set off against the demand of one of the partners in a suit founded on his individual contract: *Jackson et al.* vs. *Clymer, for use, &c.*

Will—Alternative Legacy.—If a legacy be given to one by name, and in the event of his death to another, the alternative gift will take effect, if the first legatee die in the testator's lifetime: *Martha May's Appeal.*

So where a legacy is given to a class, and in the event of the death of one who would have been a constituent of the class before a defined period, his share over to another, that other will take, though the first legatee die in the lifetime of the testator: the alternative gift will be supported, if the first legatee be one who would have taken had he lived to the period of distribution: *Id.*

NOTICES OF NEW BOOKS.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. By HORACE GRAY, JR. Vol. IX. Boston: Little, Brown & Co. 1863.

Mr. Gray's last volumes come along like angels' visits, in more respects than one, but chiefly, because ever welcome to the recipients. It is scarcely needful to say much, at this late day, in regard to the general merits of these Reports. That has been long since well established. Mr. Gray takes an honorable place among the distinguished Reporters of the Old Bay State. The present volume contains many important cases, and especially that of The Commonwealth *vs.* The City of Roxbury, in regard to the proprietary rights of towns, in the sea-shore and flats adjoining, which is very learnedly discussed by the late Chief Justice SHAW, and a very elaborate and thoroughly exhaustive and learned note appended to the case of more than twenty-five pages by the Reporter, for which the profession will, as they ought, feel greatly obliged.

I. F. R.

THE MASSACHUSETTS DIGEST. Being a Digest of the Decisions of the Supreme Judicial Court of Massachusetts, from the year 1804 to the year 1857. By EDMUND H. BENNETT and FRANKLIN F. HEARD. In two volumes. Little, Brown & Co. 1863.

These two volumes, consisting of nearly two thousand pages of double column, royal octavo, done up in the best law book style, will be hailed

by the practising lawyers in the state of Massachusetts, as a most acceptable book, more so perhaps than any other one work of equal extent which was ever published in the State. It had become a very serious labor to spell out the true state of the Massachusetts decisions upon any given point, by turning over the indexes of almost thirty volumes. So embarrassing had this matter become, that good lawyers were liable to be met on the trial of important causes, with decisions having a controlling operation upon questions involved which they had overlooked, and even the Court sometimes, it is said by the judges themselves, did not feel confident of the true state of the decided cases upon any given point, until they had expended more labor and research than was always at command.

This embarrassing difficulty is now removed, and, as we feel confident, in a manner which will prove most satisfactory to the profession. The authors of this digest are well known in the profession, for their learning and painstaking labor and study, in the preparation of books. The present work contains many excellent qualities in a digest. The plan is simple, natural, and exhaustive, and we feel confident the work will have a very extensive and ready sale, even beyond the limits of the particular State. For the decisions of the State of Massachusetts are regarded as authority, not only throughout the American States, but even in Westminster Hall. In the case of Waller *vs.* The South Eastern Railway Co., in the Court of Exchequer, during the present month of May, 1863, MARTIN, Baron, said: "I have read the judgment of SHAW, C. J., in the case of Farwell *vs.* Boston and Worcester Railroad Co., 4 Metc. 49, which is marked by great ability, and occurs in the passage chiefly bearing on the subject, as follows;" and then, after quoting from the opinion, nearly half a page, adds: "Recognising great force and cogency in these remarks, I yield my own doubts." And in the same case, BRAMWELL, B., said: "I think this case is within the principle * * of that excellent criterion used by * * and SHAW, C. J., in the case of Farwell *vs.* Boston and Worcester Railroad Co, 4 Metc. 49."

This is certainly in very marked contrast with the feeling manifested in the English Courts thirty years ago, when it was first proposed to read American decisions in Westminster Hall. It was conceded as matter of courtesy, but with the distinct protest against the precedent being regarded as any ground of implication, that the American cases could be treated as authority in Westminster Hall. We know that there has been a constant relaxation in that respect towards American legal

authority since that time. And when, some years since, we ventured the opinion, that Chief Justice SHAW had no superior upon either side of the Atlantic, as a wise judge and learned jurist, we rather hoped, than expected, a recognition of the same truth in Westminster Hall. And we have alluded to the fact here, more because it shows the value of the Massachusetts Reports, as a body of law, and of this Digest, as affording ready access to its stores, than for any other reason. We do not intend to imply that European fame is any sure guaranty of greatness or learning. We are too far advanced towards the outer goal of life, and have seen too many changes in our day, to feel that such European indorsement alone is any sure guaranty of truth or justice, or of abiding value to the profession. It may be cheaply obtained, or it may be the result of the irresistible force of life-long labor and unbending principle, united with great natural ability, as in the case of Chief Justice SHAW.

I. F. R.

REPORTS OF CASES IN LAW AND EQUITY, DETERMINED IN THE SUPREME COURT OF THE STATE OF IOWA. By THOMAS F. WITHROW, Reporter. VOL. V., being Vol. XIII. of the Series. Des Moines: Published by the Reporter. 1863.

We have had occasion on the appearance of former volumes of these Reports, to speak of the careful and painstaking manner in which they are prepared and published. Mr. Withrow seems determined, contrary to the common maxim, and to what we fear is the too common practice, to maintain his well-earned character for industry and faithfulness, even in small particulars of detail, and after his reputation in that respect is too well established to suffer materially by occasional departures from it. That is certainly a very desirable course in law-book making, where so much of the value depends upon full and faithful work in the author, in order to save needless labor and perplexity in those who use the books.

We have looked into most of the cases in this volume, which were decided in June and December, 1862, and we have felt surprise at the large proportion of important questions determined, and the great carefulness and thoroughness with which the cases are prepared and argued by counsel, and the general adherence to principles apparent in the judgments. We have no doubt the bar have great reason to thank Mr. Withrow, for the compact and unmutilated form in which their briefs are generally preserved in the reports; but it is evident they must have done their part faithfully, to enable the Reporter to present them in so becoming attire.

In Fanning *vs.* Stimpson, the question of express and implied covenants for rent in leases is carefully examined, and finally determined in a very satisfactory manner. In Karney *vs.* Paisley, in an action of slander, the plaintiff was permitted to prove the pecuniary condition of the defendant in aggravation of damages, which, although sanctioned by good authority, is somewhat questionable, perhaps, in principle.

In Samuels *vs.* Griffith, it seems to be supposed that the rule of examination of witnesses in Court, requiring the examiner to direct the attention of the witness to the matter of contradiction between his statements out of Court and upon the stand, will apply to the case of contradiction between two depositions of the same witness in the same case. We should hesitate in regard to this. We believe the more general view is, that the rule has no application to the case of a witness giving his deposition out of Court. The party may not know of his having made such contradictory statements, or he may not in fact make them, until after the deposition is taken.

In Cochran *vs.* Miller, it is said that in actions against surgeons for malpractice, the jury may be allowed to give vindictive or punitive damages, upon evidence showing gross negligence. We question the wisdom of the rule allowing juries to give exemplary and vindictive damages in any case, unless restrained within the just limits of the Levitical Law, of adding one-fifth to the actual damages where the defendant acted wilfully; but we should seriously and especially object to allowing juries upon such excitable cases as those for malpractice in surgery, to give damages of any kind, beyond the injury, unless the defendant acted in bad faith. We would esteem it coming nearer the justice, and what should be the law of these cases, to adopt the rule recently laid down in the Court of King's Bench, Montreal, that the medical man was justified in treating his patients according to any well-accepted medical authority, and was not responsible for consequences, if, in so doing, he acted in good faith and according to his best judgment and ability.

The case of Keenan *vs.* The Mutual Insurance Co. is a valuable one, and adopts the true rule in saying, that the assessment and collection of any part of the premium note, operates as a waiver of any violation of the conditions of the policy known to the company to have been previously committed.

We had marked many other cases as worthy of special notice, but we can only name The State of Iowa, *ex relatione* Burlington and Missouri Railroad Co., *vs.* The County of Wapello, where it was held, contrary to

the former decisions of the same Court, that the Legislature had no power to authorize a municipal corporation (town, city, or county), to become subscribers to the stock of a railway corporation. This case is discussed with great ability, both by the Court and the counsel, and occupies nearly forty pages, which precluded its publication in this magazine, although furnished us in season; and while we believe that the decision will be regarded by capitalists as unjust and impolitic, we feel compelled to say, that in our humble judgment, it is the only view fairly reconcilable with principle. I. F. R.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT AND COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY. By ANDREW DUTCHER, Esq., Reporter. Vol. 5. Trenton. 1863.

With this volume, which is the fifth by the present Reporter, we have the commencement of a new title by which the Reports are proposed to be known hereafter, as New Jersey Law Reports, of which the present will be Vol. 29. We sincerely hope that this attempt to establish uniformity of citation may be more successful than has been the case in our own State; for though the title of Pennsylvania State Reports is backed by the authority of an Act of Assembly, yet it is rarely used by the profession, who cling tenaciously to the old style of citation by the Reporter's name, notwithstanding the manifest advantages of the new title.

The high character of both the bench and bar of New Jersey has always given its Reports a value outside of the State itself; and this is especially the case when the work of reporting is so faithfully done as by Mr. Dutcher. The present volume, creditable for its mechanical execution, as well as for its higher merits, will be found to contain many cases of interest and value to the profession in general, among which may be especially mentioned King *vs.* Paterson and Hudson River Railroad Co., on the title of stockholders to dividends after they are declared, and the duties of directors in declaring dividends; The State *vs.* Jersey City, on municipal legislation concerning railroad tracks in the streets and the speed, &c., of trains in city limits; Voorhees *vs.* Jones, on secret agreements among partners as to non-liability and non-participation in profits; Paullin *vs.* Kaighn, on contribution and subrogation between co-sureties; and the elaborate case of Duncan, Sherman & Co. *vs.* Gilbert, both in the Supreme Court and the Court of Errors and Appeals, upon accommodation notes. J. T. M.