

NOTICES OF NEW BOOKS.

Reports of Cases argued and determined in the Supreme Court of the State of California, in the year 1852. By H. P. Hepburn, Reporter for the Court. Vol. II. Philadelphia: T. & J. W. Johnson, Law Booksellers, No. 197 Chestnut st.

These reports present to us decisions which have settled questions involving property of immense value, suddenly discovered, and acquired under circumstances entirely novel.

The emigrants from the Atlantic States in 1849, found California in the possession of a people, living with their herds in patriarchal simplicity, and governed by the Civil Law and the legislation of Mexico. In 1850, a people of high civilization, boundless ambition and energy, with a system of Law entirely different, controlled California; and at the same time, pastoral life disappearing, cities and the arts, the fruits of her mines, covered the land. Not unexpectedly, therefore, we find in these Reports cases of unusual difficulty and interest.

We will cite a few of the cases which have especially interested us:

Fowler vs. Smith, pages 39 and 569, raises the question, whether the Civil or Common Law governed contracts made after the acquisition of California, and prior to the repeal of the former, and adoption of the latter by the Legislature.

Mr. Chief Justice Murray, dissenting from the majority of the Court, contended with great learning, that the law of the acquiring country became immediately the law of the acquired country, from the necessity of the case, in California, where, to use his forcible language, "in a few months, the emigration from older States exceeded five times the original population of the country. A State government was immediately formed to meet the wants of this unexpected population. The whole world was amazed by our sudden progress; and even the Federal Government, startled from her usual caution by so novel a spectacle, beheld us take our place as a sovereign State, before her astonishment had subsided. Emigration brought with it business, litigation and the thousand attendants that follow in the train of enterprise and civilization. The laws of Mexico, written in a different language, and founded on a different system of jurisprudence, were to them a sealed book. The necessities of trade and commerce required prompt action. This flood of population had

destroyed every ancient land-mark, and finding no established laws or institutions, they were impelled to adopt customs from their own government."

The judgment of the majority of the Court was pronounced by Mr. Justice Haydenfeldt. His opinions in this and numerous other cases throughout the book, bear intrinsic evidence that they are the work of an accomplished lawyer, whose mind, though subtle, is not misled into over-refinement, but seizes the strong points of a controversy, and disposes of it with a just logic.

Billings vs. Billings, page 107, and *Smith vs. Morse*, page 524, are decisions upon the validity of deeds of trust for the benefit of creditors. At this time when such deeds are of frequent occurrence, and Courts are conflicting in their views on the subject, these decisions are valuable additions to the stock of learning.

Smith vs. Morse is a most important case. It involves millions of dollars of property, and the power of corporations and legislatures are here elaborately discussed.

In *De Witt vs. San Francisco*, page 289, it appears that the city of San Francisco was about to purchase and hold certain real estate in common with the county, for municipal purposes.

After a clear and critical examination of all the points taken in the argument of the cause, Mr. Justice Wells, in an able opinion, decided that the proposed purchase was proper and legal. This is an important case; the more so, as it contains the only judgment pronounced by Judge Wells, since elected by the people to the Supreme Bench, and who has given therein good earnest of what may hereafter be expected of him.

In re Perkins, page 424, slavery, emancipation, fugitive slaves and legislative acts on the subject, are the topics of inquiry.

Unfortunately those topics are pregnant with angry national agitation. It cannot be expected, therefore, that the opinion of this or any Court, can calm the turbulent elements of excitement, although the argument here reported covers every minute point, and seems to leave nothing more to be said on the subject. This cause, being a judicial exposition by a tribunal of high authority, of the most important question that ever agitated this country, will be read with interest throughout the Union.

In closing our review of this volume, we remark that it embraces a great variety of legal learning, in which the labors of the bench have been well supported by the bar, whose arguments have been presented with

ability, evincing that the large professional rewards in California, have called into the service of the profession many of its eminent members.

The reporter has discharged his duty in a neat, concise and masterly manner. The points in the several cases are lucidly stated, and the whole style and arrangement of the book is creditable. It is handsomely printed and well bound.

Cases in the Circuit Court of the United States for the Third Circuit. Reported by John William Wallace. Vol. II. Philadelphia: T. & J. W. Johnson. 1854. pp. 616.

This volume is quite as interesting, and contains as many, perhaps more cases of permanent interest and importance, than the first volume. We have read it with undiminished pleasure, and would gladly give our readers a full and extended notice, did our limits permit. We have already presented, by the kindness of the reporter, many of the principal points. In *Krebs vs. The Bank*, p. 49, will be found an excellent note on the vexed question as to the nature, effect and value of a judgment affirmed from necessity, in a Court of Error, by an equally divided Court. And in *Cromwell vs. The Bank*, p. 589, a vivid but sad picture of the manner in which solemn judicial records, involving many interests, are kept, or rather neglected. The cases which will probably attract the most professional attention are *Smith vs. The Creole*, p. 485; *Hanway's Case*, p. 139; *Stowe vs. Thomas*, p. 547; *Aspden's Estate*, p. 368; *Grubb vs. Bayard*, p. 31; *Goodyear vs. Day*, p. 283, and *Jones vs. The Ins. Co.*, p. 278.

Commentaries on the Jurisdiction and Peculiar Jurisprudence of the Courts of the United States. Vol. I. Containing a view of the judicial power and the jurisdiction and practice of the Supreme Court of the United States. By George Ticknor Curtis, Counsellor at Law. Philadelphia: T. & J. W. Johnson. 1854. pp. 635.

We have already called the attention of our readers to this valuable and comprehensive work. This volume is devoted to one of the most important and practical inquiries that can engage the attention of the Bar, the judicial power of the Federal Courts. A more extended knowledge of the principles, practice and mode of procedure in these Courts, has been greatly needed by the profession, and such learning has, by Mr. Curtis, been, for the first time, elaborated and put within our reach. The very latest authorities are all given, and copious and able commentaries made upon disputed questions. Nowhere is so careful an inquiry to be found as to Admiralty Jurisdiction, as in B. I. ch. 3, p. 33, et seq. Book II discusses the Original and Appellate Jurisdiction carefully and fully. We can do no better office for our readers than send them to the volume itself.