

found, that the finding becomes erroneous as matter of law: *Hyde vs Nelson*.

Insurance—Measure of Damages under a Policy which gives the Insurer the Option to rebuild, and where the Local Law forbids Rebuilding.—Plaintiff insured with defendants his wood warehouse, situate within the fire limits of Detroit. The policy contained a stipulation that in case of loss or damage by fire, it should be optional with the company to rebuild or repair the building. A fire occurred which destroyed the roof of the building, but did not otherwise essentially injure it. The Common Council of Detroit refused plaintiff permission to repair, and the building was therefore nearly or quite worthless. Suit being brought on the policy, defendants claimed that they were only liable for such sum as would be sufficient to repair the building. *Held*, that plaintiff was entitled to recover the whole amount insured: *Brady vs. N. W. Insurance Co.*

NOTICES OF NEW BOOKS.

ELEMENTS OF INTERNATIONAL LAW. By HENRY WHEATON, LL.D, Minister of the United States at the Court of Prussia; Corresponding Member of the Academy of Moral and Political Sciences in the Institute of France; Honorary Member of the Royal Academy of Science in Berlin, &c., &c. Second Annotated Edition. By WILLIAM BEACH LAWRENCE, Author of "Visitation and Search," &c., &c. Boston: Little, Brown & Co. London: Sampson Low, Son & Co. 1863.

We are here presented, by this excellent law publishing house, with a new edition of the most approved work upon International Law. It is certainly a just occasion of pride and gratification to all loyal Americans, to reflect that one of our own countrymen should have produced a work, upon this delicate and difficult subject, which should have met with such universal acceptance and approbation throughout the civilized world. For this work is now accepted as the standard text book upon International Law in almost every court in Europe. And the present edition is enriched by the careful and exhausting labors of such an editor as few authors can expect to find, to keep up their books to all the requirements of advancing commerce and civilization.

If there is any fault to be found with the present edition, it is that it was not allowed to make two volumes of moderate size, instead of one so

overcrowded and out of proportion, comprising nearly twelve hundred pages. But this is a fault which most purchasers will excuse, on account of the lessened price, and its present proportions will convince all of the necessity of making two volumes of the next edition.

The chapters in this work which will attract most attention at this particular juncture in American affairs, those upon the Rights of War as between Enemies, and the Rights of War as to Neutrals, have received the special attention of the editor, and contain extensive additions from approved and authoritative writers upon these subjects, ancient and modern, and much historical information of great value. Indeed, this work is now so crowded with information, indispensable to every general reader, and especially to every general scholar, that they cannot afford to be without it. We had intended to give some extracts from the work, and especially from the recent additions by the editor, in regard to the questions of such paramount interest at the present time, but it would occupy too much space, and we are sure our readers will avail themselves of the opportunity thus presented to examine for themselves those legal and constitutional questions so vital to the Republic, and which must, in the common course of events, so soon come to a final and authoritative determination by the American people, and in regard to whose judicious and peaceable solution the legal profession have, and in the nature of things must have, such an awful responsibility. We desire to avoid all appearance of alarm or agitation, but we must say, that any man who views the present crisis in American affairs with indifference, or without painful concern and apprehension, must either be very wise or very simple.

I. F. R.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. By CHARLES ALLEN. Vol. IV. Boston: Little, Brown & Co. 1863.

We have so recently spoken of the general character of Massachusetts Reports, and of those of Mr. Allen in particular, that we have nothing to add. The present volume contains a full average of interesting and important questions, and the general appearance of the volume for accuracy and neatness in the preparation of the matter, as well as in the publication, is creditable both to the reporter and the publishers.

The case of *Child v. The City of Boston*, in regard to the liability of the defendants for damages accruing to private persons, by the construc

tion, or want of repair, in the common sewers of the city, is one of very considerable interest, and the questions involved are examined with thoroughness and ability.

In the case of *Dean v. The American Mutual Insurance Company*, the much-discussed question of the effect of death by suicide in cases of life insurance, where the assured was partially insane, and the policy contained the usual exception, "where the assured shall die by his own hand," is very carefully and learnedly examined by the court and counsel. The subject of fire insurance is very extensively and carefully examined in *Hardy vs. Union M. F. Ins. Co.*

In *Wright vs. Malden and Melrose Railroad Company*, the question of the degree of care and diligence to be required of a child of tender years in escaping peril to which he is exposed through the negligence of the defendants, concurring with that of the parents or guardian of the child, is very carefully examined, and the rule laid down in *Lynch vs. Nurdin*, 12 B. R. 29, rejected, notwithstanding its adoption in many of the American States. The same question is further considered in *Munn vs. Reed*, where a child was bitten by a dog. The rule adopted in these cases, and in the State of New York, visits upon the child, in denying him a recovery, any want of care and prudence on the part of his guardians, in not keeping him out of danger. We prefer the English rule of allowing the child to recover for any injury which is the *direct* result of the defendant's negligence, notwithstanding any *remote* fault on the part of the parent or guardian. We believe this rule will finally prevail as to all cases of negligence which is the direct result of the fault of the defendant, although remotely produced, perhaps, by the fault of the plaintiff in needlessly exposing himself to peril. That is true in almost every case. There is, *in fact*, some fault on both sides, but juries refuse to find that fact, when their common-sense instincts make them feel that the law is making a wrong and an absurd use of it. The better way is to qualify the rule, and reduce it within the limits of common sense, by admitting the proper distinction between the negligence which is the *proximate* cause of the injury, and that which is only the *remote* cause. The tendency of the later English cases, and of many of the American cases, is in that direction.

The case of *Dekon vs. Foster* presents a very interesting question, and one of some practical importance—the right of the Courts of Equity to enjoin a citizen within the state where insolvent laws obtain, and where his debtor is domiciled and has gone into insolvency, from going out of

the state and attaching the property of his debtor, and, by pursuing it to execution there, prevent the assignees from obtaining it to distribute ratably among all the creditors. The court here held that the creditor, under such circumstances, was liable to be enjoined from so applying property out of the state exclusively upon his own debt. There is certainly a degree of moral justice in such a decision. We have not examined it with sufficient care to be able to determine how far it may be consistent with the ordinary powers of Courts of Equity.

I. F. R.

A COPYRIGHT MANUAL; Designed for Men of Business, Authors, Scholars, and Members of the Legal Profession. Prepared by WILLIAM W. ELLSWORTH, late Judge of the Supreme Court of Errors in Connecticut. Boston: Oliver Ellsworth. 1862.

We owe the author and publisher of this excellent manual an apology for not sooner having noticed it. It consists of about fifty pages in all, and contains everything which business men or lawyers would desire to have upon the subject for ordinary use, and is got up in a very natural, plain, and simple style. It is unambitious and unpretentious, like its excellent author, the worthy son of a worthy sire, whose names and fame are identified with the history of one of the oldest and best states in our Union, as well as with that of the Union itself. The fact that the days of such honest-hearted disinterestedness and truthful earnestness and ability as made, and will make, the name of Ellsworth a national and world-wide renown, in all time, past or future, have now measurably passed away; and that the best of men now labor more for pay than from patriotism, will make those venerable names, which graced the better days of the Republic, doubly dear to the patriot and the Christian, who feels that there is an aim above mere personal aggrandizement, and a reward which only the unselfish and the pure in heart can justly claim.

I. F. R.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPERIOR COURT OF THE CITY OF NEW YORK. By JOSEPH S. BOSWORTH, LL.D., Chief Justice of the Court. Vol. 7. Albany: W. C. Little, Bookseller. 1863.

The series of Reports of the decisions of this Court comprise two volumes by Hall, five by Sandford, six by Duer, and seven by Bosworth. These twenty volumes contain many able and well-reasoned cases, decided

by such men as Chief Justices Jones, Oakley, Duer, and Bosworth, Justices Sandford, Hoffman, Woodruff, and others, some of whom have a national reputation. Many of the most important commercial cases arising in the city of New York have come before this tribunal, and, after having received the most thorough and exhaustive discussion at the bar, have, by the satisfactory manner in which they were disposed of by the bench, become leading cases in the law.

Nearly all of these decisions have been reported by one of the Justices of the Court. We cannot bestow too much praise upon the manner in which this has been done by the present Chief Justice. We personally know that he has brought to his work the most conscientious and painstaking thoroughness. Time has in no case been spared wherever it was necessary to the most complete and comprehensive preparation of the work. The result is, that in these volumes there is always an accurate and clear statement of the facts in each case, a condensed but faithful sketch of the argument of counsel, and an elaborate and satisfactory analysis in the head-note of the points decided.

We cordially commend these volumes to the profession. T. W. D.

THE LAW OF TRUSTS AND TRUSTEES, AS ADMINISTERED IN ENGLAND AND AMERICA.
Embracing the Common Law, together with the Statute Law, of the several States of the Union, and the Decisions of the Courts thereon. By JOEL TIFANY and E. F. BULLARD, Counsellors at Law. Albany: W. C. Little. 1862.

This appears to be an excellent work. The arrangement of topics is simple and logical, and the discussion lucid and satisfactory. The second chapter upon Implied Trusts is very full and complete. Trusts for Charitable Purposes are extensively examined in the fourth chapter, and the recent authorities cited. The statute law of the various States of the Union, concerning the Appointment of Trustees, is digested into about 100 pages, and is a very valuable feature of the book. We know of no work that can take its place in this respect. In our judgment, it has only to be known to command general favor.

We would suggest to the authors, on the publication of a second edition, that they enrich its pages by more extensive citations from English judgments within the last three or four years, and especially from the luminous decisions of Vice-Chancellor Wood. No lawyer who has examined these can fail to be impressed with their excellence, and they have received the highest professional praise, both in England and America.

T. W. D.