

This decision is made upon the best examination that our time will admit of at present, and is attempted to be based upon principle, as well as upon authority, so as to furnish a definite rule. The refined distinctions between personalty and realty, equitable estates and legal estates, have not been gone into. The subject not having been exhausted, the case has been the more readily given the present direction, because by taking that course it can be more thoroughly examined into hereafter, if it shall be found necessary. The decisions of South Carolina, where the deed was made, are not now directly accessible to us; nor are the laws of that State set out in the pleadings. How far that should be done, and how far the rights of the respective parties may have been affected by the Registry Acts of South Carolina, Alabama and Texas, are matters which may be involved in the merits of the case, but not being before us, are not decided upon.

The court erred in sustaining appellee's exceptions to appellant's petition.

Judgment reversed and the cause remanded.

NOTICES OF NEW BOOKS.

COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS. By SIR WILLIAM BLACKSTONE, Knt. one of the justices of his Majesty's Court of Common Pleas. With Notes selected from the editions of Archbold, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Baron Field's Analysis, and Additional Notes and a life of the author, by GEORGE SHARSWOOD, Professor of Law in the University of Pennsylvania. In two volumes. Philadelphia: Childs and Peterson, 602 Arch street. 1859.

Mr. Marvin, in his legal bibliography, justly says, that a good American edition of recent date of Blackstone, is a want in our professional libraries. It has been generally known that the learned President Judge of our District Court was about to give his professional brethren an edition annotated anew, and with all the light that the later and better English editions had cast upon the elegant pages of the Vinerian professor. This work is now before us, and deserves a somewhat more extended notice than we are commonly willing to give. Of all the books in law libraries, perhaps Blackstone may be said to be the most generally popular. It is the first

or institutional book which is handed to the student upon his entrance into our offices, and it is commonly the last that he reviews prior to his examination for admission. A good edition of such a work is of cardinal moment to the bar. It has been so regarded by the profession from the hour of its publication. No law book has been more frequently edited and annotated.

A brief history of the American editions and reprints will not be uninteresting. The first American reprint of the Commentaries was from the English copy, page for page, 4 vols. 8vo., Philadelphia, 1771-72; then followed Williams' edition, 4 vols. 12mo, Boston, 1799; Christian's edition, 4 vols. 8vo, Portland, 1807, and Boston, 1818; Archbold's edition, 4 vols. 8vo, Philadelphia, 1825. And then the stereotyped New York edition, 2 vols. 8vo., 1832, which is in most general use in the United States, and contains in part, the notes of the English editions previous to 1832, as well as the notes of Hovenden, by way of an Appendix to each volume, with some references to American cases by a member of the New York bar; but this reprint is neither remarkable for accuracy nor mechanical execution.

Besides the above, there are Americanized editions of the Commentaries which deserve notice, viz: Blackstone's Commentaries, with Notes of Reference to the constitution and laws of the Federal Government of the United States, and of the Commonwealth of Virginia; with an Appendix to each volume, containing short extracts upon such subjects as appeared necessary to form a connected view of the laws of Virginia, as a member of the Federal Union, by St. George Tucker, 5 vols. 8vo., Philadelphia, 1803. Mr. Tucker's edition contains the most of Christian's notes, and many learned and judicious remarks upon the laws of the Federal Government, and those of Virginia. This edition, when first published, was in great repute in Virginia, but years of legislation and accumulated decisions, have rendered the additions comparatively useless, and it is now seldom cited.

To which must be added "the Pennsylvania Blackstone, being a modification of the Commentaries of Sir William Blackstone, with numerous alterations and additions, designed to present an elementary exposition of the entire laws of Pennsylvania, by John Reed," 3 vols. 8vo. Carlisle, 1831. The compiler of this work, in his preface, says: "I do not present it in its new dress as the Commentaries of Sir William Blackstone, on the Laws of England; for, if viewed in that light, it would be found to be sadly mutilated and deformed. My design was to transform the whole from a commentary on the laws of England, to a dissertation upon the laws of Pennsylvania, and

to make it here what it was there,—a key to the great temple of the laws." In this edition, where the author has used the original text, he has, for the most part, omitted the references to authorities, and the work is a medley of English, Federal, and local law, that never received much approbation from the profession in Pennsylvania, and is probably not much known out of our State, and has deservedly fallen into disuse.

An American reprint of the 21st English edition is much in use. The English edition was printed in 1844, and is an excellent one, containing notes by four English Barristers. This edition is, we believe, stereotyped, and has been annotated by John L. Wendell, Esq., "late State Reporter of New York;" is in four volumes, and a new issue has now just been made, and bears date 1859. This work is more especially adapted to the State of New York, where it is of value. Mr. Chitty's edition, reprinted here, and the 21st edition, are the ones now in general use with the profession; but they are both wholly inadequate to the wants of the student and practitioner, and a new and complete edition was greatly needed.

The preface to the edition now under notice states fully what has been the plan and design of the editor. It has been prepared with especial reference to the use of American law students. The main object of the notes, selected and original, has been to correct any statement in itself erroneous, and to explain what might be calculated to mislead. In some cases, where the text appeared to pass over important topics, they have been introduced in order to render the book complete as an institute of legal education. Besides the editions of Archbold, Christian and Chitty, which have been republished in this country, the editor has drawn largely upon the valuable notes of Mr. Justice Coleridge. The late English editions of James Stewart and Robert Malcolm Kerr—in which all the recent alterations by statutes have been referred to and incorporated—have been freely used, and an occasional note will be found from the late abridgment of Blackstone by Samuel Warren; and the attention of the student is especially called to the notes added to the last chapter of the work, on the rise, progress and gradual improvement of the laws of England, for valuable sketches by Coleridge, John William Smith, Stewart, Warren and Kerr, of the latest enactments, to which the American editor has added some remarks upon American jurisprudence.

The work is issued in good style, printed on tinted paper, sized and calendered, with clear type, and illustrated by a fine line-engraving of Sir William Blackstone, engraved by Whitechurch, at J. M. Butler's, from

Gainsborough's well known portrait, and accompanied by a biographical sketch by the American editor.

"Probably there is not a treatise mentioned in the whole bibliography of the common law," says Marvin, "about which a greater variety of opinions has existed, than of Blackstone's Commentaries. Soon after their publication the controversy began, and from that time to the present, these volumes, on the one hand, have been most acrimoniously and unjustly criticised, and on the other, inordinately and injudiciously praised. Impertinent and unfair criticism will no more guide us to a proper opinion of the value of a production than over-zealous and indiscriminate praise. Did we believe the former, Blackstone is an immethodical, uninformed writer, without invention, incapable of reasoning, whose Commentaries 'contain somewhat which is not law upon almost every page.' Did we believe the latter, his Commentaries are unsurpassed models of method, precision and clearness, which should be perused *iterum atque iterum*. All are, however, agreed, that they are written in a nervous, elegant and lucid style, models of legal purity of diction. Before the time of Sir Matthew Hale, the common law was considered as incapable of system, by reason, it was said, 'of the indigestedness of it, and the multiplicity of the cases;' but Hale was not of this opinion, and by his analysis, fully showed how capable the subject was of method and system. On this foundation Blackstone built his immortal work."

The opinions of writers upon the merits and demerits of the Commentaries are worth quotation and consideration :

"The method observed by Blackstone, in his far too celebrated Commentaries, is a slavish and blundering copy of the very imperfect method which Hale delineated roughly in his short and unfinished analysis. From the outset to the end of his Commentaries, he blindly adopts the mistakes of his rude and compendious model; missing invariably, with a nice and surprising infelicity, the pregnant but obscure suggestions which it proffered to his attention, and which would have guided a discerning and inventive writer to an arrangement comparatively just. Neither in the general conception, nor in the detail of his book, is there a single particle of original and discriminating thought. He had read somewhat, (though far less than is commonly believed,) but he had swallowed the matter of his reading without choice and without rumination."—Austin's Outline of a Course of Lectures, 63.

Mr. Ritso is of opinion that real disservice has been done to the author by the indiscriminate, injudicious praise of his admirers.

“Perhaps no professional writer has suffered more in this instance from the zeal of injudicious admirers than Blackstone, in his celebrated Commentaries. They were not designed for students at law, but for students at the university; they were not addressed to professional, but to unprofessional readers. He was not a lecturer of an inn of court, but a university professor—not to inform lawyers, but to render the law intelligible to the uninformed minds of beginners. Addressing himself to persons of this description, like an experienced actor, he accommodated himself to the temper and character of his audience, rather for effect than with a view to demonstrate. Like the gnomon upon the sun-dial, he takes no account of any hours but the serene. A man may read Blackstone’s Commentaries from one end to the other, and yet have no notion that a proposition in law is as capable of being resolved and demonstrated as a proposition in mathematics. In the rank of elementary composition, they might forever have reposed beneath undisturbed laurels; but he who would make them the institute of his professional education, improvidently forces them into an element which is not their own, and lays the foundation for those perilous misunderstandings—that unlaywer-like jejune smattering, which informs without enlightening, and leaves its deluded votary at once profoundly ignorant and contented.”—Ritso’s *Legal Education*, 30, 76; see, also, *Jones on Bailments*, 4; *Hargrave’s Law Tracts*, 45.

“Blackstone’s Commentaries are, however, a wonderful work, and the more a lawyer reads and studies, the more he will appreciate them; it is not with him we find fault, but with those who blindly copy him, even in his errors, who seem to think nothing in him can be wrong, nothing improved upon.”—2 *M. L. M.* 62.

“I recommend the Commentaries of Blackstone as a general book. The intention of that ingenious writer was to give a comprehensive outline; and when we consider the multiplicity of doctrine which he embraced, the civil, the criminal, the theoretical and practical branches of the law, we must confess the hand of a master. But in the minutix he is frequently, very frequently, inaccurate. He should, therefore, be read with caution. The student, in reading him, will often require explanation from him whose duty it is to instruct.”—*Watkins’ Princ. of Conveyancing*, Int. 28.

“Blackstone’s manner is clear and methodical; his sentiments—I speak of them generally—are judicious and solid; his language is elegant and pure. In public law, however, he should be consulted with a cautious prudence. But even in public law, his principles, when they are not proper objects of imitation, will furnish excellent materials of contrast. On

every account, therefore, he should be read and studied. He deserves to be much admired, but he ought not to be implicitly followed."—Wilson's Works, 22.

"Till of late I could never, with any satisfaction to myself, point out a book proper for the perusal of the student; but since the publication of Mr. Blackstone's Commentaries, I can never be at a loss."—Lord Mansfield, *Holliday's Life* of, 89.

"He it was who, first of all institutional writers, has taught jurisprudence to speak the language of the scholar and the gentleman, put a polish upon that rugged science, and cleansed her from the dust and cobwebs of the office; and if he has not enriched her with that precision, which is drawn only from the sterling treasury of the sciences, he has decked her out, however, to advantage, from the toilet of classic erudition; enlivened her with metaphors and allusions, and sent her abroad, in some measure to instruct, and in still greater measure to entertain, the most miscellaneous, and even the most fastidious societies."—Bentham's *Frag. on Government*, 89.

The learned editor of the present edition, after referring to the contrariety of opinion expressed, adds this very just summary:

"It is not difficult to arrive at a just conclusion between these conflicting opinions. Blackstone is not an authority in the law in the same sense in which Littleton, or his commentator, Lord Coke, is. He has fallen into some errors and inaccuracies—not, however, so many nor so important, that the student ought to have his confidence in it, as an institute, at all impaired. In fact, these errors and inaccuracies have been, for the most part, pointed out and corrected in the modern editions.

"There is, certainly, truth in the charge brought against Blackstone, of overweening admiration of the British Constitution; but that is not likely to mislead an American student. We can sympathize with his panegyric of the free spirit and general justice of the common law. We claim it as our birthright, and boast of it as the substratum of our own jurisprudence. As an elementary book, however, it may be enough to say that the whole body of American lawyers and advocates, with very few exceptions, since the Revolution, have drawn their first lessons in jurisprudence from the pages of Blackstone's Commentaries; and no more modern work has succeeded as yet in superseding it."

It is only necessary to add, that every thing here suggested by the learned editor, in his judicious Preface, has been accomplished, and accomplished in a clear, neat, elegant and concise manner; and the teacher can

no longer complain that he is without an institutional law book, exactly adapted to the needs of the common law learner, whether he pursues his studies in the venerable Lincoln's Inn, in London, at the justly celebrated Dane Hall, in Cambridge, or within the classic walls of the Pennsylvania University, or the Philadelphia Law Academy.

PENNSYLVANIA STATE REPORTS, Vol. XXXIII., comprising Cases adjudged in the Supreme Court of Pennsylvania. By JOSEPH CASEY, State Reporter. Vol. IX., containing cases decided in January and May Terms, 1859. Philadelphia: Kay & Brother, Law Booksellers, Publishers and Importers, No. 19 South Sixth Street. 1859.

We are again furnished with a volume of our State Reports, and with a promptitude that deserves every commendation, the cases are brought down to the end of May Term, 1859. The volume is much like its predecessors, and perhaps the most satisfactory notice is to call attention to some cases which deserve special remark: thus *Helfrich vs. Commonwealth*, p. 68, holds that the offence of adultery consists in sexual intercourse by a married person with any one not his or her wife or husband, and, therefore, a married man may be guilty of adultery by carnal intercourse with a single woman. In *Haverstick vs. Sipe*, p. 368, the law of ancient lights seems to be held in accordance with the common understanding of the profession, that the grant of an easement for light and air is not implied from the fact that such a privilege has been long enjoyed. In *Borrell vs. Borrell*, p. 492, the court held that one tenant in common may maintain *assumpsit* against his co-tenant to recover a share of the profits, upon proof that the whole was received by the defendant. In such case the law raises an implied promise to pay over the plaintiff's share, and he is not driven to his action of account render. In *Baker vs. Lewis*, p. 301, some very sound law on the subject of collision is enunciated, where the court held that he who moors his craft at an accustomed landing, must be careful to leave sufficient room for the passage of other boats, but the law requires no more of him; and in case of collision with a moving craft, he is not responsible in damages. The vessel in motion must, if possible, steer clear of and avoid one moored or at anchor; and in case of injury to the latter by the former, no excuse will avail but unavoidable accident, or that *vis major* which no human skill or precaution can guard against or pre-

vent. In *The Sunbury and Erie R. R. vs. Cooper*, p. 278, and *Menges vs. Dentler*, p. 495, there is some discussion of constitutional law which is well worth study; but the points are too elaborate to be given briefly, and too long to be stated in full. The case of *McQuiesney vs. Hiester*, p. 435, is of some importance. By it questions arising under ground rents, in relation to limitations, are to be determined. The court held that a ground rent reserved by deed is not within any statute of limitations, nor is it subject to a legal presumption of extinguishment from mere lapse of time. But the arrears of a ground rent are presumed to be paid, after the lapse of twenty years, unless there exist repelling circumstances, which raise a counter presumption. *The Pennsylvania R. R. vs. Zebe*, p. 318, on the law of damages, is a very interesting and an important case. It is printed in our present number, and was in type before the publisher favored the profession with 33 State Reports. *Cornpropst's Appeal*, p. 537, holds that insolvency renders a person, otherwise entitled, incompetent to receive a grant of letters of administration; those interested in the estate are entitled to the security of an administrator's personal liability as well as that of his bail—a sound doctrine, from which none will dissent. *Vaughan vs. Haldeman*, p. 522, is a judicial determination of a question which has long been practically settled in Philadelphia, that gas fixtures, such as chandeliers and side-brackets, put up and attached to the gas pipes by the owner of the premises, are mere personal property, not fixtures, in the proper sense of the term, and do not pass by a sheriff's sale of the real estate. The volume as a whole is interesting, and will be read with satisfaction both within and without the State. It is printed in the usual satisfactory manner of our friends, the Messrs. Kay, the publishers.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT, AND THE COURT OF ERRORS AND APPEALS, OF THE STATE OF NEW JERSEY. ANDREW DUTCHER, Reporter. Vol. III. Trenton: published by the Reporter. Phillips & Boswell, printers, No. 4 Chancery Court. 1859. pp. 680.

Our friends in New Jersey have latterly sent us pretty good volumes of Reports. Certainly they contain much good law, and certainly they are well printed. This third volume is much like its predecessor, the second, with which a marked improvement in the typographical reportorial execution of the reports commenced. As we understand the matter, the New Jersey

Reports no longer suffer from the State's interference; and they have ceased to be a *political job*. They are now printed for and published by the Reporter; and so long as he shall be as competent as Mr. Dutcher clearly is, and as painstaking in his labors, no just cause of complaint can be made by any one. This volume contains cases from February Term, 1859, to June Term, 1859, inclusive. We particularly call attention to the important adjudications in *The State vs. Brown*, p. 13; *Township of Morris vs. Casey*, p. 377; *Clapp vs. Ely*, p. 555; *Budd vs. Hiles*, p. 43; *Magee vs. Hilland*, p. 86; *Lucas vs. Pitney*, p. 221; *Reed vs. Vancleve*, p. 352; *Morris Canal vs. Ryerson*, p. 457; *Paulin vs. Kaign*, p. 503. The syllabuses and index appear to be well and fully made, and deserve every commendation. Upon the whole, we wish we could commend every volume of reports submitted to us, as heartily as we do this.

ANNUAL DIGEST OF THE LAWS OF PENNSYLVANIA, for each of the years from 1853 to 1859, namely, from 28th May, 1853, to 4th May, 1859. Together with some Laws of older date, inadvertently omitted in Purdon's Digest—1700 to 1853; Marginal References; a Digested Syllabus to each Title; Foot Notes to the Judicial Decisions; and a full and exhaustive Index, in which the contents of all these Annual Digests are incorporated in one Alphabet; the whole completing Stroud & Brightly's Purdon's Digest to the present date. By FREDERICK C. BRIGHTLY, Esq., author of the "Law of Costs," "Equity Jurisprudence," "United States Digest," etc. Philadelphia: Kay & Brother, 19 South Sixth street, Law Booksellers, Publishers and Importers. 1859.

AN ANALYTICAL DIGEST OF THE LAWS OF THE UNITED STATES passed at the Thirty-fifth Congress, 1857-1859, completing Brightly's United States Digest to the present time. By FREDERICK C. BRIGHTLEY, Esq., of the Philadelphia bar, author of the "Law of Costs," "Equity Jurisprudence," "The United States Digest," editor of "Purdon's Digest of the Laws of Pennsylvania," etc. Philadelphia: Kay & Brother, 19 South Sixth street, Law Booksellers, Publishers and Importers. 1859.

We always hail with pleasure Mr. Brightly's annual or biennial contributions to our legal digests. They are absolutely indispensable to every practitioner, because they contain not only the statute enactments to the latest moment, but uniformly have added short notes of the most recent decisions in the State and Federal tribunals.

The Annual Digest which now accompanies our Purdon needs no comment. It is as important for the practicing lawyer as the volume called Statutes at Large, or "Acts," with its clumsy index and indifferent type and paper. The Digest of Mr. Brightly is free from the multitudinous private acts which render the State's volume so bulky, and contains just what is wanted, the public general acts, arranged and digested, and annotated, and is certainly a hand-book of immense convenience.

The Biennial Digest of the Acts of Congress is prepared in the same way, and is just as useful. We commend these pamphlets equally for their utility and cheapness.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF RHODE ISLAND. By SAMUEL AMES, Chief Justice and Reporter. Vol. II. Rhode Island Reports, Vol. V. Boston: Little, Brown & Co. 1859.

It has been the good fortune of Rhode Island to always have most admirable reporters. This volume is no exception. The judiciary has ever maintained a high character for learning and integrity. The present reporter is the learned Chief Justice himself, and the book bears every mark of the careful industry and supervision of a really learned and painstaking reporter, who does not mean that his favorite science of jurisprudence should suffer by neglect, carelessness or incompetency. The reader may not always accede to the law as laid down by the court, but the vigor and learning of the opinion will never fail to command his respect. We have marked several cases for our own pages, and could wish to call professional attention to some others specially, did not our limited space forbid it.