

Reviews.

THE RULES AND PRACTICE OF THE COURT OF CHANCERY FOR UPPER CANADA, comprising the orders of 1850 and 1851, with explanatory Notes referring to the English Orders and Decisions: by Robert Cooper, Esq., Barrister at Law. Toronto: A. H. Armour, & Co, 1851.

At the present moment this is a well timed publication, whether we regard the advantage to the legal profession, or to the public at large, therefrom. By the former, the want of such a publication has been felt; and this now before us will be found the most perfect compendium of the rules and practice of our Court of Chancery which has yet appeared. Any lengthened notice of its professional merit would be unsuited to our general readers. But to the public at large, there is one portion of this work which will not be uninteresting at a time when ignorance and prejudice would raise a cry for the abolition of the Court of Chancery as a useless and expensive appendage to the tribunals of the Province. If such men will but read the introduction to this volume, they will see how insane is their cry. For their instruction we shall make the following extracts, from which the necessity for a Court of Equitable Jurisdiction will be manifest; and the very men most biased in the senseless cry for its abolition may be the first driven to wish for its maintenance.

"A circumstance, which might possibly be supposed to render a work of this kind not altogether necessary, is, that there is an opinion in some quarters to this effect, that the Court of Chancery, as now established in Upper Canada, is not likely to remain a permanent institution—that, like many other creatures of Canadian Parliamentary birth, it may soon suffer annihilation at the hands of the parent, and that indeed such an event would be rather popular than otherwise. On this subject it would be presumption to offer an opinion here. The benefit, or otherwise, of this particular Court is a question of public economy, and not of law. Those whose duty it is to consider and decide upon such questions, will no doubt give it sufficient consideration. But one conclusion is inevitable, whether this or that Court be suffered to remain or be abolished, some tribunal, having power to try causes, such as those now brought before the Court of Chancery, must exist. There must be a Court, in which claimants can have redress in cases which the present common law tribunals cannot reach. Such cases will arise, and by some Court they must be decided. This is sufficient for our purpose; and it is therefore unnecessary to enter into an argument as to which kind of Court would be most popular for the purpose, or which system would be most efficient. If, whatever changes in the jurisdictions take place, there must still be Equity administered by some Court, (and this seems undeniable) then it must be useful for the Profession to have kept clearly before them, from time to time, as alterations take place, the Rules by which the practice in the administration of Equity is governed.

"A party has purchased a lot of land. He pays a portion of the purchase money, but is in arrears as to the remainder. The vendor brings an action of Ejectment and turns the purchaser out of possession. The purchaser afterwards tenders his purchase money, but the vendor refuses it, saying that the payment was not made in time, and he will not now take it. He prefers keeping the part of the purchase money which has been paid, and taking also the benefit of the improvements which the purchaser may have made. The Ejectment clearly could not have been defended. Such a purchaser can in Equity, unless there are special circumstances against him, have a specific performance of his contract, and a conveyance of the Estate on making payment. A recent case on this subject is *Macdonald vs. Elder*.—*Grant's Chancery Reports*, Vol. 1.

"The ordinary mortgage transactions, which are constantly occurring, cannot be adjudicated upon completely by the Common Law Courts. The right of the mortgagor to redeem is no unreasonable indulgence, limited, as it now is, to six months instead of twelve as formerly, after the account is taken. The Court of Chancery is the only court by proceedings in which this right can be foreclosed, or extinguished.

"There are many cases where the right to redeem, does not rest on the express words of a mortgage in the usual form, but upon special circumstances, and extrinsic evidence, which in some cases have been deemed sufficient to sustain the right to redeem, although such a permission might seem contrary to the words of the deed. Where, for instance, there has been fraud, accident, or mistake, and the holding of the deed to be an absolute conveyance would be inconsistent with the dealings between the parties. In such cases the Rules of Common Law prevent any relief being granted in those Courts, and resort is necessary to an Equitable Jurisdiction. A case of this kind is *Lertage vs. De-Tuyli*.—*Grant's Chancery Reports*, Vol. 1, page 227: and the distinction is very clearly drawn in the judgment of the Court of Appeal in the case of *Stewart vs. Howland* between the cases in which relief can, and where it cannot, be given in opposition to the words of the conveyance—in short, where the Statute of Frauds must prevail, and where it can be held inapplicable, because to use it as a shield would be to make it the means of effectuating fraud. The case of *Stewart vs. Howland* was decided in December, 1850, and will be found in *Grant's Reports*.

"The Jurisdiction of the Court of Chancery is frequently invoked in cases of fraud, where an advantage has been gained by one party over another, who may have his advantage strengthened by having the Law on his side. This is the case often enough, where a person has, in ignorance of his actual rights, and not being in a position clearly to understand the effects of his act, executed papers which must have their full effect at Law, but which may be considered in Equity with reference to the real merits of the transaction arising out of all the circumstances. On this subject, though the case goes to other points, the reader is referred to *Stuart vs. Horton*.—*Grant's Chancery Reports*.

"These are a few, and very far from the whole, of classes of cases, in which an Equitable Jurisdiction under the system of laws which obtains in England and here is absolutely necessary. In whatever Court that jurisdiction may be vested, is a matter of comparatively little importance to the lawyer or to the student, or even to the public, provided that it be a Court competent for the purpose, and such as to satisfy the wants, but not to form a disproportionate drag upon the resources of the country. The Equity must be somewhere administered, and it must therefore be studied and practiced. Nor

will it continue to be studied and practised by a few only of the Profession. The more summary mode of proceeding, and the great reduction of costs in all the Courts, will render it almost out of the question for any one class of men to confine themselves to one branch of the Profession, however desirable that might, under some circumstances, be considered with a view to greater efficiency. These considerations, although perhaps stated at too great length, may be given as fair reasons among others for believing, that a publication of this kind may be useful."

CANADA PAST, PRESENT, AND FUTURE; by W. H. Smith: Part 4. Toronto: Thomas Maclear.

This part completes the first volume of this work, and is the most interesting which has yet appeared. It comprises the introduction, which gives a most interesting history of Canada, from its first discovery to the present time. Its early history, under the French, will be read with pleasure. The expedition of Father Heneguin and his companions, in 1679, is briefly given. The second chapter contains a narrative of the seizure and capture of Quebec, and the terms of capitulation, which, among others, provided "that the exercise of the Catholic, Apostolic, and Roman Religion, should be maintained."

Of the rapid rise and progress of Canada under British sway, the sketch is good. The commercial and other statistics of the country will be found useful; and of this number, we may say it forms in itself a complete volume and a valuable addition to any library.

THE PERVERSIONS IN ENGLAND.

At a time when the public mind is so much interested upon this subject, the following extracts from the Church Reviews of April last will be found to detail the progress of this movement with some fidelity, and will shew that after the vast efforts made, the perversions are in point of numbers insignificant:—

The first division of this period of twenty-one years, as we now survey it, extends from the early part of 1829, when the laws excluding Roman Catholics from office were repealed, to the latter part of 1833, when the publication of the Tracts for the Times was undertaken. At its commencement, George the Fourth was on the British throne, and the Duke of Wellington was his chief minister.—The English primates were Howley and Harcourt. Of the Bishops, Majendie, Corneivall, Luxmoore, and Huntingford, who all died within four years, were men of a past generation; the exemplary Burgess, Bathurst, for many years the only Whig prelate, Sparke, Law, the pious Ryder, the learned Marsh, the munificent Van Mildert, had also been long in their high office; Carey, Carr, Jenkinson, Robert Gray, and two able Professors of Oxford, Copleston and Lloyd, had been more recently added; and the only members of the present bench who had been consecrated were Murray, Kay, Blomfield, Bethel, Percy, and the two Sumners.—The literature of the times was still illustrious with the advancing years of Mackintosh and Coleridge, Scott and Southey, Crabbe and Wordsworth. A crown of glory still shone in the retirement of Wilberforce, Simeon, Rowland Hill, Lord Teignmouth, Lord Gambier, and Hannah More; and Robert Hall still preached, and the pen of Adam Clarke had no rest. The Christian Year, though published but a little before, had glided through several editions. Almost every season ushered in a book from the indefatigable Faber. The Roman Catholic controversy had drawn forth the polemic energy of Philpotts. In the essays of Whately on the Writings of St. Paul, in the Paraphrastic Translation of Shuttleworth, and in the works of Bishop Blomfield and the present Archbishop of Canterbury on parts of the New Testament, much had been given to the cause of sacred literature and of practical religion: while Foster's Mahometanism Unveiled and some of the treatises on prophecy attempted more doubtful results. Returning from studies on the Continent, Pusey had lately published his *View of the Theology of Germany*.—Arnold was at Rugby, and the first volume of his *Sermons* had just appeared, while he was breathing a warmer life into the spirit of the higher schools of England. In his Fellowship at Oriel College, he has been succeeded by Newman.

Such a victory as that which was termed the Roman Catholic Emancipation, could not but animate the opponents of the Church of England.—It had been won by agitation and the union of discordant forces. What might not the same agitation and union still accomplish! The Roman Catholic peers, the heads of the old houses of Howard, Talbot, Stourton, and Dormor took their seats; and O'Connell and a train of Irish Romanists were soon in the House of Commons. The excellent Robert Grant moved the admission of the Jews.—George the Fourth was succeeded, in June, 1830, by his more popular brother. Three days in July expelled the restored House of Bourbon from France, and placed the Orleans family in the Tuilleries. A few weeks more severed Belgium from Holland, and founded another constitutional monarchy. The Wellington ministry retired, nominating, almost as their last act, Dr. Philpotts to the See of Exeter. Indeed, the appointment was not complete, and Earl Grey refused to permit its consummation till the Bishop elect should have

resigned the rich benefice of Stanhope. Bishop Lloyd, who died early, had already been succeeded by Dr. Bagot. The new ministry placed in the next two vacant Sees the brother of the prime minister and Dr. Maltby, a learned, rather than strict theologian; and they made Dr. Whately Archbishop of Dublin, and Daniel Wilson Bishop of Calcutta. In 1831 they introduced the Bill for Reform in Parliament. Before it passed, in 1832, Bristol was in the hands of a mob, and the palace of the Bishop was sacked and burned. The revenues of the Irish Church were threatened; its ministers were impoverished; ten of its Bishops were extinguished; the English Bishops were advised to "set their house in order;" and while the cholera was for the first time passing across the land, the minds of thoughtful men were boding changes in the civil and ecclesiastical constitution, which now can hardly seem to have been real perils. Writers like Isaac Taylor were going to the very foundations of things; Lord Henly proposed one well-meant plan of Church reform; Dr. Arnold had another and a bolder; Mr. Riland another; Dr. Burton would have warded off assault by still another; the Romanists exulted; the Dissenters were eager; within the Church, "the party of Hophni and Phinehas" knew not where to lean; but some of the wisest and best of the clergy looked forward, with submissive faith, to a probable day of sacrifices. In the midst of these alarms, in 1832, the British Magazine was commenced by Hugh James Rose; and in the same year, Dr. Hampden preached the Brampton Lectures, in ears sharpened by the times.

Before the close of 1833, Scott and Crabbe, Mackintosh and Davy and Robert Hall, Adam Clarke and Hannah More, Wilberforce and Lord Gambier, Magee and Jebb, were all amongst the dead.

The second sub-division of the period before us extends from the autumn of 1833 to the spring of 1836; beginning with the commencement of the Tracts for the Times, and closing at the point at which they became the occasion of public controversy.

They originated with a company of theological associates at Oxford. Of these, the chief were Dr. Pusey, Regius Professor of Hebrew, a nephew of the first Earl of Radnor; Mr. Perceval, a son of Lord Arden, and nephew of the former prime minister Perceval; Messrs. Keble, Newman, and Oakley, Fellows of Oriel College; the first most known for his sweet, sacred poetry; the second for his terse, earnest prose; Mr. Palmer, the learned investigator of Church History; Mr. Isaac Williams, a poet; and Mr. Froude, the most ardent of all. Their consultations on the state of affairs tended towards an association in the defence of the Church; but resulted in the suggestion, in connection with Mr. Rose and others, of two great clerical and lay addresses against all hasty change in its discipline or liturgy. Such addresses had, as might be anticipated, the signatures of seven thousand clergymen and nearly a quarter of a million of laymen. But another result was the issue, from Oxford of various tracts, which were composed and published, however, under no organized supervision.—In the first six months, thirty had appeared, of which almost all were original; but afterwards, such was blended with treatises of old writers and extracts from the Fathers. Their avowed object was "the practical revival of doctrines, which, although held by the great divines of our Church, at present have become obsolete with the majority of her members." The subjects which they pressed, in a pure, vigorous, concise style, were, 1. the Apostolical Succession of the ministry, with the power to bind and loose; 2. the essential independence of the Church towards the State; 3. the restoration of ancient discipline; 4. the daily, public prayer; 5. the mischief of changes in the liturgy; 6. the observance of fasting; 7. the value of traditional customs in the Church, and of tradition as evidence of doctrine; 8. the necessity of communion with the Church; 9. the establishment of a *via media* between Popery and what was called Ultra-Protestantism; 10. the pre-eminent value of the doctrine of the Incarnation, and, as its support, of the Athanasian Creed; 11. Catholicity of doctrine, according to the rule of Vincent of Lerins; 12. Regeneration as conveyed by Baptism; 13. the Lord's Supper as a literal communication of the body and blood of our Saviour. This was the scope of the Oxford Tracts, for more than two years, and though, from the first, they were viewed by many with a suspicious eye, their circulation rapidly grew, and their writers rejoiced in the gradual progress of their own cherished principles in the minds of a multitude of Christians.

The tracts formed thus the chief signs of the movement. But at the Church of St. Mary the Virgin, Mr. Newman was the Vicar; and it was thronged by academic hearers. His Parochial Sermons, volume after volume, and edition after edition, as well as his history of the Arians, nourished a dissatisfaction with the prevailing views of evangelical doctrine, and a disposition to have recourse, with great reverence, to authorities earlier than the Reformers, and later than the Apostles. They were not unaided by the Remains of Alexander Knox and his Correspondence with Bishop Jebb, which had lately been published by Mr.

Forster. As yet, no controversy had been stirred, beyond private circles; and widely as these writings were known, they had scarcely the same large sphere of readers as the books of the same period, from Blunt, Melville, Anderson, Le Bas, and Benson.

It was in the beginning of the year 1836 that the Church lost Dr. Burton, the Regius Professor of Divinity at Oxford; and the Government nominated in his place Dr. Hampden, whose Brampton Lectures had been charged with a rationalistic view of Christian doctrines, a view which he elsewhere disclaimed and condemned; and who had also been an advocate of the admission of Dissenters to the Universities. A large majority at Oxford arose in ineffectual resistance; and affixed a censure to his theological name, by refusing to entrust him with certain functions which had been an appendage of his office. All this could not be without warm discussion; the authors of the Tracts were leaders; and it was about the same, if not in the development of that discussion, that the Tracts were openly assailed. The first shaft was irony: "a Pastoral Epistle from the Pope to some Members of the University of Oxford." Dr. Pusey, who also wrote against Dr. Hampden, replied to this production by an earnest remonstrance. As early as March, 1836, too, the Christian Observer "most sincerely applied the epithet Popish to a class of publications which had lately sprung up, as, for example, some of the Oxford Tracts and Mr. Newman's Sermons." The Tracts themselves now took the form of more extended treatises; and they gradually advanced to more obnoxious positions. They maintained the weakness of many Protestant arguments against Popery, and would have confined the discussion to such points as the denial of the cup to the laity; the necessity of the intention of the priest; the necessity of Confession; the unwarranted anathemas of Rome; purgatory; the invocation of saints; the worship of images; and throughout, the practice rather than the theory. They granted that all must be received, "if taught by Scripture, as interpreted by tradition." They allowed that the English Church was incomplete and deficient. They professed that it was Reformed, not Protestant. Because "many persons were in doubt whether they were not driven to an alternative of either giving up the Primitive Fathers, or embracing Popery," they reprinted Archbishop Usher on Prayers for the Dead. They lamented the great loss sustained in the omission of earlier usages from the English Liturgy. They published a considerable volume of extracts from the Roman Breviary, and appended imitations adapted to the commemoration of modern saints. They then passed on to the subject of the Romish purgatory; and they defended a system of reserve in communicating religious knowledge. But the Tracts were now but an inconsiderable part of this literature. Mr. Perceval wrote on the Roman Schism, as illustrated from the records of the Catholic Church—Mr. Keble published an elaborate edition and intended correction of Hooker. Mr. Palmer prepared an abridgement of Church history. Mr. Sibthorp compiled a Family Liturgy. The accomplished statesman, Mr. Gladstone, devoted his thoughtful leisure to a treatise on the relations between the Christian Church and State. The sermons of Moberley, the writings of Churton, of Paget, of Gresley, and of the present Bishop Wilberforce, as well as the brilliant work of Maurice, were not wholly of the same school, but partook of its influence. The peculiar tone and doctrine of the Tracts was noticed in many passing strictures, by Archbishop Laurence of Cashel, by Griffith, Bidulph, Jackson, and others; but the general and profound respect for the piety and good works, the talents and tastes of the associated divines, compelled censure to pause, and enlisted indulgence to the utmost. A Library of Translations of the Fathers was proposed and partly published, under the supervision of Pusey, Keble, and Newman, assisted, amongst others, by H. W. Wilberforce, and Oakley, Frederick Faber, Isaac Williams, and Manning. From the fertile pen of Newman issued Lectures on Romanism and Popular Protestantism and Lectures on Justification. The treatise of Palmer on the Church of Christ was prepared for the use of students in theology. A collection of poems, chiefly from Keble and Newman, which had appeared in the British Magazine, under the title of *Lyra Apostolica*, attracted much admiration, though the freshness of the Christian Year was not there. Mr. Irons published Parochial Lectures on the Holy Catholic Church. The claims of primitive tradition were boldly urged in a Sermon by Mr. Keble, and afterwards in a sermon at Chichester, by Mr. Manning, to which Dr. Wilson replied. The Remains of Mr. Froude, who had been early snatched away, now appeared, and displayed a picture of hostility to the Reformation and its fruits, which excited much alarm.

At length, in May, 1838, Dr. Faussett, Magdalen Professor of Divinity at Oxford, preached at St. Mary's, and printed a sermon, entitled the Revival of Popery. Newman replied; and the press now teemed with the productions of the school of which he was becoming the centre. He was the editor of *Sutton on the Sacrament*; of *Andrews' Devotions*; of the *Hymns of the Church*, from the Breviary; and he obtained the control of the *British Critic*,