across said way, does not necessarily imply a negation of the owner's right to enclose his land and to erect gates across said way: *Id.*

Notwithstanding such a grant, there remains with the grantor the right of full dominion over, and use of the land except so far as a limitation of his right is essential to the fair and reasonable enjoyment of the right of way which he has granted: *Id.*

Mutual Accounts—Off-set—Statute of Limitations.—Where there are mutual accounts between the parties, and the plaintiff brings suit on his claim, and the defendant files his account in off-set, the plaintiff may plead the Statute of Limitations to this off-set, but only so much of the defendant's account will be barred by the statute as had accrued more than six years prior to the date of the plaintiff's writ: *Rollins* vs. *Horn.*

NOTICES OF NEW BOOKS.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. By HORACE GRAY, JR. Vol. X. Boston: LITTLE, BROWN & Co., 1864.

We have here the last but two of the long-expected volumes of Mr. Gray. The profession, doubtless, generally understand the cause and the necessity of this delay as existing chiefly in the inability of Chief Justice SHAW, in consequence of the increased amount of business in the court, and the advanced period of his life, to keep his opinions always up to the demands of the reports. We shall now soon be in possession of the last of this long-delayed series. This volume contains some important cases, rendering it valuable in itself, as well as indispensable to complete the series. I. F. R.

ILLINOIS PLEADINGS AND PRACTICE. By SABIN D. PUTERBAUGH. 1 Vol. pp. 617. Published by HENRY NOLTE, Peoria, and E. B. MYERS, Chicago, Illinois.

The above work, of which the publishers have sent us a copy, is a pioneer in a difficult and nearly uncultivated field. To one who knows the utter chaos in which the practice of the law is involved in Illinois, it would seem a miracle were the book not to contain serious faults. Mr. Puterbaugh gives us an idea of the condition of that practice when announcing "the sources that govern the practice of the circuit courts of this state," as he phrases it. "Those sources," he says, "are the rules and orders of courts, together with statutory provisions and judicial

decisions mingled with *undefined rules* of practice." As a legal statement, that is not very clear, but it is clearness and certainty itself, compared with those variant but undefined rules, which, as every Illinois lawyer knows, operate as traps to catch the unwary, who venture to practise outside of their own circuits.

How well the author has accomplished his task is, therefore, not to be determined solely by his approximation to the best standards in older countries, but by the difficulties to be encountered, and the helps at his hand to surmount them.

Judged by this standard, we can commend the work, on the whole, as a good, though rather brief, discussion of the topics proposed to be considered therein. The statutory law, the rules and customs of the courts, where there is any approach to uniformity in them, and the decisions of the court of last resort, relating to questions of practice, are thoroughly digested, and will be found of essential service to the practitioner.

But we deem it our duty not to overlook one or two faults in the book. The first is inexcusable disregard of the simplest rules of orthography and grammar. Our old acquaintance, *quantum meruit*, appears uniformly as *quantum merint*, which may answer the author's purpose, but it is certainly not Latin, and the same may be said of *nil debit* for *nil debet*. In a form of a declaration on page 200, the most important verb lacks a nominative. In another on page 149, copied, we are sorry to say, from the Vermont Reports, it is bunglingly said of a defendant, that he "has denied and still denies" to render a reasonable account, &c., &c.

Throughout the forms abstracted from reports, there reigns also an entire lack of uniformity of style and expression; a fault certainly in a work offered to the profession as containing models of pleading. But these are of less consequence than another fault to which we shall give some space, because it is one that disfigures more or less all the books of forms in common use amongst us, except that of our respected friend, Mr. Chitty. It consists in the presentation to the profession, as models of pleading, of forms whose chief excellence is that they have been passed upon by the Supreme Court, and have not been pronounced bad; forms objectionable enough, from want of perspicuity or accuracy of expression, to have raised doubts as to their legal sufficiency, but which much argument or a press of business has induced the Supreme Court to allow to pass.

The soundness of such forms is subject to the same sort of suspicion as attaches to patients discharged from a hospital; their health, officially

considered, has been restored, but it is far from improbable they would succumb to another attack of the same or a different disease.

In some cases, too, the forms used have been actually condemned by the highest courts, but have been altered so as to obviate, as is supposed, the objections raised to their sufficiency.

On page 32, for instance, a form is given for a declaration on a promissory "*note payable on a contingency.*" This form has doubtless passed through the Supreme Court (3 Scam. R. 524), but that court surely did not deliberately pronounce such an instrument to be a promissory note, or the count declaring on it as such to be good; for it is well settled that it is not a promissory note: *Kelley* vs. *Hemmingway*, 13 Ill. 605; *Smalley* vs. *Eden*, 15 Ill. 325. The language of the court undoubtedly seems so to decide; but, on looking through the case, there appear to have been two other counts on the same instrument, not as a promissory note, but as a contract, merely, for the payment of money on a condition. The only question considered by the court was whether the condition, that the money should be paid in case General Harrison was elected President, did not make the contract void as against public policy.

In the cases from which the two forms on pages 86 and 246 were taken, no point at all was made in the Supreme Court as to the sufficiency of the declarations. They may or may not, therefore, be good in law, but the latter contains matter that was mere surplusage in the actual case, and ought to have been stricken out, certainly from the form.

On page 38 is a form of a declaration drawn to avoid a defect pointed out in *Crouch* vs. *Hall*, 15 Ill. 263, but it is more than doubtful whether it has succeeded in doing so, and whether if used, it would not be faulty on special demurrer.

A form is given on page 278, which contains matter that was decided by the Supreme Court to be at least surplusage, and perhaps worse, and which under no conceivable state of the facts could constitute a proper averment: *Elam* vs. *Badger*, 23 Ill. 498.

Not to dwell too long on the subject, however, the objection we make is, that these forms, taken from actual practice, are rarely models of style or expression. If they lack also legal sufficiency, they are worse than no forms at all; and the fact that they have been subjected to the ordeal of the highest court does not by any means invest them with infallibility.

But, as we have said, as a whole the book of Mr. Puterbaugh is well done, and we hope no Illinois lawyer will fail to procure it.

J. A. J.