other party the sum of three hundred dollars, which shall be paid in full, on or before the forfeiture as above." *Held*, that on a failure by B. to perform the contract, he was liable for the full sum of three hundred dollars as liquidated damages: *Lynde* vs. *Thompson*.

Sale of Railroad Bonds—Erroneous Certificate of their being secured by a first Mortgage, how far Defence to Note for Purchase-Money—Whether Purchaser relied on Certificate, to be left to Jury.—If a railroad company issues and sells bonds bearing upon their face a certificate, signed by persons describing themselves as trustees, that the same are secured by a first mortgage to them in trust for the bondholders, there is no absolute presumption that a purchaser thereof relies upon such certificate; and, in an action upon a note given by him as a part of the consideration of the purchase, the question should be submitted to the jury to determine whether he accepted the bond, relying to any extent upon such certificate: *Edwards* vs. *Marcy*.

LEGAL INTELLIGENCE AND REFORM.

The late session of the British Parliament has been more than commonly productive in law reforms. It is a fact not fully understood by the profession in this country, in many instances, we believe, that legal reforms, taking their rise in Great Britain from the example of this country, have far outstripped us in almost all useful improvements in legislation in the last twenty years. In the simplification of process and procedure, and in the accommodation of remedies to afford the desired results, in all the courts of the nation, high or low, the late English statutes, called the Common Law Procedure Acts, are well worthy of imitation upon this side of the Atlantic. In some respects, our codes of practice, and the consolidation of the different forms of action, have been far more radical than the English reforms; but they have been, as a general thing, less adapted to produce the objects and purposes for which they were designed. This has been owing, in some degree, no doubt, to the undue admixture of unprofessional counsels in regard to these

reforms, and the necessity of deferring to the ignorance and inexperience of the lay element in our legislatures, in order to secure the adoption of any measure of reform after it was matured. Whether that obstruction in the way of judicious law reform is inseparable from our free and democratic institutions, it is not yet time to decide with confidence. We see no reason to question why the legislature of any of the American States may not ultimately be made as willing to take the counsel of a standing legal committee of advice in regard to all changes in jurisprudence, or in judicial administration, as the British Parliament. The experiment has scarcely been, as yet, attempted in this country, and, until it is, there is no fair ground to argue that it would not meet with acceptance. As a general thing, the pretensions and presumptuousness of mere unprofessional men in the State legislatures, with rare exceptions, growing out of moral or mental obliquity, has been more owing to the false glosses of manœuvring political sects and schools probably, than to any innate perversity of temper or want of fairness and teachableness of disposition in the members. Our legislatures have only to know that the British Parliament, with ten or twenty times the learning and experience of any of our State legislatures, never attempt to adopt any changes in the law until it has been referred to a special commission, learned in that department, and has then received the revision of a standing committee of the judges and others learned in such matters: Our legislatures have only to know this to induce them, we trust, to make their reforms less radical, and, at the same time, more efficient.

But the subject which we now desire to bring to the notice of the profession, is the late statutory provision of the British Parliament for the ascertainment of the law of foreign States. By the 22 and 23 Vict. c. 63, and the 24 Vict. c. 11, provision is made both for the ascertainment of the laws of the different portions of the British Empire and of foreign countries, whenever it shall come in question in any of the courts of the realm.

This has hitherto been done by means of the testimony of those skilled in the laws of the country whose jurisdiction affects the cause of the action before the court. This was often a most perplexing

matter, since the witnesses assumed the character of counsel far more generally than would have been expected by those who had not had experience upon the subject.

These statutes provide, in substance, that any of the superior courts in her majesty's dominions may remit a cause pending wherein it shall become important to determine any question of foreign law, to the courts of the State or country whose laws are brought in question, with specific inquiries in regard to the law, desiring the opinion of the court of last resort thereon. And this opinion, when obtained, the domestic tribunal may apply to the determination of the cause, the same as if it had been pronounced by the court where the cause is pending; or they may submit the cause to a jury, with this opinion as conclusive evidence of the foreign law, or as evidence of the law, in any other portion of the realm.

And if the court, upon the return of such opinion, are in doubt in regard to the case having been properly understood, or being fully stated, they may remit it to the same, or any other foreign court in the State whose laws are in question, with or without amendment, as often as may be necessary or expedient.

If some expedient of this, or a similar character, could be devised for supplying to courts in all cases the information which they now derive in a very imperfect manner, from the testimony of experts, upon various subjects, it would be a most gratifying advance in judicial reform.

The article in the London Jurist, June 29, 1861, will explain the nature of these provisions more fully, and cannot fail to be of interest to the profession here.

A valuable addition to the law of this country has just been made by the legislature in the stat. 24 Vict. c. 11, intituled "an act to afford facilities for the better ascertainment of the law of foreign countries when pleaded in courts within her Majesty's dominions." Before, however, proceeding to state its provisions, it will be useful to advert to the previous state of the law, and the evils which that statute, and the 22 & 23 Vict. c. 63, intituled "an act to afford facilities for the more certain ascertainment of the law administered in one part of her Majesty's dominions when

pleaded in the courts of another part thereof," of which it is a great extension, were designed to remedy.

It has ever been an established principle of law, that courts of justice do not take judicial cognisance of the laws of foreign countries—whenever the existence of such comes in question before a court, it must be proved as a fact. And this is not peculiar to the English law, for it may be looked on as a maxim of general jurisprudence. (See Heinec. ad Pand., pars. 4, § 119; Id., pars. 1, § 103; Story's Confl. Laws, § 637, 5th ed.) But how is such a fact to be proved? The obvious and usual mode was by the testimony of witnesses skilled in the law of the country in question. Whether a witness offered for this purpose stood in a position to entitle him to give evidence on the subject as an expert was of course a question to be decided by the court or judge, and several reported cases show that this was occasionally a matter of some nicety.

The inconvenience, and often the inefficiency of this kind of evidence are well known to every practical lawyer. Partly owing to the uncertain character of the subjects to which they depose, partly owing to the circumstance that it is almost impossible to indict for perjury a man who only swears to his belief, testimony of the loosest and most dangerous kind is daily given in courts of justice by almost every species of experts—medical men, surveyors, &c. The testimony of lawyers as experts is less frequently required, but when it is, great conflict of opinion is often to be found among the witnesses. On questions relating to the law of France in particular, the most discordant opinions of eminent jurists and practitioners from that country are not unfrequently adduced in our courts—a fact which inevitably leads to one of these inferences—either that a loose standard of morality exists among the learned of that country, or, what we believe far more likely, that the law of France is in a very unsettled state upon many important matters—a conclusion much at variance with the favorite, though most erroneous notion of many at the present day, that the Codes Napoleon have succeeded in expelling all doubts from French jurisprudence, and reduced the whole law of

that country to a small volume, which every person, lawyer or layman, can carry in his pocket, and interpret for himself. And, whatever may be said of the evil resulting from courts of justice being compelled to resort to the testimony of experts to prove the laws of countries which are "foreign" in the proper sense of the word, it almost amounts to absurdity in the case of countries which are foreign in a technical sense only—i. e. those which, though governed by different laws from England, are still under the dominion of the British Crown, such as Scotland and the like.

To provide some remedy for these evils the two statutes to which we have alluded were passed. The 1st section of the former (the 22 & 23 Vict. c. 63) enables the courts in one part of her Majesty's dominions to remit a case for the opinion in law of a superior court in any other part thereof. By sect. 3, when a certified copy of the opinion is obtained, either party to the action may move the court to apply that opinion, "and the said court shall thereupon apply such opinion to such facts in the same manner as if the same had been pronounced by such court itself upon a case reserved for the opinion of the court, or upon special verdict of a jury; or the said last-mentioned court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case, *as evidence, or conclusive evidence, as the court may think fit*, of the foreign law therein stated, and the said opinion shall be so submitted to the jury."

This statute, it is obvious, went only a small part of the way towards remedying the mischief. But it has been more effectually attacked by the second—stat. 24 Vict. c. 11. The 1st section enables any of the superior courts within her Majesty's dominions to remit a case, with queries, to a court of any foreign state or country with which her Majesty may have made a convention for that purpose, for ascertainment of the law of such state. By sect. 2, when a certified copy of the opinion is obtained, either party may move the court to apply that opinion; "and the said court shall thereupon, if it shall see fit, apply such opinion to such facts, in the same manner as if the same had been pronounced by