

to result." But still we may be indulged in saying, that it seems to us that the point for which that is cited did not arise here; that was an action for negligence, and the learned president of the Common Pleas held that, if the railroad company caused the accident, they must disprove negligence, and for this the judgment was reversed. Though the principle seems to be sustained by the opinion of Gibson, C. J. in another case, (4 Rawle, 25,) we cannot see how in such a case the question which we have here discussed, could be raised, and therefore it seems to us that thus far it contains an irrelevant expression of opinion by a single judge.

From what we have said, it results that this judgment must be reversed so far as relates to the one thousand dollars allowed for damages that may be done by accidental fire, and affirmed as to the residue.

NOTICES OF NEW BOOKS.

We have on our table the last two numbers of the *Revue Historique de Droit Français et Étranger*, a periodical published in Paris, and conducted by several distinguished jurists, professors of law and practitioners at the bar. Among these is Mr. Laboulaye, member of the *Académie Française*, and one of the most eminent of his countrymen in the domain of jurisprudence.

This *Review* has a large number of contributors both in France and other countries, and has earned and deserved reputation. It aims to concentrate, as much as possible, individual efforts and labors in the legal world; to place side by side writers of different parts of the world; to compare and contrast the results obtained in one country with those of another, and thus to combine to enlighten and strengthen the efforts of legal learning wherever made. The words *Revue Historique* show its tendency. Its motto might be: "*The sources of the law are its best commentary.*" Hence the very great attention paid in France, and still more in Germany, and generally now over all Europe, to the history of the law. The jurist meets but few principles in modern law that have not their roots in former laws which may have passed away. The principle still lives in the new law, adapted to new circumstances, and its study with

reference to, and even in the old law, can only cause us to know its importance and appreciate its effects. Even when the old rule has been laid aside, the knowledge of what it was is almost equally important to understand and fix the just limits of the new rule about to occupy its place.

The scope of the *Review* is not confined to the French law. Foreign law claims much of its attention, inasmuch as nothing better exhibits in their true light the laws of one country than a comparison with those of another. Hence the existence in all European legal faculties of at least one special chair for Comparative Jurisprudence—"législations comparées."

The articles contributed are generally well worthy of perusal, and even study. M. Villegues furnishes a valuable one, "*De l'absence en droit Romain et en droit Français.*" In this he notices and ably controverts the opinion long prevalent, that the principles contained in the title, "*des Absens,*" in the code Napoleon, are the work of the *rédacteurs* of that code, and that they are here the creators of a new law. He shows here that the sum total of the matter, borrowed from the law that governed France prior to the promulgation of the Code Napoleon, is far greater than that which was rejected. The Roman, the Canon, and the Customary law, (*droit coutumier*) are more extensively drawn upon. The author shows that the Romans had no complete system on *absence*, and that the principal merit of the *redacteurs* of the code has consisted in their having divided the time of absence into three different periods. 1st. Period of presumption of absence. 2d. Period of declaration of absence, with a provisional *missio in possessionem*. 3d. Period of definitive *missio in possessionem*.

The article then treats extensively of the effects of absence in relation to the rights of the absentee's wife, of the eventual rights which may occur to his profit, or its effect upon his marriage, and of the effects of absence on his children and their rights and duties.

M Pontalis contributes an excellent article on the *judiciary power of England*. He well observes that the English judicial system seems, at first sight, to be composed of a number of different jurisdictions, calculated to perpetuate the confusion of the feudal system. There are civil courts, with special attributes and limited powers; ecclesiastical courts, with partial jurisdiction over lay affairs; courts for the universities and other corporate bodies; privileged tribunals for certain persons or certain districts—different systems according to the courts that apply them. Such are the obstacles which apparently lie in the way of any regular and uniform system of justice. This aggregate—somewhat incoherent, of institutions

partly obsolete, and others tottering—is but a testimony of that respect for the past inherent in the people of England, and to which they owe much of their prosperity.

The writer of the article in question gives a short account of the origin of those courts and their jurisdiction, and shows how the life and strength of the judiciary power exists mainly in the high courts at Westminster and in the Inns.

The *Lex Bajuvaricorum* is the subject of another long, but interesting article. The old legal monuments, as a source of elucidation of modern law, had ever received much attention in Europe. Hence the article above named. The singularities of its composition, formed as it is of elements from various sources, have for a long time attracted the attention of historians, and its intimate relation with the laws of cotemporaneous nations has given rise to numerous controversies. The same was the case with the "*Lex Burgundionum*," on which the writer of this article has published a paraphrase, or a commentary. This body of laws has recently been translated, and forms a useful guide to those desirous of becoming acquainted with the old law without being acquainted with the legal language of the sixth century. The learned will also find here a most useful commentary on a law which is still, unfortunately, very obscure in many places.

The common law (*droit coutumier*) continues to occupy much attention in this *Review*, and deservedly so. The most valuable monuments of science in Europe are often scattered and lost in consequence of political commotions, and it is not without great trouble that men devoted to study succeed in bringing together the fragments surviving these revolutionary tempests.

Secondary men best represent their age: those of genius, by the elevation of their thoughts, are apt to go beyond. The crowd keeps the same even tenor of its way—now and then donning a new dress. It belongs to secondary men alone to exhibit without exaggeration the grand and the ridiculous of their age. They progress, but do so with measured steps. They do not even clearly apprehend the part they are playing. To such valuable minds we are indebted for much slow, but sure progress. Their labor remains, though their name may have been consigned to oblivion. Such a one was Jean de Basmaison, a lawyer of the sixteenth century, and such were the suggestions that induced M. Bardoux to discuss the subject in an article in this *Revue Française*.

Though there is no country in the world so much favored with *legal reviews* as Germany, a new one has lately been issued from Munich by Bluntschli and Pözl, under the title of *Kritische Ueberschau*, etc., a critical survey of German jurisprudence and legislation.

It is well agreed at this day that jurisprudence has need equally of the aid of history and philosophy. The exercise of this double way of studying law has produced the most satisfactory results. The great question now is, how to give the works and labors of both philosophers and historians a practical direction, to elucidate and perfect that system of common law, that *jus gentium*, to which the systems of all nations are approximating.

The *Review of Munich* has an able article reviewing Kemble's work on the Saxons. The author, Conrad Maurer, gives in it an interesting *resumé* of all that we know of Anglo-Saxon civilization. He is a competent judge. He has thoroughly searched the origin of the German law in the institutions of the northern nations, and especially among the Scandinavians. His recent work on the history of Iceland exhibits a rich mine to be worked out.

PRINCIPLES OF THE LAW OF REAL PROPERTY; intended as a first book for the use of students in conveyancing. By JOSHUA WILLIAMS, Esq., of Lincoln's Inn, Barrister at Law. Second American, from the fourth English edition, with Notes and references to American decisions, by William Henry Rawle, author of a treatise on Covenants for Title. Philadelphia: T. & J. W. Johnson & Co., law booksellers and publishers, 197 Chestnut street. 1857.

We regard it as very creditable to the publishers of American reprints of English books, that they generally present them to the profession with copious annotations, referring to the American cases, by American annotators of established reputation and unquestioned ability. This little, unpretending volume contains, in a succinct shape and elementary form, careful discussions on some of the most abstruse learning the bar is called upon to consider and advise upon. The severity and forbidding aspect of the older treatises on Realty have disheartened many a student, who, had he had such a book as Williams' placed in his hands, would easily have encountered, in his subsequent studies, Coke's Littleton. The notes of Mr. Rawle have greatly enhanced the value of the original book. They

are conceived and executed in the same spirit as the book itself, and we can do the student no greater favor than to send him to these able annotations for stores of instruction.

A TREATISE ON THE LAW OF CONTRACTS, AND RIGHTS AND LIABILITIES EX CONTRACTU. By C. G. ADDISON, Esq., of the Inner Temple, Barrister at Law. Second American, from the fourth London edition, with notes and references to American decisions, by Edward Ingersoll. Philadelphia, 1857: R. H. Small. pp. 1264.

Mr. Addison's treatise on contracts is by far the most useful English book on this branch of the law. It is better arranged, more thorough, and comprehends a wider range of subjects than that of the late Mr. Chitty; and it is more adapted to the necessities of the practising lawyer than Mr. Smith's otherwise invaluable lectures. Mr. Addison treats in the first place of the principal contracts with respect to real and personal estate, viz: The contracts of sale, and mortgage, pledge, and other species of hypothecation; those of the letting and hiring of property, and with labor, services, and carriage, at land and by sea; and of the other kinds of bailment, those of insurance, agency, suretyship, marriage, partnership, incorporation, association and the like. The interpretation and construction of contracts, and the rights of action to which they give rise, and the effect of assignment, novation, substitution, bankruptcy, and death, upon those rights, are then considered. The discussion of the release, discharge, and satisfaction of contracts, and the method of compelling their performance at law and in equity, as well as of the doctrines of lien, set-off, merger, and of the limitation of actions, concludes the book. A vast body of law is thus collected in a compact and convenient form, and, we may add, stated always with clearness and accuracy.

We cannot, indeed, consider this work as belonging to the highest order of text books. It is, we must admit, little more than a skilful condensation of the multitudinous decisions and statutes in England on the subjects of which it treats; and these latter are rather aggregated together by the author, than developed through and in any natural or coherent connection. There is a lack of that scientific method, that systematic discussion of principles which the law of contracts demands, but which it unfortunately

has seldom received from English writers. Mr. Addison, it is true, has to some extent availed himself of the assistance which the continental jurists afford in the consideration of topics, most of which are emphatically *juris gentium*; but he has not always done so with perfect accuracy. At the very outset, for instance, he makes the common blunder of confounding the doctrines of the Roman and of the common law with respect to *nuda pacta*, and of supposing that the *causa*, which the one, and the "consideration," which the other, makes essential to a contract, are convertible terms. Nothing could be more erroneous. A *nude pact* in the Roman law was simply a promise or agreement, which, from the absence of established formalities which indicated deliberation, or from some artificial reasons, was not clothed with an action. The question of "consideration," as we understand the word, had little or nothing to do with it. On other points, also, we have noticed that Mr. Addison has drawn a little incautiously from the wells of Roman jurisprudence, though perhaps not in matters of very grave importance.

But while thus indicating what we conceive to be a defect in the treatise before us, we have no desire to detract from the real and solid merits which it possesses, and which are now stamped with the seal of a fourth edition. Indeed, for the practical lawyer, its "very failings lean to virtue's side." What it wants in abstract completeness is more than compensated for by its copiousness of citation, its comprehensiveness of plan, and its general accuracy. Its value is much enhanced to the profession in the United States by the learned and careful notes of Mr. Ingersoll.

AN ANALYTICAL DIGEST OF THE LAWS OF THE UNITED STATES, from the year 1789 to the year 1857, with marginal references, a digested syllabus of each title, foot notes to the judicial decisions, and a full and exhaustive index. By FREDERICK C. BRIGHTLY, Esq., author of "The Law of Costs," "Equity Jurisprudence," etc.; editor of "Purdon's Digest of the Laws of Pennsylvania," etc. Philadelphia: Kay & Brother, 1857. One vol. imperial octavo.

By the courtesy of Messrs. Kay & Brother, we have been shown some specimen pages of this work of general interest, and we think the profession will be glad to be informed that such a book is now in the hands of the printer, and will be presented to the public during the ensuing sum-

mer. The important, and by far most interesting feature of the editor's labors, consists in the foot notes. Every source of authority has been explored. The decisions of the Supreme Court, the Circuit and District Courts, the Court of Claims, the decisions of the State Courts, the opinions of the Attorneys General and heads of departments have been collected, and the references, arranged under the respective sections of which they are the interpretation. The editor, Mr. Brightly, is well known at this bar, and throughout Pennsylvania, as the careful and diligent editor of Purdon's Digest in its latest and most useful editions. The plan attempted with the federal laws seems to be much of the same character. The sheets we have seen are most fully and thoroughly annotated, and leave little to be desired. Should the entire work be completed with the same thoroughness, and in a manner equally elaborate, it will certainly supply a want in our libraries which as yet remains unfilled.

REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK; with notes, references, and an index. By E. DELAFIELD SMITH, Counsellor at Law. Volume II. New York: Lewis & Blood, law booksellers and publishers, No. 84 Nassau street. 1856. pp. 864.

This volume is quite equal to its predecessor. It contains judgments upon points of much practical importance in a large and enterprising commercial community. The amounts involved frequently appear trifling when compared with the intrinsic difficulty of the questions themselves. The Court of Common Pleas in New York is by no means a modern tribunal; until recently its jurisdiction was limited. By the Judiciary Act of 1847, the Code of 1848, and its amendments of 1849, 1851, and 1852, and the statute of 1854—the Common Pleas exercises in that city co-ordinate jurisdiction with the Supreme Court. But in addition to this general jurisdiction, it is invested with a peculiar and exclusive jurisdiction, which gives some special interest to these reports. It is the Court of Appeals for the Marine Court and the District (Justices') Courts; and, as to all suits commenced in those courts, it is the court of final resort. Its reports, therefore, contain the most complete and authoritative information concerning the practice and powers of those courts, and by analogy, of the Courts of Justices of the Peace and County Courts throughout the

State. It has also exclusive jurisdiction of cases under the Mechanics' Lien Law (except that proceedings may be instituted in the Marine or Justices' Courts upon liens not exceeding one hundred dollars, subject to review in this court). We propose in our next number to insert some abstracts of the cases in this volume, which will give our readers a better idea of the value of the reports than any mere commendation can do.

OFFICIAL OPINIONS OF THE ATTORNEYS GENERAL OF THE UNITED STATES, advising the President and Heads of Departments in relation to their official duties, and expounding the Constitution, treaties with foreign governments, and with Indian tribes, and the public laws of the country. Edited by C. C. ANDREWS, Counsellor-at-Law. Vol. VII. Containing the opinions of Hon. Caleb Cushing, of Massachusetts, from October 9, 1854, to July 9, 1856. Washington: Robert Farnham, 1856. pp, 778.

We have read this volume with much pleasure. It contains many interesting and important opinions to both professional and lay readers. The labors of the editor are most satisfactory. His head notes lead at once to the very pith and substance of the opinions themselves, enabling the reader to see at one view the subject discussed and the matter settled. The head notes and index add to the interest and value of the volume, by rendering its contents accessible to the reader, without which they could only be known by much greater toil than most readers are willing to undergo. We propose, in the next number, to present one or two opinions of general interest; and we especially commend the attention of readers to "The Celebration of Marriages by Consuls," p. 18; "The Estate of Madame Sontag," p. 68; "The Appointment of Consuls," p. 242; "The Functions of Consuls," p. 342; "The Purchase of Public Lands by Aliens," p. 351; "Foreign Enlistments," p. 367; "General Scott's Case," p. 349; "United States' Judicial Authority in China," p. 495; "Eminent Domain of the United States," p. 571; "Copyright," p. 656; "Spurious Land Warrants," p. 657, as containing learned, able, elaborate, and thorough discussions by Mr. Attorney General Cushing, well worth the attentive study and perusal of any professional reader who wishes to be fully informed upon the particular subject matter of inquiry.