jinks in which Paulus Pleydell, Esq. was found taking a prominent part when Mannering and Dandie Dinmont sought him out for advice. In these merry makings dice were thrown by the company and those upon whom the lot fell, were obliged to assume certain fictitious characters or repeat verses. Forfeits were easily incurred and paid by additional rounds of drinks. Pleydell was grotesquely attired as King of the Revels. "It's him," said Dandie, astounded at the sight, "Deil o' the like o' that ever I saw." Dandie wanted to retain Pleydell in a dispute with a neighbor about a lot of land worth scarcely five shillings a year. "Confound you," said Pleydell, "why don't you take good cudgels and settle
it?" "Od, sir," answered the farmer, "we tried that three times already; but I dinna ken, we're baith gey good at single stick and it couldna weel be judged."

"Then take broadswords and be d---d to you, as your fathers did before you," said the counsel learned in the law. Dandie was at first about to take the advice in earnest, and goes away in sorrow, but afterwards Pleydell takes his case. "I don't see after all," said he, "why you should not have your lawsuits too, and your feuds in the Court of Session, as well as your forefathers had their manslaughters and fire raisings."

Scott himself was no anchorite; he rather prided himself on his skill in making punch, and as he said in his Journal, he thought "an occasional jolly bout improved society," and recommended a little magnesia for the "morning after."

Later on Scott defended a young man charged with homicide and secured his acquittal. Part of his brief is given by Lockhart in Chapter vii. It is a careful and conscientious though rather labored piece of work.

It must be confessed that Scott did not score a brilliant success at the Bar, although in a letter to his fiancée in 1797, he claimed that none of his contemporaries had very far outstripped him, and on December 16, 1799, he was glad to accept the office of Sheriff or Sheriff Depute of Selkirkshire, a position which paid £250 or £300 per annum, and did not conflict with his private practice, but rather advanced it. The duties of a Scotch sheriff are, naturally, very different from those of the English official of the same name, as they resemble those of a county court Judge. Scott's jurisdiction included generally all civil actions, personal and possessory, and certain offences against the criminal law; and in addition, he returned juries and executed writs. Scott's Letters and Journal contain frequent references to his duties which he discharged in a humane and sensible manner.

He often procured a settlement of insignificant cases; as he said "there is something sickening in seeing poor devils drawn into great expenses about trifles, by inter-
ested attorneys." But he also admitted, doubtless recognizing the legal mind and litigious nature of the Scot, that too cheap access to litigation has its evils on the other hand.

In 1830, a convict attempted to escape from the Court room. Sir Walter, with sixty years on his head, leaped, game leg and all, from the Bench and stopped him with his own hand. No English Sheriff could have done more.

Even before his appointment as Sheriff, Scott was incited by the writings of Matthew Gregory Lewis, the celebrated "Monk," to try his hand at ballad writing in imitation of the German of Bürger, and soon found that the "fair fields of old romance" were ready for his cultivation. His work in ballad writing, and the Border Minstrelsy, culminated in 1805, when the Lay of the Last Minstrel marked a new epoch in literature. The general admiration of this lovely poem, led Pitt to appoint Scott one of the Clerks of Session, apparently discovering some connection between poetry and a snug berth, and, although Pitt died just at that time, the appointment was confirmed by Fox as is gratefully commemorated by Scott in the Introduction to Marmion.

Just one hundred years ago, therefore, to be exact on March 8, 1806, Scott's appointment was gazetted and he took leave of one profession to adopt another. His salaries as Sheriff and Clerk of Session, aggregated about £1500; his duties in the first office were not burdensome, while as Clerk he was only occupied during the sessions of the Court. The Clerk's duties were not so light as he modestly stated them to be, but called for diligence, accuracy and regularity, as frequent notes in his Journal attest, taking up probably about one-half of his time. For twenty-five years he held this office, until retired by disability, November 18, 1830, when his salary was reduced to £840.

His place in Court is still pointed out, where he wrote many a page of Waverley novels, to the accompaniment of long-winded argument, for Scott was never disturbed by his surroundings. He confesses he sometimes took a
nap. "The Lords," said he, "may keep awake and mind their own affairs;" but when Court adjourned and his duties were over, he was his own master and would pack up his papers in his green bag and hurry off to meet his friends at a "Gaudeamus" or to buy a fine print of Charles Edward. Yet sometimes this official drudgery offended him. "Old Hutton," he relates, "parcus et infrequens Deorum cultor, used to say it was worth while going to a Presbyterian kirk for the pleasure of coming out, and truly I am of the same opinion as to the Court of Session."

In 1808, Scott was made Secretary of the Scottish Judicature Commission, which was appointed at the instance of Lord Eldon, who had no objection to innovations so long as they did not affect his own court which needed them the most. Scott regarded this as a post of considerable difficulty, as well as distinction. The commission reported in 1810, a bill which made great changes in the law and led Scott to write an essay on Judicial Reform, an able paper, portions of which are given by Lockhart.

Scott was opposed to the introduction into Scotland of trial by jury in civil cases, which occurred in 1815, and expressed his disgust with the inferior character of the jurors under the new system. He was also much opposed to the House of Lords sitting in London as a Supreme Court for Scotland, and predicted from it the downfall of the Scottish Bench, Bar and Law, and in Redgauntlet we find one of the characters, Hugh Redgauntlet, denouncing the Scottish advocates as mongrel things that must creep to learn the ultimate decision of their causes, to the bar of a foreign court. In the Heart of Mid-Lothian he expresses himself in favor of public executions on account of their effect on the spectator.

But while thus generally conservative, he was in advance of his time in advocating the abolition of capital punishment for all save a few crimes, and its infliction with certainty in all proper cases. He disliked the Scotch verdict "not proven," that medium quid, saying: that one
who is not proven guilty is innocent in the eye of the law. He objected to strict rules of court, e.g. those imposing judgments by default, which are seldom enforced because the penalty is disproportioned to the offence, so that the rule ends by being a scarecrow. He thought that attorneys ought to be fined for errors or omissions in practice.

Scott loved and honored his own profession and respected his brother lawyers. He used to say after he had retired from practice, that intelligent barristers were the best companions in the world and their conversation amused him more than that of other professional men, because there was more of life in it, with which, in all its phases, they became acquainted.

It is not, therefore, surprising to find Scott's novels filled with his impressions of the law and lawyers. He could afford (and so can we) an occasional jest at the expense of our profession or shall we say *craft*, but there is a vast difference between Dickens' treatment of law and lawyers and Sir Walter's. Dickens saw nothing good in either, and caricatured both. Scott on the other hand was an artist; he knew a thousand times as much about the subject as Dickens, and in his fair-minded manner, endeavored to give a just picture of it. But, naturally, the scamps of the law play a larger part in literature than their betters, for a good, well-behaved lawyer is in sooth a very prosaic individual. We—let us say we for the sake of euphony—do the day's work for a mere living wage, keep our clients out of the clutches of the Courts as much as we can; we labor on our briefs which nobody reads, except of course, the Judges for whose mental improvement they are intended, and when we die, our libraries, if we have any, are generally sold at auction. But a bad lawyer is such a picturesque villain that he is the stock character of every novelist and playwright—Judas Iscariot, if he were not a lawyer, is said to have carried a bag, the universal badge of our profession, so our enemies may regard him as an honorary member of the bar.
Scott puts in the mouth of *The Antiquary*, an estimate of the honest lawyer: "In a profession," says he, "where unbounded trust is necessarily imposed, there is nothing surprising that fools should neglect it in their idleness and tricksters abuse it in their knavery but it is the more to the honour of those and I will vouch for many, who unite integrity with skill and attention, and walk honourably upright where there are so many pitfalls and stumbling blocks for those of a different character. To such men, their fellow citizens may safely entrust the care of protecting their patrimonial rights and their country the more sacred charge of her laws and privileges." *But,* "They are best aff, however, that hae least to do with them," said Edie Ochiltree, interrupting the panegyric.

In Paulus Pleydell, "a good scholar, an excellent lawyer and a worthy man," Scott undoubtedly reproduced some lawyer of his acquaintance, and Ticknor said that in conversing with Scott, he observed the similarity of the author's opinions with those expressed by Pleydell in *Guy Mannering*. We have already noticed how Mannering discovered Pleydell on a Saturday night at the tavern where he was celebrating a High Jinks. On the Sunday, Pleydell was a different man, piloted Mannering to church, and then took him home to dinner, where he showed Mannering his library filled with books, "the best editions of the best authors"—"These," said Pleydell, "are my tools of trade. A lawyer without history or literature, is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." * * * "It is the pest of our profession," continued Pleydell, "that we seldom see the best side of human nature. People come to us with every selfish feeling newly pointed and grinded. In civilized society, law is the chimney through which all the smoke discharges itself, that used to circulate through the whole house and put every one's eyes out." He sends for his clerk, Driver, who of course was at a High Jinks. "That's a useful fellow," said the
counsellor, “and he’s such a steady fellow—some of them are always changing their alehouses so that they have twenty cudies sweating after them, but this is a complete fixture in Luckie Wood’s, there he’s to be found at all times when he is off duty: Sheer ale supports him, it is meat, drink and clothing, bed, board and washing.” Then Scott gives an amusing account, too long to quote, of how Pleydell and Driver got up an appeal case on a Saturday night, during a High Jinks. “Law’s like laudanum,” said Pleydell, in another place, “it’s much more easy to use it as a quack does, than to learn to apply it like a physician.”

Even Geddes, the Quaker of Redgauntlet admits that he has known many righteous men who have followed the profession in honesty and uprightness of walk—“The greater their merit who walk erect in a path which so many find slippery.”

Scott is strongest when he writes of Scotland and Scotchmen. He often admits that he knows little of English law, and when he speaks of it, he is apt to slip. But in Scots law and the feudal system, on which it was founded, he was at home. There was probably no country in which the feudal system was more deeply rooted and there is probably none in which so much of its spirit remains to this day. In no country was genealogy more generally studied; for one reason the canny Scot with his bonny blue een wide open for the main chance always considered the possibility of his becoming the ultimate heir of entailed estates.

Scott was proud of his ancestry. Some of his ancestors were Quakers, so he was proud of them, some were notorious Highland thieves, so he was proud of them; he loved a villain for a hero, if only he were Scotch; he loved the free booter’s border raids, the stark moss-trooper’s wild foray, he loved the stories of the dark days when Scotland’s forests were filled with wild beasts pursued by wilder men, and men in turn were chased with savage hounds—men of whom he sang:
"Wild through their red or sable hair,
Looked out their eyes with savage glare
On Marmion as he pass'd,
Their legs above the knee were bare,
Their frame was sinewy, short and spare
And hardened to the blast."

These savages ate their venison raw, squeezing out the dripping blood between pieces of wood.

In the time of Charles I, a fellow known as Christie's Will, kidnapped a Judge whose opinion was likely to be undesirable, and kept him close until the case was finished; which was considered an excellent joke. A sheriff who had become somewhat unpopular, was plunged into a boiling cauldron and furnished broth for his murderers. Among the most ferocious of these savages were the blood-thirsty Macleods, a tribe of Scandinavian extraction, whose feud with the MacDonalds is told by Scott in the *Lord of the Isles*. These terrible wretches finally discovered the MacDonalds in a cavern, built a fire at the entrance and suffocated the whole tribe. In 1814, Scott visited the cave and found recent relics of the massacre, bringing away a MacDonald skull as a memento. Once James VI tried to civilize the Macleods by introducing colonists among them, but the Macleods rose against the intruders and exterminated them.

Scott was a gentle spirit, but his heart warmed within him, when he read and told of all these things. After all, these fellows were Scotchmen and he was a Scot and it was all as glorious and grand as the sounding verses:

"Regibus et legibus Scotici constantes
Vos clypeis et gladiis pro patris pugnantes,
Vestra est victoria, vestri est et gloria
In cantu et historia, perpes est memoria."

We do not ordinarily expect to find much of legal interest in poetry; not only however do Scott's poems contain many legal allusions, but Scott has added to them fre-
quent annotations. He appends to the *Ballad of Johnie Armstrong* the bond of man rent, showing the feudal service by which the Armstrong held his land of Lord Maxwell, Warden of the West Marches. *Lord Maxwell's Good-night* suggests the bond of man rent between Kirkpatrick and Lord Maxwell. Scott notes in connection with the Lochmaben Harper, the peculiar allodial rights of Bruce's tenants; the bond of alliance or feud stanching between the clans of Scot and Ker, and he also refers to numerous unusual forms of feudal tenure.

The law of Clan MacDuff granted exemption from ordinary jurisdiction in cases of homicide, without premeditation, to any member of the clan who took refuge at MacDuff's Cross. In *Sir Tristrem*, Queen Ysonde is condemned to essay the ordeal of hot iron, and Scott appends a long note on the subject. In the *Lay of the Last Minstrel* he refers to the "neckverse" of the 51st Psalm, which was read by those claiming benefit of clergy, "to save their necks. Earl Morton claims his vassals best steed as heriot, thus provoking a conflict so that:

"The valley of Eske from the mouth to the source
Was lost and won for that bonny white horse."

The oath ordeal is prescribed to Deloraine for march treason; we have the mutual defiance of the English and Scottish heralds; and the trial by single combat between Musgrave and Deloraine, so characteristic of the feudal system and ancient law, of which Scott gives a long description.

In *Marmion* Scott refers again to the trial by combat and to the feudal tenure under which land was held of the Abbot of Whitby:

"Then Whitby's nuns exulting told
How to their house three barons bold,
Must menial service do."
Most interesting is the fate of Constance de Beverley, “immured” as punishment for her sin:

"Yet well the luckless wretch might shriek,
Well might her paleness terror speak!
For there were seen in that dark wall,
Two niches, narrow, deep and tall;—
Who enters at such grisly door,
Shall ne'er I ween find exit more.
And now that blind old Abbot rose,
To speak the Chapter's doom,
On those the wall was to enclose
Alive, within the tomb;—"

Truly a gruesome fate recalling Poe’s tale of the Cask of Amontillado and Balzac’s La Grande Breteche.

But now comes Professor Maitland, who shows us in his essay on The Deacon and the Jewess, that we are all wrong about the word “immuratus;” that it does not mean “walled in,” but merely imprisoned for life and fed on bread and water, a very unromantic punishment, in short that we must not “take our Marmion too seriously.” Such is our respect for this great scholar, whose mere guess is better than a thousand arguments, that we must place this story also upon the shelf where rest our shattered illusions. So fare-thee-well, O shade of Constance de Beverley, and fall upon thy bended knees, if haply shades have knees, before your Champion, who, after four centuries, hath rescued thee from a lingering and horrible death.

In Rokeby, Scott gives us the Statutes of the Bucaniers by which the pirates distributed their booty:

"When falls a mate in battle broil
His comrade heirs his portion’d spoil;
When dies in fight a daring foe,
He claims his wealth who struck the blow."

In this poem Bertram unconsciously declares himself to be the murderer of Mortham, and Scott in a note speaks of the frequency with which conscience stricken men, impelled by the Imp of the Perverse, confess or
allude to their crimes and refers to the case of Eugene Aram, mentioning also another case from his personal experience.

In *Rokeby* Scott introduces the ballad of Wild Darrell of Littlecote Hall, with which is connected the name of Sir John Popham, Chief Justice in Queen Elizabeth's time. The tradition is that Popham acquired Littlecote Hall from the owner as a bribe for his permitting Darrell to escape the penalty of his crime. Campbell in his life of Popham, takes the story from *Rokeby* and Scott's notes.

We will now go through the Waverley novels and extract some of the more interesting of Scott's legal references. To collect all would unduly expand this paper.

Much of the humor of *Waverley* is furnished by the Baron of Bradwardine and Bailie MacWheeble, the latter belonging either to the clan of Wheedle or that of Quibble, both having produced persons eminent in the law. Bradwardine, himself, had studied law, but by never engaging in practice, had to the best of his inability, discharged the debt he owed to his profession. He was fond of interlarding his conversation with legal phrases to show his knowledge of the science, and his favorite theme was the feudal tenure under which he held his barony by charter from David the First "cum liberali potestate habendi curias et justicias, cum fossa et furca, et saka et soka, et thol et theam et ingangthief et outgangthief, sive hand habend sive bakbarend" and as no one knew the meaning of all these words, his self importance was vastly increased. His tenure would be called in England, grand sergeanty and consisted "in servitio exuendi seu detrahendi, caligas regis post battaliam," that is in undoing or pulling off the king's boots after a battle; and although his only child was his daughter Rose, he persisted that his barony, on account of the nature of the feudal service, was a male fief, passing at his death to a distant cousin. After the battle of Preston Pans, in which the Baron fought on the side of Charles Edward, he insisted on performing the ceremony, despite
the fact that Charles Edward was Prince, not King, and did not wear boots but brogues.

Scott describes how after Culloden, Fergus MacIvor is tried and executed for high treason—one of the blessings we are told which England had conferred upon Scotland, whose laws in that respect had been milder, but the attainder of the Baron and Waverley were removed by pardons secured by lawyers Clippurse & Hookem. Colonel Talbot in gratitude to Waverley, purchased the estate from Inchgrabbit the heir male, and conveyed Tully Veolan to its old owner, burdened only with a marriage settlement in favor of Waverley and Rose; the story ends with Duncan MacWheebie singing the Hymeneal anthem of how he circumvented Inchgrabbit and his lawyer, in driving the bargain; and at the last the old man draws up "a wee minute of an ante-nuptial contract intuitu matrimonii, so that it cannot be subject to reduction hereafter as a donation inter virum et uxorem,"

Scott refers in Waverley and again in Redgauntlet to the leading case of Luckie Simpson's cow. It was an old custom in Scotland for the landlord, as his parting guest stood at the door, about to mount, to present him with a farewell drink called the stirrup cup. Now Luckie Jamieson had brewed a peck of malt, and set the liquor at her door to cool. Luckie Simpson's cow came wandering by, seeking what she might devour, was attracted by the foaming beverage, smelt, tasted and yielded to the tempter. The unaccustomed drink mounted to the animal's head, descended to her legs, and affected her understanding in both directions, so that her guilt was apparent to the enraged alewife, who demanded of Luckie Simpson the value of the brew. Litigation ensued, the Bailie heard the case and then enquired of the plaintiff whether the cow had sat down to take her drink or imbibed it standing. It being admitted that the cow had committed the deed whilst on her feet, the Court adjudged the drink to be a stirrup cup for which no payment could be demanded and dismissed the suit.

The plot of Guy Mannering was taken from the case
of Annesley v. the Earl of Anglesey, tried in 1743, 17 State Trials, 1225, and Scott appropriated the names of many of the witnesses to characters in the novel, which contains many legal incidents. As Paulus Pleydell represents the respectable lawyer, Gilbert Glossin is the shyster. He tries to push the sale of old Bertram's property, in order to buy it in, and get possession before the long-missing heir should return, it being understood that the property could not be sold for debt if the heir were living.

The examinations of Dirck Hatteraick by Glossin, sitting as a magistrate, of Vanbeest Brown by Sir Robert Hazlewood, and of Hatteraick and Glossin by Pleydell, Sir Robert Hazlewood and MacMorlan, illustrate the differences between the English and Scottish procedure; the latter more resembling the French system, of private examinations previous to trial, although the "third degree," as practised here, might give suggestions to both. Glossin being committed as accessory to the kidnapping of Harry Bertram, claims it to be a bailable offence and refers to a case where resurrection women, who had promised to secure a child's body for dissection, stole and murdered a child rather than break their word and disappoint their employers.

Those of us who have had the pleasure, after a funeral, of reading the will to the assembled family, will appreciate Mr. Protocol's performance of that solemn, but sometimes amusing business.

"Mr. Protocol having required silence, began to read the settlement aloud in a slow, steady, business-like tone. The group around, in whose eyes hope alternately awakened and faded, and who were straining their apprehensions to get at the drift of the testator's meaning, through the mist of technical language, in which the conveyance had involved it, might have made a study for Hogarth." As the document was of an unexpected nature, with contingent uses to charities, the effect was startling—and produced much mortification which is Scots law for mortmain.
In Scots law it will be noticed a testamentary disposition of lands was effected by means of a trust deed or *mortis causa* settlement, reserving a life estate to the grantor, quite different in form, however similar in effect to wills as we know them. However, a common lawyer must not venture to meddle with a Scotch will lest he be guilty of vicious intromission, and in addition expose himself to unfeeling criticism. To quote the elegant remark of Earl Douglas—"The man sits full still that has a rent in his breeks."

In the last chapter of *Guy Mannering*, a reference is made to the macer's court, composed of tipstaves, as we should call them, who constituted a special court for trying questions of relationship and descent, the judges acting as assessors to their own doorkeepers. When Dinmont visits Bertram in jail, the keeper wants to lock up the jail, refusing to allow Dinmont to stay because he had committed no malefaction. "I'll break your head," was Dandie's reply, "if ye say ony mair about it, and that will be malefaction eneugh to entitle me to ae night's lodging wi' you ony way." The argument was successful, for as the jailor remarked, "A wilful man maun hae his way."

The plot of *The Antiquary* turns on the legality of the marriage of Lord Glenallan and Eveline Neville, but its chief interest to the lawyer will be found in the entertaining conversation of the Antiquary, Jonathan Oldbuck. The Antiquary had read law and made himself master of the learning of the feudal law, but being under no necessity to practice, had followed his natural bent and cultivated his taste for old books and ancient learning. He would ponder over an old black letter copy of the Acts of Parliament for days rather than play golf; he would trace the vestiges of an old Roman camp; and he discovered a curious stone inscribed with initials interpreted in a learned manner by the Antiquary, and in a trivial fashion by Edie Ochiltree, reminding us of the similar story of the stone discovered by the Pickwick Club which, indeed, Dickens may have borrowed from Scott.
The Antiquary is ready to remind Dousterswivel of the Act of 9 George II, c. 5, against cheats and imposters, warns Hector McIntyre not to interfere with the sheriff's officer, on account of the Statute of William the Lion against deforcement, and in the entertaining examination of Edie Ochiltree before Bailie Littlejohn, cites the Act of 1701, regulating bailbonds and so obtains Ochiltree's release on nominal bail. So he gives us an amusing account of the law of imprisonment for debt in Scotland, which, technically, was not permitted; but any one who disobeyed the King's writ requiring payment, was proclaimed by three blasts of a horn at Edinburgh marketplace to be a rebel and imprisoned by an elegant legal fiction, for his ungrateful contempt of the royal mandate.

The Antiquary delighted in the old-fashioned nick sticks or tallies used by bakers to record the number of loaves sold to their customers, just as accounts used to be kept by the Exchequer. The writer can remember, as a boy, that this ancient method was used by bakers in this city.

In the Antiquary we are told the story of the ghost who appeared to the despairing litigant and showed him the secret depositary of the old deed, the missing link in his chain of title; and in the opening of the book, mine host Mackitchinson, speaks of Hutchison against Mackitchinson—"a weel kenn'd plea, about our back-yard; a ganging plea my father left me and his father afore left him. It's been four times in afore the Fifteen and deil ony thing the wisest o' them could make o't but just to send it out again to the Outer house. O, its a beautiful thing to see how long and how carefully justice is considered in this country!"

"The clergy," says the Antiquary, "live by our sins, the medical faculty, by our diseases, and the law gentry, by our misfortunes."—But much of the Antiquary's conversation is like certain flowers that lose their perfume when cut. You must them enjoy where they grow.

In Rob Roy frequent allusion is made to the contracts of black mail, an ingenious arrangement on the Border, by which the most powerful scoundrel, such as Rob Roy,
agreed to insure his customers or clients against thefts, for an annual sum. He then employed one half of his thieves to steal and the other half to recover stolen cattle. Those who received or paid money under contract of blackmail, were guilty of a capital offence under a statute of 1567, but as Nicol Jarvie observed, “if the law canna protect my barn and byre what for suld I no engage wi' a Hieland gentleman that can? Answer me that.”

Squire Inglewood and his clerk Jobson, the rascally attorney, figure in this book; the former being one of the quorum and custos rotulorum, an office of which Sir Edward Coke wisely saith, “The whole Christian world hath not the like of it, so it be duly executed.” The examination of Frank Osbaldistone by these worthies is well told. Jobson has the statute law at his tongue’s end, but it is a relief to know that he is finally struck off the list of attorneys.

Bailie Nicol Jarvie is one of the best of Scott’s characters, and his description of life in the Highlands is amusing. “Never another law hae they but the length o’ their dirks; the broadsword’s pursuer or plaintiff as you Englishers ca’it, and the target is defender; the stoutest head bears longest out; and there’s a Hieland plea for ye.” Rob, himself, cared little for legal forms, for when he paid his debt, Jarvie signed the receipt, but could not find two witnesses, as required by law. Rob remarked that no man within three miles knew how to write, and threw the bond in the fire with the words, “That’s a Hieland settlement of accounts.”

In Old Mortality our attention is arrested by the examination and torture of Ephraim MacBriar, the Cameronian zealot, by the Privy Council of Scotland, in which both judicial and executive powers were vested. Scott gives a most graphic description of MacBriar’s dauntless refusal to incriminate other persons than himself, his fearful torture with the boot, his persistent defiance and his speedy execution for treason. It is hard to realize that such things were done with the sanction of law little more than two hundred years ago.

(To be continued).