nephews and nieces as should be "then" living, and the child and children of such of them as should be "then" dead, it was held, that the children of a nephew who was dead at the date of the will were entitled to participate, and that their interest vested at the death of testatrix. *In re Faulding's Trusts*, 28 L. J., Ch. 217.

Master and Servant.—An action is not maintainable by the representative of a deceased workman against his master, if the deceased's own negligence materially contributed to the injury of which he died, even though the master be guilty of personal negligence. *Semble*, that it is negligence in the manager of a mine to keep in his employ a banksman whom he knew habitually neglected a rule important for the safety of other workmen. *Senior* vs. *Ward*, 28 L. J., Q. B. 139.

Will.—Testator gave leasehold premises to M. R. for life, and at his death to A. R. and her children; but if they should die without issue, in that case the property was to be divided between four persons, *nominatim*. A. R. had no children either at the death of the testator or of the tenant for life. A. R. took only an estate for life, with remainder to her children. The rule in *Wild's case* has no application to personalty. *Audsley* vs. *Horn*, 28 L. J., Ch. 293.

NOTICES OF NEW BOOKS.

STATE OF MASSACHUSETTS.—REPORT OF THE COMMISSIONERS ON THE REVISION OF THE STATUTES. In Five Numbers. Boston: William White, Printer to the State. 1858. pp. 1389.

We are seldom called upon to pass upon labors of greater magnitude than those now before us. It is quite obvious that no critical examination, unless made by those whose duty it is to use the acts, could be made, which would enable us to furnish a complete and accurate notice. All we can pretend to do is to have hastily read certain titles and chapters of this most voluminous and laborious report, and suggest the results of our limited examination. "The Commissioners commenced their labors by an examination of all the public acts passed since the revision of the statutes in 1835, for the purpose of ascertaining how far they had severally re-

pealed or modified the revised statutes or preceding enactments; how far, in turn, each of them had been affected by subsequent legislation, and where the portions which still remained in force should be incorporated into the general plan, as prescribed by the resolve under which the revision is made. For this purpose the legislation of the different sessions was parceled out among the commissioners, and a written report was thus prepared with reference to each session; copies of which were, from time to time, submitted to the other commissioners for examination, after which general meetings were held for the purpose of considering and correcting the reports. When the Commissioners have called the attention of the legislature to the fact that the greater portion of the statutes, however much they may affect the pre-existing legislation, either contain no repealing clause, or have the general clause which is in common use, but of no practical effect, and that "all acts and parts of acts inconsistent with this act are hereby repealed," they need say no more of the great labor and difficulty of each examination.

They have not deemed it a part of their duty to pass upon doubtful questions of constitutional law, the presumption being that all the statutes of the State are constitutional until the contrary appears. But in some cases they have endeavored to obviate grave objections which might arise. For instance, many statutes are found which, while they have the form of general laws, are to be in force only in cities where they are adopted by the City Council, or in towns in which they are adopted by the inhabitants, and a few contain a further provision purporting to give the towns and cities where they are adopted power to repeal or suspend them at pleasure. In two instances the acts are in force in cities with a provision that the City Council may suspend them, but are not to be in force in towns until they are adopted. Acts of this character do not appear to be by-laws. Cities and towns have the option to adopt or reject them as they stand, but have not the power, by virtue of such provisions, to shape and fashion for themselves such rules as they may deem suitable to the wants of their several localities. So far as seemed to be practicable without changing the substance, the commissioners have given to such provisions the shape of powers to pass by-laws. When this could not well be done, they have been retained, as the commissioners had no means of determining what the legislature would be inclined to substitute.

In the execution of their duty, "to suggest any mistakes, omissions, inconsistencies, and imperfections," and the manner in which they may be corrected, supplied and amended, the commissioners have incorporated the

proposed amendments into the list of the revision. No other mode seemed to be practicable. Had they attempted to construct a perfect text without amendments, and then to propose amendments in the usual legislative mode, by striking out particular portions and inserting other matter, it would have required several years more to prepare the report. But this was not the only objection to that course. In many instances the amendments are proposed because the "mistakes, omissions, inconsistencies and imperfections," caused by successive provisions at different periods upon the same subject, rendered it impossible to construct a text from the existing provisions which should express what it seemed probable was the intention of the legislature. In other cases the existing enactments were such as to leave grave doubts respecting that intention, and the commissioners had neither the power to decide authoritatively respecting the true construction, nor the benefit of the arguments of opposing counsel, which usually attend the consideration of the contested questions of construction in the courts of justice, and render material aid in the formation of the judgment. But they were obliged to decide, as well as they might, for the purposes of this revision; and they trust that they have not made many or very grave mistakes in this particular. It will be seen, on examination, that there are numerous questions arising upon the existing statutes respecting which a court might decide either way, and in which, of course, neither the commissioners, nor any tribunal except a court of last resort, can determine with certainty whether the text of the revision, as they have constructed it, does or does not operate as an amendment. A similar power in the revision of 1835 was executed in a similar manner.

In proposing amendments, they have incorporated many provisions of greater or less magnitude, references to which will be found in the notes to the several chapters.

In a very few cases they have added independent provisions, of which, chapter 151 contains, perhaps, the most marked instance; but even here the amendments are proposed for the purpose of rendering more complete the existing enactments.

They have sedulously avoided the introduction of their personal opinions respecting matters of expediency in the shape of amendments. In common with many others, they might, if acting as legislators, desire certain changes, but they have considered it their duty to construct the several chapters according to what appears to be the general policy of the legislature as they find it expressed.

The immense toil such tasks must have imposed can only be appreciated

by those who have undergone like labors. As far as our examinations have extended, we must say that the commissioners have amply fulfilled all they have undertaken to do, and this revision cannot fail to be most useful and labor-saving to the profession in Massachusetts, and is well worth the attention of legislators and revisers in the different sections of the Union.

STATE OF NEW YORK.—FIRST REPORT OF THE COMMISSIONERS OF THE CODE. Albany: Weed, Parsons, & Co., 1858.

The Commissioners, whose first report is now before us, were appointed by an act passed in 1857, by the Legislature of the State of New York, to reduce into a systematic code such of the laws of that State as were not comprised in the codes of civil and criminal procedure already completed.

The laws of the State have been arranged under two great general heads, namely, substantive and remedial laws; or, those which define the rules relative to property and conduct, and those which prescribe the modes of enforcing such rules. The latter are comprised in the codes of civil and criminal procedure, and the codification of the former has been committed to the present commissioners, Messrs. David Dudley Field, William Curtis Noyes, and Alexander W. Bradford, all of whom are well known as jurists of high character. They are directed to divide their work into three portions: one containing the political code, another the civil code, and a third the penal code. The political code is to embrace the laws respecting the government of the State, its civil polity, the functions of its public officers, and the political rights and duties of its citizens. The civil code is to embrace the laws of personal rights and relations, of property, and of obligations. The penal code is to define all the crimes for which persons can be punished, and the punishment for the same. These three codes are not to include the laws relating to courts of justice, or the functions or duties of judicial officers, or any provisions concerning civil or criminal actions, or special proceedings, or the law of evidence, all of which are comprised in the codes of civil and criminal procedure.

The present report, made in February, 1858, is accompanied, as ordered by the act, by a general analysis of the projected codes. This analysis, though it is but a mere dry list of the heads of law, clearly shows that those who compiled it have set not only earnestly, but also scientifically, to work.

Hasty and undigested legislation, morever, is not contemplated by the commissioners; for they say, that while they "are duly sensible of the

importance of having the work done with all reasonable dispatch, and of the pressing need of some portions of it at the present time, they are also aware of the necessity of proceeding with deliberation, and submitting no portion of the code till it has been carefully considered. Not only must each part be prepared with care, but its relations to the other parts must be examined, before it can prudently be admitted."

The propriety of introducing changes in our statute law simultaneously with the consolidation of that law, has, of late years, been much discussed: the opinion of these great jurists on the subject will, we think, be read with interest, and as the following passages apply equally as well to a system of consolidation as to one of codification, we extract them from the report:—"How far," say the commissioners, "in the preparation of a code changes should be recommended, is a question of much delicacy. They should without doubt, be cautiously admitted. Law is the growth of time and circumstance. An original system of jurisprudence, founded upon mere theory, without reference to national characteristics, habits, traditions, and usages, would be a failure. The science of government and law is progressive; new regulations spring from necessity, or are suggested by experience, and the application of the rules of justice to human affairs is constantly modified by the changing circumstances of society. The process is easily understood. In the earlier stages of civilization, when communities are small and isolated, local customs are more distinct, in conformity with local character; but as cultivation and intercourse gradually break down provincial peculiarities, and eradicate partial customs, the tendency to assimilation enables the legislator to disregard inconvenient rules, venerable only from age and habit, and gradually to introduce changes, which have the experience of other communities to recommend them, and which seem better adapted to an advanced civilization. We thus reach a stage in which valuable improvements may be borrowed from other systems and engrafted into our own, without impairing the harmony of our laws by the introduction of unsuitable elements. For example, the law of special or limited partnerships, the offspring of the commerce of the middle ages, unknown to the common law, has within a recent period been adopted into our own legislation with manifest advantage. So we have also seen the influence of our jurisprudence reflected back upon the country from which we derived our language and our laws; and reforms, readily admitted by our plastic legislation, slowly adopted there, after having been tested by our experience; though the settled constitution and the fixed habits of England might have prevented their origination in that country. Thus,

two great purposes are to be subserved in revising the jurisprudence of a nation; one, the reduction of existing laws into a more accessible form, resolving doubts, removing vexed questions, and abolishing useless distinctions; the other, the introduction of such modifications as are plainly indicated by our own judgment, or the experience of others. We are satisfied that this work should be performed with delicacy, caution, and discrimination, that nothing should be touched, from the mere desire of change, or without great probability of solid advantage."

On Poisons, in relation to Medical Jurisprudence and Medicine. By Alfred Swaine Taylor, M. D., &c. Second American, from the Second London edition. Philadelphia: Blanchard & Lea, 1859; pp. 755.

Some of our readers might suppose that the word *poison* was so clear in its meaning that no difficulty would arise from its use in common or scientific language. And yet so far is this from being the case, that we have never seen an adequate definition of the word. M. Bernard (in his "*Leçons sur les Effets des Substances Toxiques,*") says, a correct definition is impossible; but adds, that here, as in other instances where definition is most difficult, it is least requisite. The like reflection may have consoled Dr. Johnson, when he asked the pert midshipman what "poplolly" was, and obtained for reply, that it was "what the poplolly man put into the poplolly locker." The medical practitioner at least will be aware that the same incapacity for definition belongs to the word "medicine." "No one," says Dr. Taylor, "can draw a definite boundary between a poison and a medicine"—a fact to which they who have been much physicked can give ready credence. The greater number of poisons are useful medicines when properly employed, and "nearly every substance in the catalogue of medicine may be converted into an instrument of death, if improperly administered."

There is one point in Dr. Taylor's book which we cannot help alluding to. We mean the controversial and personal tone which the author falls into too frequently—unless indeed it is unavoidable. In the present state of the practice of experts, and the morale of "professional witnesses," it may be true that an upright and honorable mind cannot avoid taking

every opportunity of bitterly denouncing the abuse of scientific knowledge, and the disregard of the responsible office of assisting public justice and securing private rights. Yet we wish the frequency of the attack and exposure of the conduct of certain well known professional men, were not so perpetually recurring, and so broadly put forth. We are far from saying that the author condemns unfairly; but is it necessary in a standard work to adopt the bitter and pointed language which we are now noticing?

The observations of Dr. Taylor, p. 703, with reference to Palmer's case,[1] are well worthy of perusal. He says:—

"That the prisoner was guilty of the foul crime of murdering his friend, no one who views the whole case apart from prejudice, can entertain a reasonable doubt. A distinguished German who has commented on his trial, expresses his astonishment that any professional man could be found in England, who could stand forward and publicly state on oath that the symptoms under which Cook died might be explained by any form of nervous disease, epilepsy, or angina pectoris (Dr. Husemann in *Reil's Journal*, 1857, 4th Heft, p. 564.) It argues but little for the knowledge or moral feelings of medical witnesses, and must shake the confidence of the public, as it has already done to a great extent, in the trustworthiness of medical opinions. Such must be the result when scientific witnesses accept briefs for a defence; when they go into a witness-box believing one thing, and endeavor to lead a jury by their testimony to believe another—when they make themselves advocates, and deal in scientific subtleties, instead of keeping to the plain truth. Such men should be marked by the public, and their efforts at endeavoring to confer impunity on the foulest crimes, and to procure the acquittal of the most atrocious criminals, should be duly noted. The chemical defenders of the culprit Tawell on the 'apple pip' theory (ante, p. 682), were in the foremost rank to defend the culprit Palmer! Fortunately for society their efforts did not prove successful in either case. In the mean time, this pernicious system is a heavy blow and a great discouragement to the detection and exposure of murder by secret poisoning. No man in this country can henceforth venture to denounce a grave crime of this kind, committed by a person of wealth or of social position, without being prepared to incur the most calumnious attacks, and to have his opinions and motives grossly misrepresented. If, after due consideration, he boldly expresses his

[1] See 5 Am. Law Reg., 20.

opinion at an inquest, and persists in it, he is said to be prejudiced; if he hesitates or expresses himself timidly, he is not to be trusted! There is but little protection afforded to a witness by a court of law; the accused person is there the sole object of sympathy and consideration; and a learned counsel is only mildly rebuked, who, against the whole bearing of the scientific evidence, asserts that the prisoner is innocent, and asks the jury to adopt his venal assertion in preference to the unbiased opinions of medical men."

Dr. Taylor, in the above passage as elsewhere, is, we believe, justified in the use of most of his expressions; but, notwithstanding all his experience, we perceive that his notion of the duty and position of an advocate partakes of the error which we commonly find, and may expect to find, amongst well informed people. "Venal assertion" is not the correct term for the language of counsel. Dr. Taylor himself is paid, and properly so, for giving evidence. For his assertions in the witness-box he is remunerated—we might call them venal in the primary signification of the word, as they are in one sense bought; so the arguments and forensic powers, when exercised by counsel, are in like manner venal. The *assertions* of the latter, however, are not venal. They are valueless, and therefore not marketable, unless supported by evidence. The experience of all time shows, that in a community existing in a high social condition, a special class of men trained and disciplined for the work, whose life business it is to practice advocacy, are not only eminently useful, but absolutely indispensable. The legal relations of men are never so well regulated, as when they are within the control of the educated professional jurist. We regret that Dr. Taylor should not have understood the position and duties of counsel better. But the object of this notice is not to defend the profession, for they do not require it, but to give some account of this new and very valuable contribution to forensic medicine. To no printed volume can we send the practitioner in the Criminal Courts, where he will find so much instruction on the subject of the subtle and more dangerous poisons of modern chemistry, than the one before us; and this second edition will take its place among the works always cited in capital trials for poisoning. The mechanical execution of the American reprint is also creditable to the publishers.

CHITTY ON BILLS OF EXCHANGE, PROMMISSORY NOTES, CHEQUES ON BANKERS, BANKERS' CASH NOTES AND BANK NOTES, with references to the Law of Scotland, France and America. The Tenth Edition. By JOHN A. RUSSELL, LL. B., and DAVID MACLACHLAN, M. A., Barristers-at-Law. London: Sweet.

A tenth edition is its own advertisement, and a mere announcement of the fact is often the best notice which could be taken of it. But there are special features in *this* tenth edition, which demand for it more than common attention from the legal journalist.

It is really a new edition. The editors have not been content with noting up a few new cases; they have rewritten the greater portion of the work. This is a great and rare achievement, and deserves to be recorded as a commendable incident in legal literature. They have, in fact, produced almost a new work, touching upon subjects not noticed at all in former editions, and treating at greatly increased length of others before but slightly noticed. A whole chapter has been added on the jurisdiction of courts of equity in regard to bills and notes. The plan of this book as now arranged, is very complete.

THE PRINCIPLES OF NATURAL AND POLITIC LAW. By J. J. BURLAMAQUI, Counsellor of State, and Professor of Natural and Civil Law, at Geneva. From the seventh London Edition. Columbus, Ohio: Joseph H. Riley & Company. Philadelphia; J. B. Lippincott & Company. 1859; pp. 283.

We have received a new American edition of Burlamaqui's treatise on Natural and Politic Law. The work is, with some slight modifications, a republication of Nugent's very good English translation. Most former editions of this celebrated book have been of indifferent merit; the present seems complete and desirable; the integrity of the original, with some unimportant exceptions, being strictly preserved. The work commends itself for practibility of sentiment, force of argument, and beauty of expression.

Burlamaqui was a writer of the most humanely moral principles, and his labors are deservedly held in high esteem. His method has nothing of the scholastic turn. Instead of starting new difficulties, he prevents them, by the method of stating his propositions; instead of disputing, he reconciles. Far from pursuing any idle or too subtle ideas, he follows nature, step by step, and derives his arguments from sense and experience. He unfolds his thoughts with perspicuity, in a plain, clear, and agreeable style. We can safely commend it to the perusal of the student, knowing that it cannot fail to both interest and instruct him.