

1850, to discharge minors on the application of a parent not domiciled in the United States

The act of January 20, 1813, that of the 10th of December, 1814, and that of 28th December, 1850, are the only statutes cited and commented upon by him. "Taking the acts of 1813, 1814, and 1850 together, as being in *pari materia*, the proper conclusion seems to be that the minor must have a parent or guardian, whose authority was recognized as valid by the law of the place, who had authority to consent or forbid, and to whom the recruiting officer might have applied within the United States for his assent in writing to the proposed enlistment.

I have examined with great care, as well as respect, the opinion of Mr. Justice Hilton, in Phelan's case, 9 Abbott, 286, and which has been followed by Justice Brady in the case of Johnston, and, as I am informed, by some other judges. For the reasons which are before stated, I am compelled to come to a different conclusion from that of the learned judges.

The recruit detained must be discharged.

Jonas B. Phillips for petitioner.

Theodore Hinsdale for the United States.

NOTICES OF NEW BOOKS.

DECISIONS OF HON. PELEG SPRAGUE, IN ADMIRALTY AND MARITIME CAUSES, in the District Court of the United States for the District of Massachusetts, 1841—1861. Philadelphia: T. & J. W. Johnson & Co., 1861.

Mr. Parker and Mr. Adams, who, it seems share the editorship of this volume, though their names do not appear on the title page, have done a good office in collecting the decisions of Judge Sprague. It would not have been well if the labors of twenty years, pursued with such courageous devotion under the pressure of a calamity which to most men paralyses effort and closes the avenues of knowledge, had perished without some memorial of their worth. The deprivation of sight or of its efficient use, is to any professional man a sore affliction; but to a lawyer, perhaps most of all. His eyes are to him, as it were, his servants of all work; and without their active aid, indeed, the performance of the duties of a judge is almost impossible. The search for precedents, the examination of records, the analysis of evidence, require an immediate and constant

exercise of the faculties, which can scarcely be supplied by the ministrations of others, however willing or intelligent. The strain on the attention and the stretch of memory, which this vicarious mode of study exacts, must be really prodigious. The pleadings and proofs in admiralty cases are often voluminous, and usually conflicting; and the arguments of the bar are illustrated by authorities copious and truly *undique collecta*. It is difficult to understand, though not to admire, the temper of mind that can listen with patient resolution to the recitation of the monotonous but perplexed drama, and retire upon itself to evolve in darkness out of the unshapen material a lucid coherent statement, and an argument strong enough to command respect even where it fails to secure assent.

To Judge Sprague's personal character, and to the manful and conscientious manner in which he has so long discharged his duties under a heavy burthen, a tribute such as the task which has been performed here, was justly due. But his decisions do not need any adventitious assistance to recommend them to professional consideration. They have always stood in the first rank among those of their peculiar class; and it has long been a source of regret that they had not found some permanent record.

The cases reported in this volume are of much interest, and of varied importance. Many branches of maritime law are reviewed and illustrated. In *Crocker vs. Jackson*, p. 141, and *A box of bullion*, p. 57, the right to deviate in order to assist a vessel in distress is discussed. The *Cynosure*, p. 88, decides the laws in Southern States for the imprisonment of negro sailors, to be unconstitutional. In the *Massasoit*, p. 97, we find the claim of seamen to wages out of a remnant affirmed, though no freight had been carried. The case of *Hansom vs. Rowell*, p. 117, was a curious one indeed. There a seaman startled out of his sleep at night by a collision, sprang on the other vessel by a sudden impulse, believing his own to be sinking, and could not get back; and it was held that this was not a desertion. The *Holder Borden*, p. 144, while it does not decide any important point of law, is worthy of perusal as a remarkable story of adventure, such as De Foe would have delighted in. *Taber vs. Jenny*, p. 315, established the existence of a special property in the carcass of a whale, anchored and left with the marks of appropriation in the ocean. The liability of the owners of a steam tug, for a collision, where the tow is exclusively under her government, is asserted in the *R. B. Forbes*, p. 328. In the *Gazelle*, p. 378, the important and vexed question of the discharge of the lien of wages by a sale on execution of the ship, is de-

cided against the discharge. The *Salem's cargo*, p. 389, denies to the master of a vessel the power to discharge cargo from the lien of the freight due by a charter party, by signing special bills of lading. In the *Triumph*, p. 428, as in the *Blaireau*, the right of seamen to become salvors, under special circumstances, is admitted. That noted and shameless vagrant, the yacht *Wanderer*, leaves her trace in jurisprudence, by occasioning the decision at p. 505, that a vessel may be forfeited by engaging in an unlawful trade, though it be by the pure act of the master, without the authority or knowledge of the owner. The *May Queen*, p. 522, gives an admiralty lien for towage service to a vessel employed exclusively within harbor limits. And finally, as all our thoughts now, however usefully employed, at last revert to the one absorbing topic of the time, the volume closes with two charges of Judge Sprague, one on the fugitive slave law, the other on the duties of the citizens during the present rebellion. The chasm of thought which lies between these two subjects of judicial delivrance is a history in itself.

PENNSYLVANIA STATE REPORTS, VOL. XXXVII: Comprising Cases adjudged in the Supreme Court of Pennsylvania. By ROBERT E. WRIGHT, State Reporter, Vol. I. Containing Cases decided in May and October Terms, 1860, and in January Term, 1861. Philadelphia: Kay & Brother, Law Booksellers, Publishers, and Importers, No. 19 South Sixth Street, East Side. 1861.

The first volume of the new Reporter for Pennsylvania is before us. It is neither a grateful nor an easy task to report the decisions of any legal tribunal. In the early days of reporting, the reporter always was in Court, and heard and noted the proceedings at the time: he was also a stipendiary of the government, and had no other or further interest in his reports than to have them accurate and satisfactory to his brethren of the Bar. It may be doubted, whether we have improved on the wisdom of our fathers. The reporters of modern times (we make the remark generally, and do not mean to apply it to the present reporter,) have a deep pecuniary interest in swelling the number of pages and volumes of their labors, and the booksellers continually tax the profession for comparatively useless books of reports. By legislation in some States, all cases determined by the Superior Court must be reported; by the legislation of other States, as our own for instance, only such cases as are marked by the judges "to be reported," find their way into the regular State reports.

It is certainly much to be desired that careful and well prepared reports

of all important cases, or cases involving important principles, should be in the hands of the bar for their guidance and instruction, and for the use and benefit of the community.

The present reporter, Mr. Wright, has followed the usual practice in Pennsylvania, and reported in his volume such cases as the judges designated. Some of these cases are of great practical importance, and we propose to call attention to a few of them. *Guthrie's Appeal*, p. 9, gives us the proper application of the rule in Shelley's case, and discusses the creation of life estates by devise and the descents of estates tail. These are nice matters of professional learning, and the opinion of Mr. Justice Strong is able and exhaustive. This case was not determined without much judicial doubt and difficulty, Chief Justice Lowrie dissenting. It has been reported for the readers of this Journal, ante p. 354, where a note will also be found of some interest. It is to be hoped that the judicial mutations, of which this Guthrie's Appeal is the latest phase, have reached a resting point, and that the law is now finally determined in Pennsylvania, and will require no further discussion.

Kay vs. Scates, p. 31, is another important and interesting case, which has also been reported in the columns of this Journal, ante, p. 385. This case considerably modifies the English law of trusts, and follows *Kuhn vs. Newman*, 2 Casey, 227, which has been the subject of much professional criticism. This last case is now again affirmed, and it and the cases which have followed it must be considered as now the law of Pennsylvania, though they have not been accepted without a vigorous professional struggle to prevent their domestication.

The case of *Arbuckle vs. Thompson*, p. 170, determines a point of some practical moment, as it enables the consignee of goods delivered to a common carrier for transportation, to maintain an action for a failure to transport or deliver them where there is no evidence of ownership in the consignee, and that the bill of lading is sufficient to make a *prima facie* case of ownership to enable the party holding it to sustain his action.

The Iron Bank vs. The City of Pittsburg, p. 340, is a valuable and interesting opinion on the constitutionality of the taxation of bank discounts, and upon the inviolability of charters without the consent of the corporators. The opinion of Mr. Justice Woodward contains a review of the cases in the Federal Courts, and a clear and admirable summary of the law as it now is, deduced from the Supreme Court adjudications.

Reed vs. Gracy, p. 508, is an admirable illustration of the well settled

rule of law that personal property follows the owner's domicile, although in this case it is presented in a new and curious form.

As usual, in all our later reports, the law of husband and wife receives copious illustration, and our married woman's act plays its conspicuous part. The cases are too numerous and too long to be particularized, and the interested reader must consult the volume itself.

The cases of *Com. vs. Commissioners, &c., of Allegheny*, p. 237, 277, and *Diamond vs. Lawrence Co.*, p. 353, give us a further illustration of the law of municipal bonds; a vexatious subject that has exercised, and it is to be feared, must continue to exercise much professional skill and talent. The Courts in this State, and elsewhere, have held the law on this subject with a firm hand, and the multiform efforts of bodies corporate and politic, to escape the legal consequences of their rashness, and perhaps folly, have not heretofore been crowned with success, the Courts wisely considering that counties, like individuals, must perform their contracts, whether they have been made with or without discretion.

The subjects of attachment and attachment execution have received additional illustration in the cases of *Bierne vs. Cunningham*, p. 228, and *Shriver vs. Harbaugh*, p. 399.

The case of *Weimar vs. Clement*, p. 147, on the law of sales is a case of considerable practical importance in the law of warranty on the sale of chattels, and of misrepresentation and deceit.

As a whole, the volume contains an unusual number of interesting and important cases which will arrest professional attention wherever the book is read. The duties of the reporter appear in general to have been properly executed, and the reports and head notes are clear and intelligible.

REPORTS OF CASES Argued and Determined in the Court of Chancery, and on Appeal in the Court of Errors and Appeals of the State of New Jersey. MERCER BEASLEY, Reporter. Vol. I. Trenton: Printed by PHILLIPS & BOSWELL, No. 4 Chancery Court. 1860.

The high character maintained by the New Jersey Chancery tribunals, will in no wise be diminished by the publication of this volume. The present reporter, Mr. Beasley of Trenton, is a gentleman who has long enjoyed a large and important chancery practice, and has a complete knowledge of the business details, as well as a matured and carefully cultivated scientific experience in the leading departments of Equity. In selecting a gentleman so well known to be skilful and competent, the present learned Chancellor has shown that he has profited by his own experience as a Chancery reporter, and well knows that acquirements of a

high order are indispensable for the proper discharge of such laborious duties as all first class reporting must involve. We take much pleasure in saying that a careful examination of this volume enables us to pronounce upon its merits, and that accuracy, care, fidelity and succinctness mark it throughout. We are not over burdened with the multifarious and tedious details of the bill, answer and exhibits. We are sparingly indulged in the arguments of counsel; we are furnished with a brief and clear statement of facts, enough to understand the opinion, and no more. This kind of reporting requires intelligence and toil, and both have been liberally expended on this volume. We had marked a number of cases with a view of calling the reader's attention to them, but must content ourselves with referring to a few only of such as seemed most interesting or important. The law of injunctions has received considerable illustration, and the reader may consult *Morris Canal vs. Jersey City*, p. 227; *Wilson vs. Brown*, p. 246; *Butler vs. The Society for Useful Manufactures*, p. 264. The law of mortgage also holds a prominent place in this volume, and is illustrated in *Bell vs. Fleming*, p. 13, 490; *Ames vs. The Franklinite Co.*, p. 66, 512; *Runyon vs. Greshon*, p. 86; *Long Dock Co. vs. Mallery*, p. 93, 431. The subjects of Trusts and Trustees, and Water Courses also, receive illustration in several important cases. We commend this volume with pleasure to the attentive perusal of the diligent Equity Student, and feel assured that he will be instructed by its contents.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS; by HORACE GRAY, JR. Vol. 8. Boston: LITTLE, BROWN & COMPANY. 1861.

We are always glad to have a volume of Massachusetts reports on our table. The cases, many of them, are important, and they are discussed by counsel and determined by judges, and reported in the books with marked ability. Mr. Gray's reports are not, in any respect, inferior to his predecessors. The head-notes and statements of facts are careful and clear, and give, in a brief space, an accurate notion of the case itself. The case of *Mary Ann Holly vs. The Gas Company*, p. 24, presents an action for negligence in a gas company, by allowing the escape of gas in a house, by which the plaintiff, who was a minor, was injured. But no recovery was had, because the father of the minor, by his own negligence, contributed to the mischief. *Linton vs. Smith*, p. 147, determined that the owners of a vessel were not liable for the negligence of the stevedore, who had been employed for a gross sum to unlade the vessel by the consignees, because there was no relation of master and servant between the owners and

the stevedore. This sound and clear distinction, pointed out carefully in the important and leading case of *Hilliard vs. Richardson*, 3 Gray, 349, is here again stated and enforced. *Mayhew vs. Thayer*, p. 172, illustrates the well-settled law as to a husband's liabilities for necessaries furnished to his wife, lawfully absent from his house, where he has neglected to make proper provision for her. *Blanchard vs. Page*, p. 281, determines that a shipper, named in a bill of lading, may sue the carrier for an injury to the goods, although he has no property, general or special, therein. *Jones vs. Robbins*, p. 329, is an elaborate case on the right of trial by jury in criminal cases. *Carson vs. The Railroad Company*, p. 423, determines that a railroad company, which erects a fence on their own land to keep the snow off their track, is not liable for damages caused by the accumulation of snow upon another's land on the other side of the fence.

The legislation in regard to intoxicating liquors in the State of Massachusetts, has given rise to some judicial determinations. Thus, in *Com. vs. Timothy*, p. 480, it is determined "that any person is competent to testify that certain liquor is gin." The witness testified that he found in the house "what, in his opinion, was gin." To this the defendant's counsel objected that it was not shown that the "witness knew, or could distinguish, what the liquor was;" thereupon followed the solemn adjudication above set forth. This case also contains a ruling about "empty jugs" that "had had liquor in them recently;" because, say the Court, "they tended to show that the defendant kept liquor, which was a necessary step in proving that he kept it unlawfully." In the *Com. v. Norah Bowers*, p. 482, an attempt was made to evade the statute by selling the liquor *on credit*; but the ingenious point did not save Norah from the claws of justice, inasmuch as the judges determined that it was the *sale*, and not the *terms* of the sale, that violated "the peace, dignity, good government, &c." In *Com. vs. George Miller*, p. 484, it is determined that "drunkenness, in another person's room, in the house in which the party resides," is an offence under the statute. The law seems to be as astute in our sister Commonwealth as the law-breakers. The law of sale and delivery of chattels receives an exemplification in a *hog* case, *Bourke vs. Amariah Bullens*, p. 549, which will edify the reader.

We might specify other interesting or entertaining cases in this volume of excellent reports, but our limits require us to stop. Any reader, who wishes to be instructed by cases of the gravest moment and most difficult solution, will not fail to apply to this volume; while he who is curious in the phases of social life will receive his quota of fun from the pages of this series of solemn judicial determinations.