

not where he does his best to get competent persons. He is not bound to warrant their competency." Here the defendants have employed competent persons to do the work; they did not do it themselves, and cannot be held responsible for the result of the breaking of the scaffolding.

*Temple* was not called upon to reply.

PER CURIAM.—There was certainly evidence to go to the jury, and there must be judgment for the appellant.—*Judgment for the appellant for a new trial.*

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#### NOTICES OF NEW BOOKS.

REPORTS OF CASES ARGUED AND ADJUDGED IN THE SUPREME COURT OF THE UNITED STATES, December Term, 1856. By BENJAMIN G. HOWARD, Counsellor at Law. Vol. XIX, Washington: William M. Morrison & Co. 1857. pp. 662.

Charles Lamb once, when a child, after studying for some time the epitaphs in a crowded church-yard, innocently inquired "where all the bad people were buried?" A retrospect of the literary notices of this and other legal journals for a few years, has forced upon our minds a similar inquiry, "Who writes or publishes the bad law books?" Certainly such there must be, yet our memory turns back in vain over a dreary waste of goodness, and distracts us with the impossible excellence of all the authors, publishers and printers that have ever come under our notice. So invariably admirable have they been in everything, from text to type, that if Arcadia, too, had its lawyers and booksellers, from that stock must they have sprung. Even if a little rivalry has occasionally exhibited itself in law calf, between Menalcæus and Damocetes, it did not disturb this pastoral happiness, for the ever amiable critic soon harmonized them with his equal praise, and declared to each,

"Et tu vitula dignus et hic,"

Of this monotony of perfection we, as editors, have some little right to complain. It has exhausted our stock of laudation. We have honored every draft on our praise, and now we have apprehensions lest our bank may be forced to suspend. Yet we have done our best. Every change has been rung on the accuracy, the fullness, the brevity, the clearness, the

learning of the author, and all sorts of harmonious antitheses of conflicting qualities have been made to result from the shaking up of these few epithets of all work, just as we have such a series of brilliant effects in the kaleidoscope from the turning of a few bits of colored glass. Type and paper, too, have run their narrower circle of praise. We have sworn "eternal friendship" successively to every publishing house in the country. And that mystical and portentous abstraction, "The Profession," has been urged to admire and buy upon so many and such varied pleas that the fertility of our invention has really been a surprise to ourselves.

On the other hand, on beginning our career, we laid in the usual store of critical weapons. We have still piled away a whole arsenal of bitter vituperation, of scathing ridicule, of indignant denunciation, such as every well conducted journal should have on hand, and which some seem to be lucky enough to keep in constant use. But we have had no such good fortune. Our arms are rusting away in private, in these melancholy days of peace and admiration towards our neighbor, like that famous stock of muskets that a New York merchant once bought, and could never find what to do with thereafter; and like him, too, having wasted all our compliments and stored our ill nature, with empty hold and unspent ammunition, we seek some lawful use for our artillery, that we may never be tempted to fillibustering attacks upon the innocent good books of which we have spoken above. Will not somebody write a very bad book?

In the meantime, and waiting this, we have endeavored to lay hold of some only comparatively bad book to review, just for a little practice, and to hide the bankruptcy of our vocabulary of praise. It has proved no easy task. We thought for a while of the copious Mr. Shorterman's editions of Serjeant Stubbs' book on *Ne Exeat*, and of Graeme on motions in arrest of judgment, in which these authors have been fairly swamped in a muddy mass of crude notes on every possible subject, or where a slender wire of text stretches drearily through a wilderness of comment. We looked hopefully at another recent "American edition" of a book on a very comprehensive branch of law, in which a solitary but quite irrelevant American case is cited with perfect regularity at the foot of every twenty-seventh page, as though it had been edited by some intermittent machinery connected with the printing press. But, unfortunately, the books themselves were good and useful; it was only the "mustard was naught." We then turned cheerfully to some late Commentaries on Penal Law, in which the writer has calmly appropriated his predecessor's authorities, if not more, without acknowledgment; but we had not quite a fair subject even here, for

the book had much merit, and the typography and general *mise en scene* of those eminent publishers, Messrs. Large & Black, are of course always excellent, and have the effect of obliterating all minor distinctions.

At last we fell on the nineteenth volume of Mr. Howard's Reports.

Now, we must premise that we have no very warm animosity to a man who writes obscure, feeble, or inaccurate text books. He may do so if he likes, without much harm. We are not obliged to read them. If we choose to do so, the collection of authorities at least is usually valuable, and the most stupid man, who has brooded over his subject a long time, must hatch some little original thing now and then. At the worst they are pleasanter reading than a digest. But a bad reporter always earns our unmixed reprobation. His book we must have and study, and the waste of time and vexation of mind which his blunders create are apt to be set down to his account in no pleasant spirit or euphuistic terms. We are forced to hire him at an annual salary; and his only service is to disfigure the good materials placed in his hands. Any man who has ever lost a cause by relying on an erroneous syllabus, or is often obliged to stop in the hurried preparation of a case to try and comprehend an incomprehensible report, has acute feelings on this subject.

Such reporters—and Mr. Howard not least among the number—we rank among the public enemies. He himself is the reporter of the highest tribunal in the United States, and that which to foreign countries is the representation of the very roof and crown of our judicial system. However much habit may have weakened its effect on the mind, there is certainly something most august and reverend in the idea and constitution of the Supreme Court. A body whose general jurisprudence is that of nations rather than individuals; a court whose bench and bar are composed of the topmost men of a people which has developed the science of law in more varied lights, and studied it more profoundly than any other; a tribunal in whose pacific arbitrament rest those high arguments which can set Europe in a blaze of war, is of certainly no mean dignity, and should have a fit exponent of its judgments. Yet how are its decisions reported? Why, in a manner that is admitted to be a disgrace to the country. What must English judges and lawyers think, accustomed as they are to their own admirable reports, to find the decisions of Taney or Story, or the other lights of commercial law, to whom they look, in such setting as the series before us? What opinion can they have of our judges and lawyers who can tamely submit to be caricatured in such a manner?

The first of these volumes were wretched; complaints and remonstrances

were made, and the last of these volumes are still wretched. It was to be hoped that pride would supply that in which industry or conscientiousness was lacking. But no improvement seems to have been even attempted. It is not worth while to enter into the details of Mr. Howard's defects, which are too well known. It is enough to say that the head notes, when comprehensible or correct, which is not the case with more than half of them, are vague statements of the common-places of the law, which had dropped from the judges in their opinions, and which, being both new to and understood by the reporter, he has borne off in triumph. The statement of facts is generally a mere "muddle," and the arguments of counsel, when any are given, are no better. Indeed, it provokes us beyond the bounds of patience to find those grand arguments in which the giants contended, the arguments of Webster, and Clay, and Binney, and the other masters of common and constitutional law, whose reasoning weighs with us scarcely less than the judgment of the court itself,—to find them, we say, so botched and mangled and belittled that not even the *torso* of the colossus remains.<sup>1</sup> And the index is always constructed on the plan of tossing together all the syllabuses under the three comprehensive heads of Chancery, Commercial Law, and Constitutional Law, without any further attempt at subdivision.

In this volume, Mr. Howard has added the one thing left to complete the unworthiness of his work. Formerly, when these reports were printed by Little & Brown, their mechanical execution was some slight consolation. But now he publishes in Washington; and the type and paper are on a par with the contents of the volume. Really, it is time that some one should speak out honestly with respect to the great disregard for the simple and plain duties of his post which the reporter has always shown.

In the foregoing observations we have not been actuated by the slightest ill feeling against Mr. Howard himself, with whom we have no personal acquaintance. We believe that he belongs to that class of estimable but rather incapable gentlemen of the old school, who have the most deserving political and social connections, and for whose support the Federal Government has mainly intended to provide. When these get quiet, profitable posts, we are always well pleased, as they infuse a tone of placid respectability into the Government, which is necessary to temper the rude progress

<sup>1</sup>For instance, read the argument of counsel in the Girard College case, in 2d Howard, and see what incoherent balderdash the four perhaps most famous lawyers in this country are made to talk, in a struggle too which was *pro corona*!

of Democracy. They constitute, indeed, one of the most amiable features of our institutions.

We cannot forget, however, that office partakes in some degree of the character of a trust, and is not altogether intended for the benefit of its incumbent. Not, indeed, that we would expect him, in such cases as the present, to do its work himself. We generally have cause to regret it if he does. He is not appointed for that purpose. What we desire and expect is that he will get some competent deputy. This is an understood thing. The respectabilities are to be supported by one and the work accomplished by another; for men differ in their gifts. Perhaps hereafter some different plan may be devised for uniting the two.

In the meantime, and in conclusion, we would suggest to Mr. Howard that there are hundreds of needy lawyers throughout the country who are abundantly able to get up a capital set of reports, who would do it perhaps for a tithe of the salary, and who would still leave his name on the title page. This course would please every one. The reporter would be rid of barking critics like ourselves, the needy lawyer would get a lift in the world, and the public would at last obtain a decent series of United States Reports; which they have not had for the last twenty-five years.

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AN ABRIDGMENT OF THE LAW OF NISI PRIUS, by WILLIAM SELWYN, of Lincoln's Inn, Esq., &c. With Notes and References to the Decisions of the Courts of this country, by the former Editors, HENRY WHEATON, THOMAS I. WHARTON, and EDWARD E. LAW. Seventh American edition, with additional Notes and References to American Cases, by ASA I. FISH; from the eleventh London edition. Philadelphia: Robert H. Small. 1857. Two vols. pp. 1,523.

A new edition of this standard work has been long desired. Among the earliest of the treatises on the law of Nisi Prius, it has survived even its later rivals. It has done so deservedly. It is much the best book on the subject. It is clearly written, well arranged, copious in its citation of authorities, and preserves the happy mean between practice and theory, which is essential in a work of this kind.

The bulk of the American notes has been long before the profession, and the names of the former editors have been a sufficient guarantee of their value. Mr. Fish has performed his part of the task with care and fidelity, and has added much useful material. It would not be becoming for us to say more, but we can safely recommend the book to our readers as an admirable compendium for practical use.

