

A TREATISE
ON THE
MEASURE OF DAMAGES,

OR, AN
INQUIRY INTO THE PRINCIPLES

WHICH
GOVERN THE AMOUNT OF PECUNIARY COMPENSATION
AWARDED BY COURTS OF JUSTICE.

BY
THEODORE SEDGWICK,

DISTRICT ATTORNEY OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK; AUTHOR
OF A TREATISE ON STATUTORY AND CONSTITUTIONAL LAW.

"Cum pro eo quod interest dubitationes antiquæ in infinitum productæ sint, melius nobis visum
est, hujusmodi prolixitatem, prout possibile est, in angustum coarctare."
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DANIEL LORD, ESQ.

DEAR SIR:—

IF you find no fault, I am very sure that I shall not be elsewhere censured for placing your name (although without any previous permission), upon the dedication page of this work.

Your opinion of the importance of the subject, is one of the circumstances that have most strongly urged me to proceed with it. But I have other reasons for requesting you to accept this volume.

You show us all, by a teaching far better than barren precept, how much true dignity and usefulness, as well, if we may be allowed to judge, as real happiness, attend a life assiduously, intelligently, and, above all, honorably devoted to that profession of which we are the votaries.

I am, dear Sir,

With sincere regard and respect,

Your obedient servant,

THEODORE SEDGWICK.

NEW YORK, *January*, 1847.

PREFACE
TO
SECOND EDITION.

IN preparing the Second Edition of this work for the press, I have done all in my power to show my sense of the favorable manner in which it has been received, and to increase its utility. I have examined the numerous volumes of Reports which have appeared both in England and this country, and have availed myself, as far as possible, of the increased attention which has been latterly paid to the subject. This has led not only to a great increase of matter, but to changes so considerable in the arrangement of the work, that I have found it impossible to preserve the original paging. The two last chapters are entirely new.

The principal difficulty which I encountered in preparing the first edition—the difficulty of adapting any scientific arrangement of the rules of compensation to the technical forms of action of the common law—has been somewhat increased by the great changes that have been introduced into legal proceedings within the last few years. New York, and several of the sister States, have adopted a system of pleading which amounts to a total subversion of the common-law procedure; and Massachusetts has made very serious innovations on it. We are evidently in the midst of a revolution which, in our own time, will not only efface most of the distinctions between law and equity, but

will completely sweep away the common law so far as its forms of proceeding are concerned ; and in so doing, work a change in the administration of justice, far more complete than was ever before effected in so short a period. Our example and influence are already making themselves felt in England ; and the alterations there, though perhaps they will be more cautiously made, bid fair to be not much less sweeping.

Convinced, as I have long been, that these changes—although attended by the evils which always wait upon great and sudden modifications of existing arrangements, evils aggravated in this case in our country by our tendency to act rather with energy and vigor than with caution and deliberation—still, that these changes will finally establish our jurisprudence on a basis more intelligible, more harmonious, more beneficial, I cannot in any sense regret their introduction.

For the time being, however, in regard to the order and arrangement of this work, I have felt the full inconvenience resulting from the present chaotic state of our procedure. I have endeavored to avoid it as far as possible by keeping steadily in view what is manifestly the inevitable result of the experiments now going on, viz. : the final and total abrogation of the forms of common-law pleading both in England and America. When that end is at length attained, and when the application for redress shall be made to depend solely on the right, then, and not till then, it will be easy to classify and arrange the rules governing the measure of relief in a manner that shall be at once legal and logical ; that shall satisfy the technical demands of the practitioner, and at the same time gratify that love of reason and justice which animates the mind of him who desires to find something in the law besides a mere collection of abstract and arbitrary rules.

NEW YORK, *July*, 1852.

P R E F A C E

TO

T H I R D E D I T I O N .

IN preparing a Third Edition of this work for the press, I had hoped to be able to give more of my time and personal attention to the work than, owing to various reasons, I have found it possible to do.

But perhaps, under the circumstances, there is no particular cause for regret. The diligence and accuracy of Messrs. Abbott Brothers, to whom the reader is indebted for the notes to this edition, have supplied all the recent decisions; and it is yet hardly time to remodel the work, as I hope some day to do, with reference to the great changes that have taken place in our jurisprudence since the first publication of the treatise, in 1847.

Those changes are in active operation, but their ultimate results cannot yet be with safety predicted. If another edition of this work shall be required, I hope then to be able to re-fashion it so as to bring it into conformity with the great alterations that have taken place in the system of pleading, and, in fact, in the whole administration of justice, both in England and in this country.

I should not do justice to myself, if I omitted to take some notice of the kind and cordial way in which this work has been received on both sides of the Atlantic. It is in my power in

other ways to make my acknowledgments to the eminent authorities of my own country, who have spoken favorably of this treatise; but to the voices from afar, I can hardly make any response, except by availing myself of an opportunity like this. The courts of Westminster Hall have treated this work in a manner that cannot but be very gratifying to an author; and I take pleasure in thus sending my thanks across the water, for the friendly manner in which it has been spoken of by Mr. John George Phillimore, in his "Essay on the Principles and Maxims of Jurisprudence;" by Mr. Edward Powell, in his very able "Treatise on the Practice of the Law of Evidence;" by Mr. Herbert Broom, in his "Commentaries on the Common Law;" and by Mr. J. D. Mayne, in his "Essay on Damages."

NEW YORK, *June*, 1858.

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