

any sense of historical proportion, in spite of the gross and often willful carelessness with which he deals with his authorities, Mr. Harrison persists in regarding Carlyle as an historian, and even goes so far as to recommend his books as histories. Carlyle's *Cromwell* is called "one of the most splendid monuments of historical genius," and a "masterpiece of industry and genius;" and the unfortunate reader of seventeenth century history in England is recommended to supplement it by a study of Guizot—of Guizot! of all people in the world—and of Green's *Short History of the English People*. And again, Carlyle's *French Revolution* is styled, "a great book," "an enduring book," and "the most striking extant example of the poetical method applied to history;" although in the same breath Mr. Harrison admits that "Carlyle has too often proved to be extravagant or unjust and sometimes flatly mistaken in his facts." It is indeed a blessing for the future historians of England that Mr. Harrison is to have no share in their training, when he holds such extraordinary views about the true province of history as to rank the most conspicuous offender against the canons of historical truth of the last hundred years among the greatest of great historians. As a corrective to the extravagant views avowed by Mr. Harrison upon this subject, a careful study may be recommended of the recent article upon the scientific study of history in the *Fortnightly Review* by Mr. H. A. L. Fisher, one of the most accomplished of the younger school of Oxford historical teachers.

In conclusion, although Mr. Harrison's views on history may be deprecated, and his accuracy suspected, since he deals with equal ease with so many different subjects and so many remote and unconnected periods, it would be unfair not to admit his skill as a writer, and not to recognize that "the man of letters who has read much history" can invest his work with more subtle charms of style than the laborious scholar who patiently pieces together the history of the past and is apt to lose in the examination of details the broad grasp and deep insight which alone can win immortal fame for a writer of history.

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*The Historical Development of the Jury System.* By MAXIMUS A. LESSER, A.M., LL.B. Rochester, N.Y., 1894.—12mo, 274 pp.

What we most need in the field of English legal history is original work, based on careful study of the sources: work such as is being

done by Brunner in Berlin, by Maitland at Cambridge, and by Ames and Thayer at Harvard. Until much more work of this sort has been done, mere digests of the literature are little needed. Mr. Lesser's book belongs to the latter class rather than to the former, and is, I regret to say, a very poor specimen of its class. It can hardly be termed a digest: it is more like a scrap-book. It is full of excerpts; and these are drawn with little discrimination from older authors whose construction of legal history was mainly guess-work, from magazine and cyclopædia articles which are of little more value than Mr. Lesser's own book, and from recent writers who have really investigated the history of the jury on the basis of the oldest written laws and documents. The juxtaposition of these heterogeneous clippings is rather bewildering to the student who knows something of their relative value. To the student who should begin his study of the jury with this book the problem of its development would surely seem insoluble.

The most important contribution to the history of the English jury is Heinrich Brunner's *Entstehung der Schwurgerichte* (Berlin, 1871). Brunner's book removed a large number of earlier hypotheses from the category of unproven to that of disproven; showed that Forsyth was right in attributing the establishment of the jury in England to the Norman kings; and that Biener was right in maintaining that the jury was first established in Normandy. But Brunner carried the history a long step further back. He not only showed the connection between the English verdict-finding jury (*Urtheiljury*) and the Anglo-Norman jury of proof (*Beweisjury*), but traced the latter back to the Frankish *inquisitio*. Mr. Lesser has read Brunner's book; he cites from it repeatedly, and adopts, in the main, its conclusions. But he must have compiled the greater part of his own book before reading Brunner, and he had not the courage to do what he should have done, — cut out the antiquated excerpts from the older literature.

As it is, the citations from Brunner and from the admirable supplementary articles of Professor Thayer<sup>1</sup> seem incongruous — an alien graft of fruit-bearing branches on a barren stock. And as far as Brunner's book is concerned, the quotations, whether from haste or carelessness, are quite inaccurate. Some of the errors may charitably be attributed to bad proof-reading. So, on page 77, a statement is supported by a reference to Brunner's *Schwurgericht*, pages 54-59 and 205. The passages cited refer to quite other matters:

<sup>1</sup> The Jury and its Development, *Harvard Law Review*, vol. viii (1891-92).

the reference should be to page 399. So, again, a translation in Mr. Lesser's text (page 95) of a sentence from Brunner in which the latter gives the essential characteristic (*Merkmal*) of the Frankish *inquisitio*, begins with the words "no characteristic," which completely reverses the meaning. Mr. Lesser probably wrote "the characteristic." But in many other cases the author has clearly misinterpreted Brunner. If he had really digested either the *Schwurgericht* or any of the modern treatises on early Teutonic law which he cites, he could not speak of the *scabini* or *Schöffen* as "sole judges of fact as well as law," nor compare them to the Roman *judices pedanei* (page 52), when in fact these Teutonic representatives of the people simply decided which of the litigants was to prove his allegation and how he was to prove it. Nor, in speaking of the judicial duel, could he say (as he does on page 92, note 14) that "Brunner demonstrates its antiquity by reference to a capitulary of Louis the Pious . . . (A.D. 819)." He cites *Schwurgericht*, pages 189, 197, 198. Here are, in the first place, two printer's errors. The capitulary cited is of the year 817; and the references to Brunner should be to pages 68 and 198. But apart from these errors, the passage indicates a remarkable confusion of ideas. It implies that the judicial duel, with which the Germans came into authentic legal history centuries earlier, cannot be traced back beyond the ninth century. The purpose for which Brunner actually cites the capitulary is to show that, even after the Frankish emperors had instituted the practice of interrogating witnesses before they gave oath, the oaths of the witnesses were still conclusive unless their veracity was challenged by the declaration that they had perjured themselves; which challenge, as for centuries before, involved an appeal to the ordeal of battle. Brunner's point is that there was not yet, under the capitulary of 817, any weighing of evidence; proof by oath was still "formal," and conclusive unless challenged. Again, Mr. Lesser quotes Brunner as saying that the Frankish *inquisitio* "originated in the capitularies and documents of the Carlovingian period" (page 94). What Brunner says is, that the capitularies and documents of the Carlovingian period recognize (*kennen*) the *inquisitio*. Elsewhere he shows that the *inquisitio* was not established by legislation, with the assent of the magnates, but by administrative custom, and that the innovation was based on the equitable powers of the Frankish crown.

For a final illustration of Mr. Lesser's failure to assimilate the *Schwurgericht* I may cite his treatment of the Anglo-Saxon *secta*, to which he refers in three or four places. Nowhere is any hint given

of Brunner's interesting theory that the *sectatores* were originally simply witnesses to the complaint, and that their coöperation was required to make out a *prima facie* case and to serve as a bar to frivolous litigation.

How accurate or inaccurate the author's citations from other books may be I have not undertaken to determine. I have examined only some of his references to Brunner.

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*State Papers Relating to the Defeat of the Spanish Armada.*

Edited by J. K. LAUGHTON for the Navy Records Society. Printed for the Society, London, 1894.—Two vols., 365, 418 pp.

About ten years since, a well-known Spanish naval officer, Captain Duro, published, in a work called *La Armada Invencible*, an immense number of Spanish documents relating to the invasion of England in 1588. Now an English naval officer, Professor Laughton of King's College, London, has edited, in two handsome, well-printed volumes, all the important English documents relating to the strictly naval aspect of this invasion. The editor has prefaced his collection of state papers by an introduction (74 pages) in which he gives the conclusions to which his researches have led.

For the narrower and purely naval aspect of the Armada we now have ample materials in the publications of Duro and Laughton. And it was fitting that the latter, editing for a Navy Records Society, should devote himself, not only in the choice of documents, but in the introduction, almost exclusively to this aspect. On the other hand, it is for the same reason strange that the editor deems it "unnecessary here to describe the fights of that eventful week" (page lii). For it is certainly possible, by a careful and critical comparison of the authentic English and Spanish evidence now before us, to give step by step a fairly accurate account and explanation of the channel fights. And it is desirable, at this time of special interest in the influence of sea power upon history, to know exactly what happened in those summer days of the year 1588, when the English sailors turned the history of the world towards a new and happier goal.

Professor Laughton gives several very interesting pages (xliv ff.) to a comparison of the English and Spanish guns. Unfortunately the data are not adequate to his purpose. We have an official description of the guns of only two Spanish ships. The armaments of the others (table, page xlv) are taken from a Spanish document dated July 9, 1587, compared in the case of the *San Lorenzo* with the somewhat loose report of an Englishman who boarded her off