NOTICES OF NEW BOOKS.

REPORTS OF CASES DETERMINED IN THE SUPREME COURT OF THE STATE OF ILLINOIS, at April Term 1861, and January Term 1862. By O. PECK, Counsellor at Law. Vol. XXVI. Chicago, Illinois. E. B. Myers.

The Reports of the State of Illinois, especially during the period of the present accomplished and faithful reporter, have acquired a very high reputation throughout the Union. The present volume seems to us fully equal to any of the preceding ones. In the essential and important particulars of brevity and point in the opinions of the judges, we have noticed a constant advance for some time, and now regard these reports as a model in that particular, well worthy of imitation.

The number of cases to be decided has so much increased of late everywhere, that it has become indispensable that no discussion be admitted into the reports not strictly pertinent to the questions determined. And while some of the reports have been prompt to apprehend this necessity, others have not seemed to comprehend it with equal readiness. The Illinois Reports are at present greatly in advance of most of the other states in that respect.

We have been surprised to find so many important questions, where the authorities are not referred to, and do not appear to have been consulted either by court or counsel, so ably and satisfactorily disposed of. We may refer to Roberts *vs.* The City of Chicago, p. 249, where the question arose in regard to the right of the municipal authorities to alter the grade of streets; and to Chicago, Burlington and Quincy Railway *vs.* Dewey, p. 255, where the different degrees of diligence required by either party, under given circumstances, are extensively discussed; as illustrative of what we have just said. The subject of malicious actions and prosecutions is correctly disposed of in Ross *vs.* Innis, p. 259, but the cases are not referred to. They will be found to be numerous. See Redfield on Railways 161, 330; 31 Verm. R. 181, and cases cited.

There are some anomalies in this volume explainable upon the ground, we presume, of local usage or special statute. For instance, revising the decisions of inferior Courts in regard to postponing a trial, upon writ of error and bill of exception. The Bishop Hill Colony *vs.* Edgerton, p. 54.

The revising and reversing a former decision of the same Court, on the same facts, in Smith *vs.* Moore, p. 292, is as creditable to the Court, as it is of uncommon occurrence, since it is evident the Court had been misled

in the first decision by a New York case, Raymond *vs.* White, 7 Cow. 321. But the case is not without precedent. It has been done more than once in the Supreme Judicial Court of Massachusetts, under the administration of one of the most enlightened jurists of the age. Blanchard *vs.* Page, 8 Gray's R. 281. We only say that such things are of uncommon occurrence, and not a little embarrassing to those minds who do not feel entirely sure of a firm hold upon public confidence. But when they do occur, they afford the most convincing evidence of the tribunal being more solicitous to do justice than to be highly esteemed by the mass of men, who are more likely to hold a man wise because he never yields an opinion, than because he always admits his liability to err, and sometimes gives the most convincing proof of it, by changing position.

There are some few decisions in this volume which strike us, at first blush, as questionable. In Sackett *vs.* Mansfield, p. 21, and Myers *vs.* Kinzie, p. 36, it is decided, that in deeds of general assignment for the benefit of creditors, to render them fraudulent as to other creditors, the assignee must have been conversant, and have concurred in the corrupt intent of the assignor. This is undoubtedly true of deeds of assignment to parties beneficially interested as creditors and purchasers. But in case of assignments to mere trustees, we question its application. "The intent of the assignor is the material consideration." Burrill on Assignments 421. See also Hildreth *vs.* Sands, 2 Johns. Ch. R. 42; Huguenin *vs.* Baseley, 14 Vesey 289, 290; Bridgman *vs.* Green, 2 Vesey 267; Wilmot's Opinions 58; Lord Redesdale in House of Lords, 1 Dow Rep. 70; The Mohawk Bank *vs.* Atwater, 2 Paige R. 54, which is precisely in point, to show that the fraudulent purpose of the grantee is not essential to avoid the deed, provided he have no beneficial interest.

The point is twice recognised that a demurrer to pleas in bar will not reach back to defects in the declaration, where there is also a plea of the general issue. This is new to us, and seems inconsistent with principle, but it may be sustained by authority. We doubt it. I. F. R.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF THE UNITED STATES, at December Term 1861. By J. S. BLACK, LL.D. Vol. I. Washington, D. C. W. H. & O. H. Morrison, 1862.

The appointment of Judge Black as Reporter to the Supreme Court of the United States, was one of those now rare occasions on which the merit of the postulant has surpassed the measure of the office. Of his great abilities there could be no doubt, and they had been exhibited in

positions of the highest eminence. Within the scope of a few years he had been successively Chief Justice of his own State, Attorney-General of the United States, and Secretary of State. In each character he had displayed marked capacity, and in the last his courage, firmness, and loyalty were conspicuous at a crisis in our history when these qualities were most needed. The selection of Judge Black for the vacancy caused by the resignation of Mr. Howard, was therefore received with general satisfaction, only mingled with a regret that the office was not more on a level with his public services.

As to the manner in which the duties of Reporter have been performed for several years back, it would be both ungracious and unnecessary now to speak. It is more agreeable to find in the present volume the inauguration of a series which will do credit to the bench and the editor. It has been prepared with that intelligent and conscientious labor which is the chief, though often the least appreciated, duty of a Reporter. The statement of facts, which in cases in this Court must be condensed from documents of more than usual complexity and extent, is, in general, clear, succinct, and intelligible to a noticeable degree. Nothing is inserted which is not necessary to a correct understanding of the decision; and, on the other hand, nothing important to that end is omitted. The arguments of counsel are well reported. The points and authorities are brought out with perfect distinctness, and at the same time, diminished to the proper focus, with due literary skill. There is often, indeed, a freshness and epigrammatical turn in the language used, which shows that the Reporter has not contented himself with a mere reduction by scale, so to speak. The head-notes are accurate and satisfactory, and can be understood at first reading. The index is carefully prepared, and has one characteristic deserving of imitation. The common course is to collect together the syllabuses of the different cases just as they stand, shuffle them, and then deal them out under different heads, as convenience or chance may dictate. Instead of this, Judge Black has, for the purpose of his index, redigested his head-notes into the sharpest and briefest form of which they were capable, so that the eye on running over them can discover on the instant which of them is wanted. There is much saving of time in this, as every one knows who has found the index of a book, like the interpreter of the play, "harder to be understood than the original."

Among the decisions reported in this volume, there are some of much general importance and interest. We have space to refer but to a few.

The case of Dutton *vs.* Strong, p. 23, on the subject of riparian proprietorship on the inland waters, such as Lake Michigan, is of much practical value. So is that of Johnston *vs.* Jones, p. 209, in which the rules as to the apportionment of ownership in the accretions on these lakes, are laid down. The liability of a municipal corporation for private injuries occasioned by the defective construction of a bridge (Weightman *vs.* Washington, p. 39); the right of compensation for an injury produced by several concurrent but not consenting causes (Steamer New Philadelphia, p. 62); the duties of a carrier in respect to goods seized under an attachment (Stiles *vs.* Davis, p. 101), how his lien for freight may be waived (Bags of Linseed, p. 108), his liability for the inherent defects of an article carried (Nelson *vs.* Woodruff, p. 156), or for its damage in a port of repair (Brig Collenberg, p. 70); or, to turn to other topics, the doctrine of the forfeiture of legacies (Rogers *vs.* Law, p. 253), and the character of the interest of partners in a joint stock company trading together in land (Clagett *vs.* Kilbourne, p. 346), are severally discussed and decided in an able manner. One or two constitutional questions deserve notice. The case of the Ohio and Mississippi Railroad *vs.* Wheeler, p. 286, contains an authoritative exposition of the doctrine on the subject of suits by corporations in the Federal Courts, and a novel application of them is made in the decision, that where a corporation obtains separate charters from two or more States (as is often the case with railroad companies), it cannot sue under that joint character in the Federal Courts of either of the States; a result which shows how purely artificial the whole reasoning on this subject has become. In Rice *vs.* Railroad Company, pp. 373, 382, it seems to have been the opinion of all the judges that Congress could not lawfully resume a grant once made any more than a State could, not because it would violate the obligation of a contract, but because whatever was granted had thereby fallen into the domain of private property. Finally, in Jefferson Branch Bank *vs.* Shelly, p. 436, the doctrine that has latterly grown up or received a fresh impulsion in several of the State Courts, that a State cannot *ex vi termini* by any bargain relinquish the right of taxation as a sovereign power, was formally repudiated, and, so far as it can be by the Supreme Court, put at rest. There remains still, however, a good deal to be said on this question.

With these observations on the character and contents of this volume, we commend it to our readers, congratulating them, as well as ourselves, on the great improvement which it exhibits over the former style of reporting.

H. W.