

maintenance of the piers, which, though they may be in some degree obstructions to the navigation, are not for that reason alone unlawful: *Id.*

A grant of the *eminent domain* of the Commonwealth, so far as it is not specially restricted, passes the immunity which pertained to it while it was in the hands of the State; and the Commonwealth having the right to build the bridge, with piers to support it, without liability for consequential damages, the bridge company have the same rights and immunity: *Id.*

The Act of August 14th, 1725, relating to a draw bridge on Chester creek, and providing that no bridge should be erected over any river or navigable stream, so as to hinder navigation, &c., applied only to bridges erected without authority of law, and could not take from a subsequent legislature the power to authorize the construction of a bridge with piers over a navigable stream; and a charter for a bridge company, under the Act of April 3d, 1837, is not subject either to that act, or to the Mill Dam Act of 1803, which applies only to dams erected under it, and prohibits only such obstructions as are not legalized by statute: *Id.*

The right to erect a bridge under the charter necessarily included a right to fix the number and location of the piers, at the discretion of the company; for a wanton abuse or a careless and negligent exercise of that right, resulting in immediate injury to an individual, a private action might be maintained; but the company are not responsible where the damages result merely from a mistake of judgment in locating the pier: *Id.*

The state alone has power to redress a wrong done to the public by an improper location of the piers, and to compel the removal of the obstructions; it cannot be accomplished by a private suit: *Id.*

Dugan *vs.* Monongahela Bridge Co., 3 Casey 310; Bacon *vs.* Arthur, 4 Watts 437, and Plummer *vs.* Alexander, 2 Jones 81, commented on and distinguished; Monongahela Navigation Co. *vs.* Coons, 6 Barr 382, re-affirmed: *Id.*

NOTICES OF NEW BOOKS.

A TREATISE ON THE LAW OF PROMISSORY NOTES AND BILLS OF EXCHANGE. By THEOPHILUS PARSONS, LL. D., Dane Professor of Law in Harvard University, and Author of Treatises on the Law of Contracts, &c. 2 vols. Philadelphia: J. B. Lippincott & Co. 1863.

Professor Parsons appears to be engaged in the preparation of a series of works on the most prominent heads of the law. The subject of his

present Treatise is one which, from its practical interest, has been dealt with by authors of all degrees of capacity, from the editors of catchpenny handbooks to the operose Chitty. It has been condensed in the terse but comprehensive chapters of Kent; it has been expanded and adorned by the fluent learning of Story; it has been expounded in the clear, business-like pages of Byles. There has been, indeed, no lack either of ability or variety of treatment. Still the rapid increase of decisions, and the occurrence of novel questions, through the shifting necessities of commerce, create a constant demand for new editions, and perhaps even for new works on this comprehensive topic. The field is ever widening, and there is room for fresh laborers.

For these reasons there could be no valid objection to the publication of a fresh treatise on Bills and Notes every few years. At the same time, we think that such a reduplication of work ought to be avoided if possible. There are many interesting and important branches of jurisprudence which are as yet almost untouched. Some indeed have sprung up and taken shape within a short period, and expose a virgin soil. These, it seems to us, are better worthy of the industry and talent of writers such as Professor Parsons. There is a practical need to be supplied, and to lawyers and judges, a new book on a new subject is always welcome. On an old subject, however, unless it exhibits some marked superiority over its predecessors, it is not received with quite as much satisfaction. There are so many books which have to be bought now, that it has become a pretty severe tax, which ought not to be unnecessarily increased. Another objection is that it is hardly fair to the authors or publishers of books of established reputation, which, the main labor having been done once for all, can always be kept up to the time at a small expense by fresh editions or supplements, but which are liable to be driven out of the field by a new competitor. It is really a bad economy of time and thought.

We have no intention in these remarks to disparage Professor Parsons's work as an independent production. It covers a wider scope than some of the previous treatises; it is well written and carefully compiled. The incidental discussions on particular doctrines in the notes, are judicious and instructive. Perhaps by the chapters on collateral but connected topics, it is made more generally useful than any which preceded it. There is one matter, however, in which it seems open to criticism. We have looked in vain for some of the most recent English and American decisions: and we have heard the same complaint from others. It is very possible that the book may have been in print for a good while, waiting a favorable

period for publication. Or Professor Parsons may not have considered these omitted cases as deserving of perpetuation. In a work of such a character, we cannot expect to find every insignificant decision, the hundredth repetition of a truism, referred to. It would be a useless waste of type and space. Nor do we expect in a sedate author, that ecstatic triumph over the very last case from the *Law Times* by the steamer just in, or from some shiny volume hot with travel from the farthest West, which counsel sometimes exhibit in a nicely-balanced cause. Still there is a mean which should be observed. Many of the minor cases cited in the old text-books may be suffered to drop into oblivion; but it is better to give all or most of the recent decisions, even where they seem of little value in themselves. It facilitates independent study by counsel, for the best of authors may sometimes in a hasty glance underrate the novelty or importance of an opinion. Besides, it sheds an air of freshness even over a commonplace, to find it verified by some new citations, rather than the old standbys from T. R., B. & C., Mass., Johns., S. & R., and all the other abbreviations which have grown stale on the pages of Story and Byles.

To be just, however, to Mr. Parsons, he has employed a great deal of industry and research in the preparation of these volumes, which will be found most useful to student and practitioner. We have only to repeat our regret that he has not directed that research and industry into more untrodden paths.

H. W.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. By CHARLES ALLEN. Volumes I., II., III. Boston: Little, Brown & Company, 1861, 1862.

We are here presented with a pretty liberal instalment of the labors of a new reporter within some eighteen months, in one of the oldest and most commercial states of the Union. We have nothing to object to the frequent appearance of new volumes of reports, since it is but an expression of the increasing business, wealth, and prosperity of the country, provided always that the cases reported are such as fairly tend to aid the profession in understanding and maintaining the old landmarks and fundamental principles of the profession. In the multiplication of causes, and of counsel, there is some temptation to publish too many cases which add nothing to the common stock of legal learning already possessed. And it is so much the nature of increasing numbers in the profession to depreciate what has gone before, in order to find fitting place for their

own mediocrity, that it will be an evil day for any one who presumes to discriminate between the labors of the past and the present generation of lawyers, unless such discrimination is in favor of the present.

In many of the states, and especially in the old Bay State, the legislature have undertaken to define the duty of the reporter. He is required to report and publish "the decisions upon all questions of law argued and determined before the first day of September in each year, *within ninety days thereafter.*" The only discretion allowed the reporter is, that he is to report the cases "more or less at large according to their relative importance, so as not unnecessarily to increase the size or number of the volumes." This is a very happy illustration of what may justly be called the bathos of legislation, where a convention of men of all trades and pursuits attempt to set themselves forth as wiseacres in other men's matters, and because it is their duty to become wise and experienced, to assume that such is already their condition and to act accordingly.

Under such circumstances the reporter has in fact no discretion, but to publish just what comes to hand; and the judges have no discretion, but to give formal opinions in every case, and thus practically make all cases, as nearly as possible, of precisely the same importance. This process of equalization has been going forward in this country, at a most hurried pace, for the last half century, until almost all the departments of office and trust have fallen into the hands of the unprofessional and the half-educated, and it now remains to be seen how the experiment will finally succeed.

Mr. Allen, with very commendable zeal, and, we conjecture, with no inconsiderable labor and watchfulness, has certainly contrived, to compensate the embarrassments of faulty legislation, and in spite of the folly of his masters, to maintain the established character of the Massachusetts Reports, in a degree quite beyond what one could have expected, under the circumstances. These volumes compare not unfavorably with the best specimens of Massachusetts Reports, and that is saying a good deal, when we reflect that the former reporters reckon among their number some of the ablest jurists and most careful writers of this ancient commonwealth. Every law library in the country, of sufficient extent to prepare a brief, cannot afford to be without these volumes. The mechanical execution is excellent, and Mr. Allen will soon become, we venture to predict, one of the very best reporters in this broad empire.

I. F. R.