

NOTICES OF NEW BOOKS.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT AND THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY. By ANDREW DUTCHER, Reporter. Vol. IV. Trenton: Published by the Reporter, 1861.

This volume contains cases decided at the November Term, 1859, and the June Term, 1860, and it fully sustains the long-established reputation of that ancient State for thoroughness and research in the decisions of its highest judicial tribunals. We have been gratified to find so large a proportion of the cases of so important a character. For it is unfortunately true, that by far the largest number of cases which find their way into the reports in this country are too insignificant, both in importance and amount, to command that serious examination or consideration, either by court or counsel, which is requisite to give the decision the character of authoritative precedent. And the wonder often is how they happen to have been no worse handled than they were.

In equity, certainly, and, we believe, the same holds true in law also, the cases which come before the English Courts in London and Westminster, equal, if they do not exceed in real importance, both as to the question involved and the value of property affected, all, or nearly all, those which are decided by all the Superior Courts in the whole United States, including the National as well as the State Courts. And when it is further considered, at what immense disadvantages as to time and opportunity for the use of books, the majority of these cases are examined and determined, the wonder is just and natural which we have already expressed.

But New Jersey is one of the oldest and most favored of the States, both in regard to general learning in the profession and ample facilities for the use of books, always in the vicinity if not immediately at hand.

The volume now before us, while it presents the usual number of questions of the nature of proceedings by certiorari, mandamus, and other sessions matters, which are not of much general interest out of the particular State, has also a considerable number of cases of marked general interest. We could not particularize all of this class, and it might, therefore, seem invidious to name any. But we venture to name a few which have seemed to us worthy of special commendation. The case of *Edwards vs. Derrickson*, pp. 39-79, occupies a large space in a very careful examination of several questions in regard to the mechanics' lien and the mode of enforcing it. The *State vs. The City of Elizabeth*, pp.

103-112, contains a very careful examination of the rights of corporations to apply their property which is exempted from taxation in general terms, to purposes of speculation or direct profit, aside from the purposes contemplated by their charters, and of the effect of such use in regard to the exemption from taxation, where the profits are ultimately applied to the objects specified in the charter; and the conclusion is reached upon sound views, we believe, that such property is liable to taxation.

Ross vs. Adams is deserving of notice as an instance of the application of common sense and natural reason to the construction of an act of the legislature, when an adherence to strict technical rules would have led the court quite one side of the purpose of the legislature.

Winfield vs. The City of Hudson, pp. 255-265, is an interesting case where Chief Justice Green discusses, with his usual clearness and ability, the negotiability of city stocks under the statute of that State.

Boylon vs. Meeker, pp. 274-478, is a will case, involving questions of great interest, always, to the parties, such as want of capacity, fraud, and undue influence, together with forgery, and the proper limits of the admissibility of the declarations of the testator, upon the several issues growing out of these different exceptions to the instrument, which are discussed with unusual thoroughness and ability by several of the judges. But, with all due submission and deference to the learned judges, it does seem to us that the facts in the case are quite too extensively debated here to claim any just place in a volume of Law Reports. The Reporter could not well lay the opinions of the judges one side. But, it is certain, somebody should have taken the responsibility of cutting out, at the very least, one hundred pages of the report of this valuable and interesting case. It would then have been needlessly prolix.

There are many more valuable cases, any one of which is worth more to the profession than the cost of the volume. If there is any general fault in the volume, it is that the cases are reported too much at length. There is one great excellency, which is becoming rare of late, the examination and discussion of the important cases by more than one of the judges.

The work of the reporter is done with great accuracy and neatness, and the paper and type are altogether unexceptionable. We have great pleasure in recommending it to the profession as a valuable addition to the long list of American Reports.

I. F. R.

REPORTS OF CASES IN LAW AND EQUITY DETERMINED IN THE SUPREME COURT OF THE STATE OF IOWA. By THOS. F. WITHROW, Reporter. Vol. III., being Vol. XI. of the Series. Des Moines: Mills & Brothers, 1861.

This third volume of Mr. Withrow's Reports fully vindicates the good opinion we have already expressed of the former ones. In many respects this volume is deserving of imitation in quarters where we are accustomed to look for models rather than copyists. The cases are more briefly reported than what has been usual of late with the American Reports, and, consequently, contains a larger number of cases than is usual. This we regard as an advance in the right direction; and, as it tends towards the days of Johnson and other model reporters, we might almost say, at the hazard of a solecism or even a paradox, it is an improvement upon the late reports, because it is an advance backwards.

There are, no doubt, some advantages in having a point discussed at length, and all the cases brought into notice; and it is well to do this with the leading cases. But it cannot be done with all the cases, and the sooner the courts begin to act upon this view the better for the profession. We notice, in the 1 Allen's Reports, that the Massachusetts Court are setting an example in that direction. This volume of Iowa Reports is another indorsement of the course. We trust it will find other followers.

The substance of the head note being embodied in a single word or two, in small capitals or italics at the beginning, is a great aid, and every facility of that kind to save time and labor, is a merit in a law book. We trust this feature will be found worthy of general adoption by all the reporters in the country, as it has long been in England.

We have no space to enumerate the leading cases in this volume. There are many of this character which seem to have been decided upon the soundest principles without much examination of the authorities. Post-nuptial contracts as to creditors, general assignments, action of libel against grand jurors, the conclusiveness of officers' returns, are all of this character.

There are some decisions wherein the court review the decisions of inferior tribunals upon motions for continuance, petitions for new trial, removing defaults and non-suits, which are commonly regarded as matters of mere discretion, and not revisable in courts of error, and one case allowing set-off of damages in actions of tort, even in slander, all which has a kind of *outré* sound in the older States; and unless controlled by the code of that State, as some of them profess to be, these decisions are certainly not a little anomalous.

We should say the same of the decisions in this volume, holding that one convicted of manslaughter on an indictment for murder, but who on appeal obtained a new trial upon his own motion, could not, therefore, be tried for murder but only for manslaughter. Notwithstanding some conflict in the decisions, the proposition seems to us to carry a sufficient refutation in its own innate absurdity. When the party asking a new trial proposes to limit the prosecutor, not by the former *trial* which is to be *renewed*, but by the former conviction, which has been set aside upon his own motion, this would be a new trial of the *conviction*, but not of *the case*. There was, undoubtedly, so long as the verdict stood, an implied acquittal of the charge of murder. But when set aside, that portion of the verdict was no more effective than the conviction of manslaughter. Since both the charge and the verdict were entire, there is no plausibility in saying that the verdict was set aside as to its direct effect in finding a conviction of manslaughter, but still remained in full as to the *implication* resulting therefrom of an acquittal of murder. If the verdict is set aside it must be, in *solido*, both for its *direct effect* and the *resulting implications*.

But these are unimportant matters, and we very cordially commend the volume to the favorable notice of the profession throughout the country.

I. F. R.

A TREATISE ON THE LEGAL AND EQUITABLE RIGHTS OF MARRIED WOMEN; as well in respect to their Property and Persons, as to their Children. With an APPENDIX of the Recent American Statutes, and the Decisions under them. By WILLIAM H. CORD, Esq., Counsellor at Law. Philadelphia: KAY & BROTHER, 19 South Sixth Street, Law Booksellers, Publishers and Importers, 1861.

Few subjects require more careful professional consideration, than the legal and equitable rights of married women. A good book on this branch of law is a necessity with the bar everywhere, and such a book Mr. Cord has furnished us. The collection of the various State statutes, at the end of the volume, is exceedingly valuable and useful. In the body of the book, the author seems to have stated fully and accurately the doctrines of the common law and equity, as well as noticed the more important peculiarities of the various State reforms.

We recommend this work to the practising lawyer, as an essential aid in disentangling the embarrassing questions which so often arise in the law of "married women."

A. I. F.