

His accomplishments were very extraordinary. He was born a musician, and the natural talent was highly cultivated. He was a *connoisseur* in painting and sculpture. The whole round of English literature was familiar to him. He was at home among the ancient classics. He had a perfectly clear perception of all the great truths of natural science. He had studied medicine carefully in his youth and understood it well. His mind absorbed all kinds of knowledge with scarcely an effort.

Judge Gibson was well appreciated by his fellow citizens—not so highly as he deserved; for that was scarcely possible. But admiration of his talents and respect for his honesty, were universal sentiments. This was strikingly manifested when he was elected in 1851, notwithstanding his advanced age, without partizan connections, with no emphatic political standing, and without manners, habits or associations calculated to make him popular beyond the circle that knew him intimately. With all these disadvantages, it is said, he narrowly escaped what might have been a dangerous distinction; a nomination on each of the opposing tickets. Abroad, he has for very many years been thought the great glory of his native State.

Doubtless the whole Commonwealth will mourn his death—we all have reason to do so. The profession of the law has lost the ablest of its teachers, this Court the brightest of its ornaments, and the people a steadfast defender of their rights, so far as they were capable of being protected by judicial authority. For myself, I know no form of words to express my deep sense of the loss we have suffered. I can most truly say of him, what was said long ago concerning one of the few among mortals who were yet greater than he: "I did love the man, and do honor to his memory, on this side idolatry, as much as any."

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#### NOTICES OF NEW BOOKS.

Reports of Cases Argued and Determined in the District Court of the United States for the Eastern District of Pennsylvania, from May Sessions, 1836, to May Sessions, 1846, inclusive. By William H. Crabbe. Philadelphia: T. & J. W. Johnson. 1853.

The Pennsylvania Circuit has been peculiarly favored in its reporters. Dallas, Judge Washington, Judge Baldwin, Peters, and the two Wallaces have furnished us with a nearly unbroken series of decisions of the very

able and learned men who have successively presided on its bench, since the adoption of the Constitution. And in the District Court, Peters' Admiralty Decisions and Gilpin's Reports contain all the important cases to the year 1835. The present volume of Mr. Crabbe takes up the claim at this point, and includes the closing years of Judge Hopkinson's judicial career, and the whole term of Judge Randall. A collection of Judge Kane's decisions, which we understand may shortly be expected, will then bring the series down to the present day.

The regular continuation of these reports we regard as of the greatest importance. The objection that has been sometimes urged against the publication of any but the decisions of the appellate Courts, is based on a mistaken economy; for out of its particular sphere, it is the character of a Court, and not its relative grade, which must give to it weight and authority. Indeed, none of the Courts of the United States can be considered as coming strictly under the denomination of inferior tribunals. The proportion of cases which get up to Washington is probably not much greater than those which, in England, are taken to the Exchequer Chamber or House of Lords, from the different Courts of law and equity; yet no lawyer there would imagine confining his library to a set of Dow or Bligh, or Clark and Finelly. In this country, too, there are peculiar reasons for collecting together the cases in the District and Circuit Courts. Several very important branches of jurisprudence, in particular those of admiralty and patent law, are growing up little by little, but with very undefined tendencies, or are assuming a direction of their own, quite different from that they possess in other countries. Without reliable precedents to guide them, the Courts must make most of their law as they go. But owing to the high sum at which appeals are fixed, much of the theoretical part of the law, and nearly all of its practical side, as established in the different circuits, never undergo any revision in the Supreme Court of the United States. It is to the reports of the decisions of the former that we must look for those expositions which are of the greatest interest and value to the practising lawyer. Another incidental advantage ensuing on the publication of reports of this nature, is their tendency, in some degree, to produce an uniformity of decision and procedure, which unfortunately has not hitherto been the result of our judicial system. These considerations, however, and others which might be urged, though deserving of attention, cannot be entered into fully in the brief space at our disposal.

Mr. Crabbe's reports are extremely well done. The style is good, the facts of the cases well stated, and the syllabus carefully abstracted. The editor has had, too, in the present case, an unusual difficulty to overcome—the very considerable lapse of time since the decisions which he has reported were pronounced, during which the testimony has become lost or obscured, or the arguments of counsel forgotten.

The cases contained in the volume are in general valuable and important. Judge Hopkinson, by whom most of them were decided, was a lawyer of extended and varied accomplishments. It seems, indeed, to have been the good fortune of the Court of Admiralty to have secured everywhere men of the highest classical acquirements and literary taste. Judge Hopkinson was not the least among these. A fluent and copious writer, he has left a collection of miscellanies behind him in which are combined clear good sense, a wide range of thought, and a happy humor, which can never fail to secure admirers. Nor did he altogether throw aside, in his judicial opinions, the peculiar characteristics of his style. Without ever failing in strength or cogency of reasoning, these opinions are always clothed in the most graceful and lucid language. They differ scarcely, except in their subject, from his more professedly literary essays.

*Facies non omnibus una, nec diversa tamen  
Sed qualis decet esse sororibus.*

Besides these qualities, which were sure of commanding respect, his elevated character and universal kindness won for him the most affectionate regard from all his fellow citizens. More than ten years have elapsed since his decease, but the deep feeling of regret in all at his loss has not yet been extinguished. *Sero quamvis, plorare fas est.*

Among the decisions in this volume to which our attention has been called, we may refer particularly to *Robert Morris' case*, on page 70 et seq., where Judge Hopkinson granted a supercedas in bankruptcy, even after certificate, on the presumption of payment of the debts by lapse of time, a point entirely novel at the time; to *United States vs. Blackburn*, the Cloth Cases, questions of fraud on the revenue; to which the editor has prefixed an interesting account of the mode of perpetration, and the manner of discovery of those frauds. In *United States vs. Hewes*, page 370, where it was ruled that the United States was not included in the act of 1839, and therefore, that in suits against their debtor, they might still

proceed by *capias*. The cases in admiralty are quite numerous. *Ralston vs. The State Rights*, page 22, contains some new questions in collision, among others, that positive damages may be given in the case of a malicious and willful collision. In *Anderson vs. Solon*, page 17, it was ruled, that where a vessel is seized by revenue officers, the mariners discharged, the vessel sold by her owner, and afterwards liberated, the lien of the mariners for wages is not destroyed. In *Ulary vs. The Washington*, page 204, the Court held that there is no law to excuse a seaman from working on Sunday, even in port. Other cases equally deserve notice, but we can refer but to one more, which we do because the point is important, and has received a different adjudication by the Supreme Court in Pennsylvania. This is *Knox vs. The Nieta*, page 534, a libel on a contract of affreightment to carry certain wheat from Norfolk to Philadelphia, directly and without deviation. There was, in fact, a deviation, and other cargo was taken in. A storm arose in the subsequent portion of the voyage, in which the vessel sprung a leak, and the grain was damaged. Judge Randall held that the carrier was responsible. The master of the vessel subsequently brought an action for freight in the State Court, to which the former recovery was set up. (*Souter vs. Baymore*, 7 Barr, 415.) The decree in admiralty had, however, been appealed from, so that it did not come within the technical rule, and the Supreme Court then held that the facts in themselves constituted no defence; and that the proximate cause of the loss being a peril of the sea, the remote cause, deviation, did not discharge the contract. With great respect for the learned Court who decided *Souter vs. Baymore*, we cannot but think that they were entirely wrong on principle and authority. It is a fundamental rule in the law of bailment, that the bailee, whether pawnee, depository or hirer, who uses the article bailed in a way differently from that stipulated in the contract, makes himself responsible for all injuries, whether arising from inevitable accident or otherwise.

The Roman Law provided in the same manner in cases of *vis major*: Thus it is said, fr. 1, § 4, Dig. xlv. 7, *Sed det in majoribus casibus, si culpa ejas (locatoris) interveniat, tenatur*; and see Inst. III, tit. 14, § 2. So Pothier, Pret à Usage, n. 57; Louage, n. 195, &c. So in the maritime law in general, 2 Boulay Paty, tit. IV. § 10, where speaking of the excuse of a vessel for the loss of goods by inevitable accident, it is said, *Si l'accident été précédé de quelque faute, qui en a été la cause principale ou indirecte, l'exception du cas fortuit n'est plus admissible*. But what is more to the point, the very question of *Souter* and *Baymore* has

arisen in several English and American cases, and been decided in a manner directly opposite. The true rule is, that where a carrier deviates unnecessarily, and subsequently encounters a storm, he is responsible for all loss occasioned thereby, unless perhaps he can show that he would have encountered precisely the same peril had he continued on his regular course. *Davies vs. Garrett*, 6 Bing. R. 716; *Crosby vs. Fitch*, 12 Con. 410; *Powers vs. Davenport*, 7 Blackford, 497; see *Hand vs. Baynes*, 4 Whart. 204.

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A Digest of the Reported Cases adjudged in the several Courts held in Pennsylvania; together with some Manuscript Casés, by Thomas I. Wharton. Sixth edition by Francis Wharton, in two vols., vol. 1, pp. 1184. Vol. 2, pp. 1147. Philadelphia: T. & J. W. Johnson. 1853.

We are indebted to the Messrs. Johnson for this new and greatly enlarged and improved edition of a most excellent law book. The Digests are a most valuable class of works to the practising lawyer; they are of constant daily use; they are indispensable in study and in the preparation of cases; while they do not and cannot supersede the regular and authentic volumes of Reports containing the solemn adjudications of the Courts, they are, nevertheless, most admirable auxiliaries and guides. The Digest before us, is a book *indispensable* to every practising Pennsylvania lawyer, and of great value out of Pennsylvania.

We are informed by the advertisement to this edition, that it comprehends, *first*, a very large number of new references to old cases, for which the editor is indebted to Judge Sharswood's manuscript copy, and *secondly*, the contents of the "Supplement to Wharton's Digest," published in August last, by Mr. Henry Wharton. The latter work, independently of abstracts of the printed decisions of the Superintendent of the Common Schools, comprises "the cases contained in the tenth to the sixteenth volume of the Pennsylvania State Reports, in the two volumes of Parsons' Reports, in Brightly's Reports, in the ninth to the eleventh volume of the Pennsylvania Law Journal, and in the seventh to the ninth volume of the Legal Intelligencer, for 1850-1852. Besides these, there will be found a few cases from the first volume of Wallace, Jr.'s Reports, not contained in the former edition, and also from the second volume of the same book, as yet unprinted; cases from a forthcoming volume of Reports, by Mr. R. P. Kane, of the Philadelphia Bar, containing decisions in the U. S. District Court, for the Eastern District of Pennsylvania; some cases decided in the Supreme Court of the United States, on error or appeal from the Pennsylvania Circuit, reported in Howard's Reports; and a number of manuscript decisions of the State and Federal Courts at Philadelphia, and by Judge Lowry, when at Pittsburg.

Commendation of a work which has been before the profession since 1822, and which has passed through five successive editions, would seem to be needless; but we feel bound to say, that this edition in every particular, is essentially—both in form and substance—improved. The editorial labor has been executed with manifest care and accuracy; the subdivision of the old heads or titles, and the introduction of some new ones have added much to the value of the edition, and will be found to give additional facility to reference.