

father, which under our laws the husband could not touch without her consent. It seems that she paid two promissory notes, due by her husband amounting to five hundred dollars, and lent him one hundred dollars to pay for timber put into his barn, and took this judgment for six hundred dollars. From the date of the various transactions we cannot doubt but that the money so advanced was the consideration of the judgment. The wife was not bound to give over her separate estate to her husband, without having it secured on herself, and when she took a judgment, the fair presumption is, that she did not intend it as a gift, but a loan. The mere receipt of the wife's money by the husband, is not such a reduction of it into possession as will divest her interest in it, unless done in the assertion of his marital rights. *Barron vs. Barron*, 24 Vermont R. 375. Post-nuptial settlements will be sustained against creditors, when the wife or her relatives pay full value to the husband. 16 Alabama R. 489; 7 John. Ch., 57; 4 Dall. 306, 7 in note; 8 W. & S. 413; Bingham on Coverture, 284. And where a wife gave her estate to pay her husband's debts, a settlement of an equal, or less amount on the wife, is binding on his creditors. 2 Ves. Sr. 16; 10 Ves. Jr. 148. And that too without the intervention of a trustee. 8 W. & S. 433. He will be decreed to make the advances good to her. Bingham on Coverture, 283. We are of the opinion that the seventy-four dollars in controversy should be applied to the judgment of *Elizabeth Shade vs. Samuel Shade*, and it is so ordered by the court.

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#### NOTICES OF NEW BOOKS.

THE PRACTICE IN COURTS OF JUSTICE IN ENGLAND AND THE UNITED STATES. BY CONWAY ROBINSON. Volume 4th. As to Pleadings in Personal Actions: Treating particularly of Declarations, and giving Forms thereof. Richmond: A. Morris; West & Johnson. Washington City: F. Taylor. Baltimore: Cushings & Bailey. Philadelphia: H. P. & R. H. Small. 1860. pp. 965.

These volumes of Mr. Robinson are a substantial contribution to the practitioner. And this fourth volume must be considered as the most important and comprehensive we have yet had. "It shows," to use the learned author's own language, "what declaration or complaint would now

be held good ; and shows whether it would be so held on common law principles, or on statute. It goes into detail as to the frame of the declaration or complaint—for a breach of covenant or promise—for a failure to pay a debt or render an account, and for a trespass or other wrong ; giving in a variety of cases a form, accompanied by decisions as to its sufficiency, thus enabling one who uses the form to show his authority for it.

The forms are mainly from printed reports, and from manuscript records of the courts of the United States, and courts of the State of Virginia.”

It is obvious, that a volume containing the subject matter of pleadings is most important to the practitioner. The reader will find in this collection the forms most used in every kind of action, with copious notes and cases, and ample discussions of the forms themselves, their frame work and substance. The arrangement of the author is clear and systematic, and his Table of Contents unfolds his labors fully. The subject matter of each page is pointed out, and divided and subdivided in a most satisfactory manner. From the examination we have been enabled to give the volume, we do not hesitate to say that it is a most useful aid to the practitioner, and will facilitate him in one of the most toilsome and responsible parts of his professional duties.

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REPORTS OF CASES ARGUED AND DECIDED IN THE SUPREME COURT OF THE STATE OF TEXAS, during part of Galveston Session, and part of Tyler Session, 1859. By GEORGE F. MOORE and RICHARD S. WALKER, vol. 23. Philadelphia: Kay & Brother, Law Booksellers, Publishers and Importers, No. 19 South Sixth street. 1860.

We have read this volume very carefully. It has not been usual in our courts to cite the earlier volumes of Texas Reports, not so much perhaps because they are not as well prepared as most volumes of reports, but because they contain so much that is not applicable to our jurisprudence; and they are not in the hands of the bar generally. But in the volume now furnished the public by the very intelligent reporters, Messrs. Moore & Walker, who have become charged with the duty of preparing and printing the judicial Reports of Texas, the profession will find much excellent learning. It gives us pleasure to bear testimony to the fidelity and care with which the labor is done. The accurate and clear synopsis in the syllabus, and the intelligible statement of the case, deserve mention. The arguments of the counsel, in some of these cases, are full of

learning; thus, the important case of the *City of Galveston vs. Menard*, p. 349, discusses the civil law and the common law learning, as to the ownership of the shores of the sea and riparian rights, with a copiousness and fullness of authority which challenges admiration. And the opinion which disposes of the case is no less able than learned, and equally worthy the magnitude of the interests at stake, and the talent displayed in the argument. The subject of assignment is considered in two cases, *Howerton vs. Holt*, p. 51, and *Park vs. Glover*, p. 469. The subject of Banking, in Texas, as well as in older communities, causes a fruitful crop of litigation, and is discussed in several important cases. *Kilpatrick vs. Sisneros*, p. 113 settles the status of the citizen under the Texas Constitution. *Holt vs. Parsons*, p. 9, decides that the trustees of a church may be guilty of a libel in a resolution passed by their body. It seems now pretty well settled that a corporation can be guilty of malice. *Powell vs. DeBlane*, p. 66, enunciates the sound doctrine, that the construction of a statute of one state by its judiciary, is received in the courts of a sister state as an authoritative decision upon the statute, although it may be contrary to the construction placed upon a like statute in the state where the action is brought.—*Blythe vs. Speake*, p. 430, is a good case on the law of warranty, and was well decided according to the present prevailing opinion of the profession, both in England and this country. *Boon vs. Weathred*, p. 65, is an interesting case on the impeachment of the credibility of a witness.

We have taken these cases at random, as they struck us in reading the volume, and we must say that the present reporting for the State of Texas is fully equal to that of any state in the union, whose reports we have occasion to consult. It would also be just to say, that the mechanical execution of this volume is excellent. Paper, type and press-work, are all good.

The learning of the present Supreme Bench of Texas, and the skill and ability of her Bar, are fully displayed in this volume, and we cannot doubt but that the reporters will have, as they deserve, the thanks of their professional brethren, for the handsome and faithful manner in which they have discharged a most irksome and laborious task.

THE RULES OF EVIDENCE STATED AND DISCUSSED. By JOHN APPLETON, Justice of the Supreme Judicial Court of Maine. Philadelphia: T. & J. W. Johnston & Co., Law Booksellers and Publishers. 1860. pp. 284.

This is an interesting publication. It discusses, with marked ability, some deeply interesting questions to jurists. The questions arising from the rules as to the Incompetency of Witnesses have received within a few years an enlarged discussion, and very considerable modifications. And the subject of Confessions and Hearsay is still in a confused and unsatisfactory condition, and requires more ample discussion and some modification. The closing paragraph of the learned judge's treatise reveals his object:—"Without evidence, or with bad rules, the judge of fact is as powerless to do justice as the Hebrews of old were to make brick without the needed straw. In what I have done, I have only endeavored to apply the reasoning and principles of Bentham, of which I have made free use, to the law as found in the treatises of jurisconsults and the decisions of courts; and, if I have aided in accomplishing the changes which I regard as necessary and indispensable, I shall be abundantly rewarded for my labors." Some of the proposed changes of the learned writer cannot fail to be made, sooner or later; and the more enlightened and philosophical spirit of modern civilization will not tolerate rules of evidence fashioned for an early and rude community. And, while we are not prepared to assent to all the suggestions made in this treatise, we are sure that it will arrest the attention and command the respect of all who read it. It is proper to add, that it is also published in the Law Library of February and March, 1860.

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A TREATISE ON THE AMERICAN LAW OF REAL PROPERTY. By EMORY WASHBURN. Vol. 1. Little, Brown & Co., Boston.

We welcome this work as a valuable accession to our legal literature. It must undoubtedly become the standard text-book for the student of this branch of the law. Those readers, whose taste has been exclusively formed by some of the more recent and popular treatises on legal subjects, may not, upon the first examination, feel very strongly drawn towards the present volume. There is none of that display of the accumulated results of mere case hunting, with which we have of late become so familiar. The idea of the author seems to have been, to fortify each proposition of the text by a few strong, well-chosen, and pertinent authorities, and then he stops,—without emptying the United States' Digest into his foot-notes. Nor has he converted his notes into a commentary upon

his own text, or into a minor treatise of criticism, comparison, analysis, and distinction, so that the eye of the reader is kept glancing from the top to the bottom of the page, and his mind is diverted by two parallel trains of thought, as if he were reading two volumes at the same time. There are, here, none of the arts of book-making,—none of the obsolete erudition of real property law is paraded before us. A score of pages discusses as much of the old learning as is relevant for historical purposes, and the student is at once brought into contact with the living body of the law as now administered in this country. The style of the work is admirable. Its chief qualities are condensation and clearness. The sentences, instead of giving us the raw materials for our own study and reflection, appear to be themselves the embodied results of the author's examination of the different subjects. Caution and sound judgment pervade the entire volume. Indeed, Prof. Washburn combines the qualities requisite for the production of a successful legal treatise. He has had a large experience at the bar, and in this particular department of the law was reputed to be one of the ablest practitioners in New England. Besides, his duties as Professor at Harvard have familiarized him with legal literature, so that he blends the characteristics of active professional experience with those of more secluded and bookish study. These qualities cannot fail to give his treatise a high character for thoroughness and reliability. We can confidently recommend it to the student and practitioner.

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PENNSYLVANIA STATE REPORTS. Vol. 35th, comprising cases adjudged in the Supreme Court of Pennsylvania, by JOSEPH CASEY, State Reporter. Vol. 11th, containing cases decided in part of October term, 1859, and in January term, 1860. Philadelphia: Kay & Brother, Law Booksellers, Publishers, and Importers, 19 South Sixth street, east side. 1860.

Mr. Casey furnishes his eleventh contribution to our legal literature, and its contents are much the same as its predecessors. The usual variety to be found in the litigation of a large and commercial community here meets us. The case of *Barrett vs. Kimmel*, p. 13, is a most curious one on the validity of a marriage; the *Pennsylvania R. R. Co. vs. Ogier*, p. 61, is an interesting discussion of the doctrines of mutual negligence, contributing to an accident and the relative duties and watchfulness required from and owed by a locomotive engine driver and a traveller driving his carriage along a highway. *Eisenlohr vs. Swain*, p. 107, gives us the rule that a newspaper publisher for neglecting to insert a paid advertisement of a

public sale of real estate, in the absence of fraud, is liable only to the amount paid for the advertisement as the measure of damages.

The married woman's act, as usual, comes in for its share of judicial determination; thus in *Auble vs. Mason*, p. 261, the court determine that a married woman cannot acquire and hold property against the creditors of her husband, unless she makes it clearly appear that the means of acquisition were her own, independently of him. In the *Pennsylvania Co. vs. Foster*, p. 134, the court determine that a married woman under our act cannot dispose of the property held by a trustee for her separate use, unless the instrument creating the trust gives her power so to do. In the important case of *Hallowell vs. Horter*, p. 375, it was determined that a stock of goods, held in the wife's name, which had accumulated by the joint skill and labor of both husband and wife, although the business was commenced and continued in her own name, at first, on the endorsement or guaranty of a third person, was still liable to an execution at the suit of the husband's creditors. In *Murray vs. Keyes*, p. 384, we are directed how to declare in actions against husband and wife, in order to charge the wife's separate estate. This is a goodly array of cases to appear in a single volume of reports upon a few sections of a short statute. This married woman's act bids fair to rival the celebrated statute of frauds in the number and nicety of its adjudications.

The rights and liabilities of municipal corporations, as usual, in every volume of recent reports, make a considerable title. In *West Chester vs. Apple*, p. 284, the court tells us that a municipal corporation is not liable for damages resulting from the digging of a trench, in a public street, by a private individual, under a license from the corporate authorities, for the purpose of connecting a supply pipe with a water-main. And in *Carr vs. Northern Liberties*, p. 324, it is determined that an action will not lie against a municipal corporation for neglecting to construct a proper system of drainage, by reason of which neglect a house is overflowed during an unusual fall of rain, and damage thereby done.

The vexed question of what the right of a purchaser is, at a sheriff's sale, of an interest in a partnership, is much considered in *Rheinheimer vs. Hemingway*, p. 432, and it is held that such creditor acquires no right to the possession of the specific chattels, but that the remaining partners are entitled to the exclusive possession. Such purchaser is only entitled to an account.

In the *New York Telegraph Co. vs. Dryburg*, p. 298, heretofore printed

in this Journal, p. 490, the liability of the company for negligently sending a message is, we believe, for the first time, presented and discussed, and sound common law principles applied, in the use of this wonderful invention of modern times. Liens, equity, evidence, promissory notes, insurance, legacy, and wills, we observe, by the index, which is prepared with great care and sound judgment, occupy, as usual, a good deal of the volume. Upon the whole, we are sure that eleventh Casey will be read with more than usual interest.