

# INSTITUTES OF AMERICAN LAW.

BY

JOHN BOUVIER.

*NEW EDITION.*

2 Vols., Royal 8vo., Law Sheep. \$12.00.

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THE INSTITUTES OF AMERICAN LAW, by the late Judge BOUVIER, have been before the profession for several years, and the increasing demand for the work attests the general appreciation of its merit. It has been used by courts, judges, lawyers and laymen, and the result confirms the opinion of its *very great value*, which Chief Justice Taney expressed upon an examination of some of the proof-sheets of the first edition, and which, after the subsequent publication, was, as he says, *strengthened* by looking further into it.

The arrangement adopted in the Institutes is in some respects novel. The method of teaching law in the form of lectures is in many particulars objectionable, and most of our modern law books, which are made up of transcripts from a lecturer's memoranda, have been required to be almost wholly rewritten in the notes, often exceeding the text in bulk and importance, or at least the generalities of the oral or written discourse have had to be supplemented by those more detailed references, distinctions, and discussions which were incompatible with the loose structure of the text, although requisite to be known by the practitioner. An institutional treatise upon the law as a science should be constructed upon a system of rigid analysis and classification which will be more apt to beget a severely logical habit of mind in the student than the discursive style of lectures. Judge Bouvier was deeply read in the French and the Roman laws, and he has evidently imbibed from those sources a taste for that orderly and accurate development of the subject which characterizes his Institutes.

Another feature of the work is, that it is a REPRESENTATION OF AMERICAN LAW, of that general body of Jurisprudence on the basis of which justice is at present administered throughout our country at large. His references are selected from the reports of our own tribunals in different States of the Union; so that the student immediately becomes familiar with our own authorities, and is prepared for immediate action in his profession. He is not set to study the

learning of obsolete titles, but becomes a thoroughly American lawyer, rather than an Americanized English lawyer.

The favor with which the work has been accepted by the profession, and its increasing sale, justify the encomiums which its matter and method have received from some of our most distinguished jurists. It may be added, as a circumstance of no small importance to the practitioner, that notwithstanding the amount of legal learning here embodied, it is rendered immediately accessible by an accurate and exhaustive index, so that, in the most hurried moments of inquiry, even during the trial of a cause, one may alight upon any particular passage contained in the work.

“The discussion of remedies both in law and equity is particularly full, and supplies what was wholly or partially omitted by former commentators, and forms an admirable introduction to the large treatises of Chitty, Greenleaf, Story, and Spencer.”

In the fourth and fifth books of the Institutes Remedies are treated under the following heads:—

Precautions to be adopted before the commencement of an action; Remedies without action; Courts; Parties to actions; Process and appearance; The declaration; Pleas; The replication and subsequent pleadings; The trial; The nature and object of evidence; Instruments of evidence; Witnesses; Effect of evidence and the manner of giving it; Proceedings before verdict, and verdict; Proceedings after verdict; Proceedings in the nature of appeals; Execution; Account render; Assumpsit; Covenant; Debt and Detinue; Action on the case; Trover; Replevin; Trespass; Mixed actions; Scire facias.

#### OF EQUITY.

The nature and principles of equity; Assistant jurisdiction of equity; Peculiar remedies in equity; The general remedies; Peculiar equitable relief; Remedies in particular cases; The exclusive jurisdiction of courts of equity; The parties to a suit in equity; Bills in equity; Proceedings between the filing of the bill and the defence; Defence, disclaimers and demurrers in equity; Pleas in equity; Answers and replications in equity; Incidents to pleadings in general; The evidence in equity; The hearing and decree.

*(From the Boston Post.)*

Bouvier's Institutes is a work of which it can be truly said, if the student can own but one book, by all means let it be this. It is true that this work has not superseded Blackstone's Commentaries, but it is certain it ought to do so, so far as the student is concerned. There is a use for Blackstone, but it should not be used as a first book, but rather the last, for a student's hand.

A

# LAW DICTIONARY,

ADAPTED TO THE

CONSTITUTION AND LAWS

OF THE

UNITED STATES OF AMERICA,

AND OF THE

Several States of the American Union:

WITH

REFERENCES TO THE CIVIL AND OTHER SYSTEMS OF FOREIGN LAW.

BY

JOHN BOUVIER.

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Ignoratis terminis ignoratur et ars.—Co. Litt. 2 a.

Je sais que chaque science et chaque art a ses termes propres, inconnu au common des hommes.—FLEURY.

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FIFTEENTH EDITION, THOROUGHLY REVISED AND GREATLY ENLARGED.

VOL. I.

PHILADELPHIA:

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1889.

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JOHN BOUVIER,  
in the Clerk's Office of the District Court of the United States for the Eastern District of Pennsylvania.

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## ADVERTISEMENT.

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IN the preparation of the present edition of the LAW DICTIONARY, it has been the aim of the Editor, FRANCIS RAWLE, Esq., of the Philadelphia Bar, to vary in nothing from the general plan of JUDGE BOUVIER, and to make only such modifications and additions in his work as the changing conditions of the law seemed to require. The period since the death of the able author has been so fruitful, however, both in legislative enactments and judicial decisions, that numerous alterations and additions have been rendered necessary, so that the present thoroughly revised and greatly enlarged edition contains three times the matter of the original edition. This new matter has been supplied by upwards of one hundred gentlemen of recognized eminence at the bar or on the bench, and peculiarly well acquainted with the special topics upon which they have treated. Their names will be found in the List of Authors appended to the work, and in the Preface of the Editor of this edition. Careful attention has been given to the citation of authorities, and they have been brought down to the date of the preparation of the respective articles. Neither time, labor, nor expense has been spared to make the book accurate and complete; and the present edition of BOUVIER'S LAW DICTIONARY is submitted to the profession and to the general public, in the firm belief that it will sustain the high reputation it has achieved, and that it will be found even more valuable in the future than it has been in the past.



## P R E F A C E.

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IN preparing this edition of BOUVIER'S LAW DICTIONARY for publication, more than seven hundred new titles have been added to the work. Many of these have been treated at length; for instance, Commerce, Homestead, Judicature Acts, National Banks, Passenger, Police Power, Removal of Causes, Telegraph, Ticket, and War.

A large number of titles have, in view of their importance, been treated more fully than was done in the last edition, and, in many cases, have been substantially rewritten. Among these may be mentioned Courts of the United States, Due Process of Law, Election, Negligence, Partners, Partnership, Patent, Railroad, Sunday, Tax, and Trade-Mark. The Editor has endeavored, in all cases, to incorporate the development and growth of the law since 1867, the date of the last edition.

In the present edition, the Dictionary is enlarged by about two hundred and fifty pages. By adopting a much shorter system of abbreviations than the one formerly in use, much space has been saved, which has been utilized by the substitution of new matter. The citations in the former edition have been altered to conform to the system adopted. The list of abbreviations heretofore placed under the title Citations, is omitted; the full name of any authority cited can always be found either under the title Abbreviations or the title Reports, in both of which, a special effort has been made

to secure completeness and accuracy. In the latter will also be found a list of all periodicals, known to the Editor, which contain reports of cases. The list of words and phrases formerly placed under the title Construction, but now placed under the title Words, has received large additions.

Numerous references have been made to valuable articles in the legal periodicals, and it is hoped that in this way much learning that is now difficult to find, can be brought within easy reach of the profession. To a certain extent this work will serve as an index to legal periodical literature.

The articles embodying the laws and constitutions of the various States have been corrected or rewritten so as to incorporate all important amendments and changes since the last edition, and articles on several States and Territories omitted in that edition have been added. Most of this work has been done by members of the bar in the various States; and the Editor avails himself of this opportunity to express his obligations to them. Among the number are Edward J. Phelps, of Vermont; Alexander R. Lawton, of Georgia; Simeon E. Baldwin, of Connecticut; Warren Olney, of California; Hon. Charles S. Bradley, of Rhode Island; Hon. M. P. Deady, of Oregon; and U. M. Rose, of Arkansas. He is much indebted to Dwight M. Lowrey, for his revision of the article on Partnership; to Charles H. Bannard, for his revision of the article on Partners, both of which titles were substantially rewritten; and to J. Douglass Brown, Jr., for his revision of Maxims, which title was enlarged, in part, by adding some maxims not in the last edition, but mainly by citations of additional cases in point. He is also under great obligations to Lawrence Lewis, Jr., and Sydney G. Fisher, for most valuable help, and especially is he indebted to Walter George Smith, and Alfred Lee, Jr., who have shared his labors throughout.

The Editor can hardly expect that in so extensive an under-



taking there have not been mistakes of omission and commission; yet he hopes that, both so far as his own original work is concerned and also so far as he has revised the work of his predecessors, his selections of principles and cases have been judicious, and that the reader will find in these volumes all the fundamental doctrines of the law set forth with sufficient elaboration of detail to make the book valuable both to the lay and to the professional mind.

FRANCIS RAWLE.

PHILADELPHIA, December 23, 1882.



# P R E F A C E

## T O T H E F I R S T E D I T I O N .

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To the difficulties which the author experienced on his admission to the bar, the present publication is to be attributed. His endeavors to get forward in his profession were constantly obstructed, and his efforts for a long time frustrated, for want of that knowledge which his elder brethren of the bar seemed to possess. To find among the reports and the various treatises on the law the object of his inquiry, was a difficult task: he was in a labyrinth without a guide; and much of the time which was spent in finding his way out might, with the friendly assistance of one who was acquainted with the construction of the edifice, have been saved, and more profitably employed. He applied to law dictionaries and digests within his reach, in the hope of being directed to the source whence they derived their learning; but he was too often disappointed: they seldom pointed out the authorities where the object of his inquiry might be found. It is true such works contain a great mass of information, but, from the manner in which they have been compiled, they sometimes embarrassed him more than if he had not consulted them. They were written for another country, possessing laws different from our own, and it became a question how far they were or were not applicable here. Besides, most of the matter in the English law dictionaries will be found to have been written while the feudal law was in its full vigor, and not fitted to the present times, nor calculated for present use, even in England. And there is a great portion which, though useful to an English lawyer, is almost useless to the American student. What, for example, have we to do with those laws of Great Britain which relate to the person of their king, their nobility, their clergy, their navy, their army; with their game laws; their local statutes, such as regulate their banks, their canals, their exchequer, their marriages, their

births, their burials, their beer and ale houses, and a variety of similar subjects?

The most modern law dictionaries are compilations from the more ancient, with some modifications and alterations; and, in many instances, they are servile copies, without the slightest alteration. In the mean time the law has undergone a great change. Formerly the principal object of the law seemed to be to regulate real property, in all its various artificial modifications, while little or no attention was bestowed upon the rules which govern personal property and rights. The mercantile law has since arisen, like a bright pyramid, amid the gloom of the feudal law, and is now far more important in practice than that which refers to real estate. The law of real property, too, has changed, particularly in this country.

The English law dictionaries would be very unsatisfactory guides, even in pointing out where the laws relating to the acquisition and transfer of real estate, or the laws of descent in the United States; are to be found. And the student who seeks to find in the Dictionaries of Cowel, Manly, Jacobs, Tomlins, Cunningham, Burn, Montefiore, Pott, Whishaw, Williams, the *Termes de Ley*, or any similar compilation, any satisfactory account in relation to international law, to trade and commerce, to maritime law, to medical jurisprudence, or to natural law, will probably not be fully gratified. He cannot, of course, expect to find in them any thing in relation to our government, our constitutions, or our political or civil institutions.

It occurred to the author that a law dictionary, written entirely anew, and calculated to remedy those defects, would be useful to the profession. Probably overrating his strength, he resolved to undertake the task; and, if he should not fully succeed, he will have the consolation to know that his effort may induce some more gifted individual, and better qualified by his learning, to undertake such a task, and to render the American bar an important service. Upon an examination of the constitution and laws of the United States, and of the several states of the American Union, he perceived many technical expressions and much valuable information which he would be able to incorporate in his work. Many of these laws, although

local in their nature, will be found useful to every lawyer, particularly those engaged in mercantile practice. As instances of such laws the reader is referred to the articles *Acknowledgment*, *Descent*, *Divorce*, *Letters of Administration*, and *Limitation*. It is within the plan of this work to explain such technical expressions as relate to the legislative, executive, or judicial departments of the government; the political and the civil rights and duties of the citizens; the rights and duties of persons, particularly such as are peculiar to our institutions, as, the rights of descent and administration; of the mode of acquiring and transferring property; to the criminal law, and its administration. It has also been an object with the author to embody in his work such decisions of the courts as appeared to him to be important, either because they differed from former judgments, or because they related to some point which was before either obscure or unsettled. He does not profess to have examined or even referred to all the American cases: it is a part of the plan, however, to refer to authorities, generally, which will lead the student to nearly all the cases.

The author was induced to believe that an occasional comparison of the civil, canon, and other systems of foreign law, with our own, would be useful to the profession, and illustrate many articles which, without such aid, would not appear very clear; and also to introduce many terms from foreign laws, which may supply a deficiency in ours. The articles *Condonation*, *Extradition*, and *Novation* are of this sort. He was induced to adopt this course because the civil law has been considered, perhaps not without justice, the best system of written reason; and as all laws are, or ought to be, founded in reason, it seemed peculiarly proper to have recourse to this fountain of wisdom: but another motive influenced this decision; one of the states of the Union derives most of its civil regulations from the civil law; and there seemed a peculiar propriety, therefore, in introducing it into an American law dictionary. He also had the example of a Story, a Kent, Mr. Angell, and others, who have ornamented their works from the same source. And he here takes the opportunity to acknowledge the benefits which he has derived from the learned labors of these gentlemen, and of those of Judge Sergeant, Judge Swift, Judge Gould, Mr. Rawle and other writers on American law and jurisprudence.

In the execution of his plan, the author has, in the first place, defined and explained the various words and phrases, by giving their most enlarged meaning, and then all the shades of signification of which they are susceptible; secondly, he has divided the subject in the manner which to him appeared the most natural, and laid down such principles and rules as belong to it; in these cases he has generally been careful to give an illustration, by citing a case whenever the subject seemed to require it, and referring to others supporting the same point; thirdly, whenever the article admitted of it, he has compared it with the laws of other countries within his reach, and pointed out their concord or disagreement; and, fourthly, he has referred to the authorities, the abridgments, digests, and the ancient and modern treatises, where the subject is to be found, in order to facilitate the researches of the student. He desires not to be understood as professing to cite cases always exactly in point; on the contrary, in many instances the authorities will probably be found to be but distantly connected with the subject under examination, but still connected with it, and they have been added in order to lead the student to matter of which he may possibly be in pursuit.

To those who are aware of the difficulties of the task, the author deems it unnecessary to make any apology for the imperfections which may be found in the work. His object has been to be useful: if that has been accomplished in any degree, he will be amply rewarded for his labor; and he relies upon the generous liberality of the members of the profession to overlook the errors which may have been committed in his endeavors to serve them.

PHILADELPHIA, September, 1839.

# BOUVIER'S LAW DICTIONARY AND INSTITUTES:

BY S. AUSTIN ALLIBONE, LL.D.,  
AUTHOR OF "THE DICTIONARY OF AUTHORS."

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*From the North American Review for July, 1861.*

THE author of these volumes taught lawyers by his books, but he taught all men by his example, and we should therefore greatly err if we failed to hold up, for the imitation of all, his successful warfare against early obstacles, his unconquerable zeal for the acquisition of knowledge, and his unsparing efforts to distribute the knowledge thus acquired for the benefit of his professional brethren. Born in the village of Codognan, in the department Du Gard, in the south of France, in the year 1787, at the age of fifteen he accompanied his father and mother—the last a member of the distinguished family of Benezet—to Philadelphia, where he immediately applied himself to those exertions for his own support which the rapid diminution of his father's large property had rendered necessary. In 1812 he became a citizen of the United States, and about the same time removed to West Philadelphia, where he built a printing-office, which still exists as an honorable monument of his enterprise. Two years later we find him settled at Brownsville, in the western part of Pennsylvania, where, in 1814, he commenced the publication of a weekly newspaper, entitled "The American Telegraph." In 1818, on Mr. Bouvier's removal to Uniontown, he united with it "The Genius of Liberty," and thenceforth issued the two journals in one sheet, under the title of "The Genius of Liberty and American Telegraph." He retained his connection with this periodical until July 18, 1820.

It was while busily engaged as editor and publisher that Mr. Bouvier resolved to commence the study of the law. He attacked Coke and Blackstone with the determination and energy which he carried into every department of action or speculation, and in 1818 he was admitted to practice in the Court of Common Pleas of Fayette county, Pennsylvania. During the September term of 1822 he was admitted as an attorney of the Supreme Court of Pennsylvania, and in the following year he removed to Philadelphia, where he resided until his death. In 1836 he was appointed by Governor Ritner Recorder of the City of Philadelphia, and in 1838 was commissioned by the same chief magistrate as an Associate Judge of the Court of Criminal Sessions. But the heavy draughts upon time and strength to which he was continually subjected had not been permitted to divert his mind from the cherished design of bestowing upon his profession a manual of which it had long stood in urgent need. While laboring as a student of law, and even after his admission to the bar, he had found his efforts for advance-

ment constantly obstructed, and often frustrated, by the want of a conveniently-arranged digest of that legal information which every student should have, and which every practising lawyer must have, always ready for immediate use. The English Law Dictionaries—based upon the jurisprudence of another country, incorporating peculiarities of the feudal law, that are to a great extent obsolete even in England, only partially brought up to the revised code of Great Britain, and totally omitting the distinctive features of our own codes—were manifestly insufficient for the wants of the American lawyer. A Law Dictionary for the profession on this side of the Atlantic should present a faithful incorporation of the old with the new,—of the spirit and the principles of the earlier codes, and the “newness of the letter” of modern statutes. The Mercantile Law, with the large body of exposition by which it has been recently illustrated; the Law of Real Property in the new shape which, especially in America, it has latterly assumed; the technical expressions scattered here and there throughout the Constitution of the United States, and the constitutions and laws of the several States of the American Union,—all these, and more than these, must be within the lawyer’s easy reach if he would be spared embarrassment, mortification, and decadence.

A work which should come up to this standard would indeed be an invaluable aid to the profession; but what hope could be reasonably entertained that the requisites essential to its preparation—the learning, the zeal, the acumen to analyze, the judgment to synthesize, the necessary leisure, the persevering industry, and the bodily strength to carry to successful execution—would ever be combined in one man? Mr. Bouvier determined that it should not be his fault if such a work was not at least honestly attempted. Bravely he wrought, month in and out, year in and out, rewarded for his self-denying toil by each well-executed article, and rejoicing, at rare and prized intervals, over a completed letter of the alphabet.

In 1839 the author had the satisfaction of presenting in two octavo volumes the results of his anxious toils to his brethren and the world at large; and the approving verdict of the most eminent judges—Judge Story and Chancellor Kent, for example—assured him that he had “not labored in vain,” nor “spent his strength for naught.” This was well; but the author himself was the most rigid and unsparing of his critics. Contrary to the practice of many writers, considering the success of the first and second editions as a proper stimulus to additional accuracy, fulness, and completeness in every part, in 1848, when the third edition was called for, the second having been published in 1843, he was able to announce that he had not only “remodelled very many of the articles contained in the former editions,” but also had “added upwards of twelve hundred new ones.” He also presented the reader with “a very copious index to the whole, which, at the same time that it will assist the inquirer, will exhibit the great number of subjects treated of in these volumes.”

He still made collections on all sides for the benefit of future issues, and it was found after the death of the author, in 1851, that he had accumulated a large mass of valuable materials. These, with much new matter, were, by competent editorial care, incorporated into the text of the third edition, and the whole was issued as the fourth edition in 1852. The work had been subjected to a thorough revision,—inaccuracies were eliminated, the various changes in the constitutions of several of the United States were noticed in their appropriate places, and under the head of “Maxims” alone thirteen hundred new articles were added.



That in the ensuing eight years six more editions were called for by the profession, is a tribute of so conclusive a character to the merits of the work that eulogy seems superfluous. Let us, then, briefly examine those features to which the great professional popularity of the Law Dictionary is to be attributed. Some of these, specified as *desiderata*, have been already referred to with sufficient particularity. But it has been the aim of the author to cover a wider field than the one thus designated. He has included in his plan technical expressions relating to the legislative, executive, and judicial departments of the government; the political and the civil rights and duties of citizens; the rights and duties of persons, especially such as are peculiar to the institutions of the United States,—for instance, the rights of descent and administration, the mode of acquiring and transferring property, and the criminal law and its administration.

He was persuaded—and here as elsewhere he has correctly interpreted the wants of the profession—that an occasional comparison of the civil, canon, and other systems of foreign law with our own would be eminently useful by way of illustration, as well as for other purposes too obvious to require recital. We will barely suggest the advantage to the student of civil law or canon law of having at hand a guide of this character. And we would express our hope that the student of civil or of canon law is not hereafter to be that *rara avis* in the United States which, little to our credit, he has long been. He who would be thoroughly furnished for his high vocation will not be satisfied to slake his thirst for knowledge even at the streams (to which, alas! few aspire) of Bracton, Britton, or Fleta; he will ascend rather to the fountains from which these drew their fertilizing supplies.

To suppose that he who draws up many thousands of definitions, and cites whole libraries of authorities, shall never err in the accuracy of statement or the relevancy of quotation, is to suppose such a combination of the best qualities of a Littleton, a Fearn, a Butler, and a Hargrave, as the world is not likely to behold while law-books are made and lawyers are needed. If Chancellor Kent, after “running over almost every article in” the first edition (we quote his own language), was “deeply impressed with the evidence of the industry, skill, learning, and judgment with which the work was completed,” and Judge Story expressed a like favorable verdict, the rest of us, legal and lay, may, without any unbecoming humiliation, accept their *dicta* as conclusive. We say *legal and lay*; for the lay reader will make a sad mistake if he supposes that a Law Dictionary, especially *this* Law Dictionary, is out of “his line and measure.” On the contrary, the Law Dictionary should stand on the same shelf with Sismondi’s Italian Republics, Robertson’s Charles the Fifth, Russell’s Modern Europe, Guizot’s Lectures, Hallam’s Histories, Prescott’s Ferdinand and Isabella, and the records of every country in which the influences of the canon law, the civil law, and the feudal law, separately or jointly, moulded society, and made men, manners, and customs what they were, and, to no small extent, what they still are.

In common with the profession on both sides of the water, Judge Bouvier had doubtless often experienced inconvenience from the absence of an Index to Matthew Bacon’s New Abridgment of the Law. Not only was this defect an objection to that valuable compendium, but since the publication of the last edition there had been an accumulation of new matter which it was most desirable should be at the command of the law student, the practising lawyer, and the bench. In 1841 Judge Bouvier was solicited to prepare a new edition, and undertook the arduous task. The revised work was presented to the public in ten royal octavo volumes, dating from 1842 to 1846. With the exception of one volume, edited

by Judge Randall, and a part of another, edited by Mr. Robert E. Peterson, Judge Bouvier's son-in-law, the whole of the labor, including the copious Index, fell upon the broad shoulders of Judge Bouvier. This, the second American, was based upon the seventh English edition, prepared by Sir Henry Gwillim and Messrs. C. E. Dodd and William Blanshard, and published in eight royal octavos in 1832. In the first three volumes Bouvier confines his annotations to late American decisions; but in the remaining volumes he refers to recent English as well as to American Reports.

But this industrious scholar was to increase still further the obligations under which he had already laid the profession and the public. The preparation of a comprehensive yet systematic digest of American law had been for years a favorite object of contemplation to a mind which had long admired the analytical system of Pothier. Unwearied by the daily returning duties of his office and the bench, and by the unceasing vigilance necessary to the incorporation into the text of his Law Dictionary of the results of recent trials and annual legislation, he laid the foundations of his "Institutes of American Law," and perseveringly added block upon block, until, in the summer of 1851, he had the satisfaction of looking upon a completed edifice. Lawyers who had hailed with satisfaction the success of his earlier labors, and those who had grown into reputation since the results of those labors were first given to the world, united their verdict in favor of this last work.

It is hardly necessary to remark that it was only by a carefully adjusted apportionment of his hours that Judge Bouvier was enabled to accomplish so large an amount of intellectual labor, in addition to that "which came upon him daily,"—the still beginning, never ending, often vexatious duties connected with private legal practice and judicial deliberation. He rose every morning at from four to five o'clock, and worked in his library until seven or eight; then left his home for his office (where, in the intervals of business, he was employed on his "Law Dictionary" or "The Institutes") or his seat on the bench, and after the labor of the day wrought in his library from five o'clock until an hour before midnight.

# LIST OF AUTHORS

WHO ASSISTED IN EDITING THE PREVIOUS EDITION

<i>Acknowledgment; Affidavit; Codes; Ex Post Facto; Falcidian Law; Feudal Law; Fiction; Foreign Law, &amp;c. . . . .</i>	}	<p>AUSTIN ABBOTT, Esq., of the New York Bar.            Author of a "Collection of Forms and Pleadings in Actions;" "Reports of Cases in Admiralty;" "Practice Reports;" "Digest of Reports," &amp;c.</p>
<i>Bankrupt Laws; Damages; Indorsement; Receipt; Sign, &amp;c. . . . .</i>	}	<p>BENJAMIN VAUGHAN ABBOTT, Esq., of the New York Bar.            Author of a "Collection of Forms and Pleadings in Actions;" "Reports of Cases in Admiralty;" "Practice Reports;" "Digest of Reports," &amp;c.</p>
<i>Guaranty; Guarantee; Guarantor; Surety. . . . .</i>	}	<p>J. W. ALLEN, Richmond, Vt.</p>
<i>Corporations; Rhode Island . . . . .</i>	}	<p>HON. SAMUEL AMES, LL.D., Chief Justice of Rhode Island.            Author of "Treatise on the Law of Private Corporations," &amp;c. Editor of Ames's "Reports."</p>
<i>New York; Parties, &amp;c. . . . .</i>	}	<p>HON. OLIVER LORENZO BARBOUR, Vice-Chancellor of New York.            Author of a "Treatise on Chancery Practice;" "Set-Off;" "Criminal Law," &amp;c. Editor of Barbour's "Reports."</p>
<i>Articles upon Maritime Law . . . . .</i>	}	<p>E. C. BENEDICT, Esq., New York City.</p>
<i>New Hampshire . . . . .</i>	}	<p>HON. SAMUEL D. BELL, Chief Justice of New Hampshire.</p>
<i>Maine . . . . .</i>	}	<p>HON. JAMES W. BRADBURY, Ex United States Senator of Maine.</p>
<i>Rescission of Contracts; Specific Performance, &amp;c. . . . .</i>	}	<p>HON. WILLIAM H. BATTLE, LL.D., of the Supreme Court of North Carolina; Professor of Law in the University of North Carolina.</p>

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|---|---|
| <i>Letters Testamentary; Probate of a Will, &amp;c.</i> . . . . .                                   | { Hon. ALEX. W. BRADFORD, LL.D., Ex Surrogate of New York.<br>Editor of Bradford's "Surrogate Reports," &c.   |
| <i>Missouri.</i> . . . . .  | { Hon. S. M. BRECKENRIDGE, Judge of the Circuit Court, St. Louis, Mo.   |
| <i>Abbreviations; Construction; Costs, &amp;c.</i>  | { F. C. BRIGHTLY, Esq., of the Philadelphia Bar.<br>Author of an "Analytical Digest of the Laws of the United States;" "Treatise on the Law of Costs;" "Equity Jurisdiction of the Courts of Pennsylvania," &c. |
| <i>Mississippi.</i> . . . . .   | { Hon. WALTER BROOKE, Ex United States Senator of Mississippi.  |
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