the fault is mainly due. The printer wants "copy;" the publisher is importunate; the author is busied about many things; but the publication cannot now be deferred any longer—a constellation of chances full of ill omen for the credit and usefulness of the coming book.

Let us next turn to Mr. Fisher's treatise. It is certainly a work of even higher reputation than that of Mr. Kerr, whether we regard the length of time during which it has been received as the best text book upon the law of mortgages, or the fact of its having recently attained the honours of a second edition. It is nevertheless open to much the same animadversions. Let us not be misunderstood. With all the deductions which we are going to make from the commendation of which we have never been niggards towards Mr. Fisher's very laborious, learned, and useful treatise, we still see no reason to retract those commendation or reduce their measure. And it is precisely because his book deserves so thoroughly the character it has won, of being the only good and complete repertory we have of "The Law of Mortgages and other Securities upon Property," that we select it to illustrate our present censures, in preference to scores of others much more obnoxious to them, and to which those censures must, therefore *à fortiori*, be considered to attach. For if our sciolists are made to discover that not even the standard law books are implicitly to be relied on, their faith in the common run of compilers cannot fail to wax cold:—

"And this ensample added yet thirto,
That if gold ruste, what should iron do?"

With respect to the following selections from Mr. Fisher's book, we need scarcely explain that our references are to the edition of the present year.

Upon the important question of the nature of the possession which supports possessory lien, one doctrine is laid down (p. 158) which certainly is in open contradiction to the law; viz., that *the mere possession* of goods by a factor or other agent will confer no lien, if by the terms of the contract, by his own permission, or by legal construction, they evidently remain under *the dominion* of the principal;"—and *Haggard* v. *Mackenzie*, 25 Beav. 493, is cited in support. On referring to that case, however, Lord Romilly, M.R., will be found to have emitted no such view subversive of the whole of the law of lien. On the contrary, what he decided was, that even a servant entrusted with goods in a place under his master's control may, before the bankruptcy of the latter, acquire a lien upon them by simply removing them to another place, not being under his master's control;—but that, until then, his master continues to have them, through him, in his order and disposition; although he calls the servant his factor or agent.

In treating of notices of sale by mortgages under their powers of sale, the point decided by Vice-Chancellor Stuart, in *Ford* v. *Healy* (or *Heely*), 3 Jurist, N. S., 1116, and 5 W. R., 517, is stated to be that (p. 503) "the express notice clause (in the mortgagee's power of sale) would not help the purchaser unless the contract were vaild:" on which the author proceeds to remark, that "as this was the question for decision, it does not appear how the clause could be made useful." Now it is very obvious that the Vice-Chancellor did give effect to "the express notice clause" in that case; for he directed the usual references as to title. And we find, on looking into his last edition of Vendors and Purchasers, that Lord St. Leonards, with his usual accuracy, has stated it thus, c. 1, s. 5, pl. 38, p. 68;—"It was held that the mortgagee himself could make a good title; yet he was clearly liable to the creditors (viz., under a trust deed executed by his mortgagor after default) for selling contrary to his power. The contract itself showed that the proper notice could not have been given; yet equity at his suit enforced the contract."

Of the power of sale in general, Mr. Fisher says (p. 505): "The power may be extended, by reference to property not specifically included in it;"—a position which may, or may not, be approved by the court, but which certainly, was not laid down in the solitary case of *Ashworth* v. *Mounsey*, 9 Exch. 175, which he cites to support it. There the only question being whether the purchaser was entitled to recover his deposit, and the sufficiency of the vendor's power of sale coming incidentally under consideration, it was held, upon the peculiar wording of the power, that it was intended to apply *à priori* not only to the part of the estate then charged, but also the rest of the estate, which it was also then agreed to charge by an equitable mortgage thereafter to be made, and which afterwards was made. And it was also held that, even if that were not so, the purchaser could not recover his deposit; the true nature of his vendor's interest having been correctly described in the conditions of sale.

Of the pawnbroker's power of sale in particular, it is said, on the authority of the 39 and 40 Geo. III., c. 99, that after sale, "the overplus on the price is to be paid to the pawnee or his representative." It may be that "pawnee" is an error of the press for "pawnor." But, in that case, it would have to be explained why the condition is omitted that the claim be made within three years, as also the penalties of fine and forfeiture by which performance is enforced.

A mortgagee in possession, it is said (p. 886), "is not obliged to defend the possession of property which the exercise of a strict legal right has thrown into his hands." The proposition is too wide, and as lawyers would say, "bad for the excess." Confined within the limits which the two authorites cited by Mr. Fisher (*Perry* v. *Walker*, 1 Jur. N. S. 746, and *Cocks* v. *Grey*, 1 Giff. 77) impose, viz.: that the mortgagee in possession is not bound to defend it "against lawful owners,"