

the late acts give with any degree of certainty. The index for the last volume will be issued with the February number. A variety of circumstances occurring at the close of an old and the beginning of a new year have combined to render the issue of the present number later than usual.

SELECTION.

DOMESTIC SERVICE.

The state of the laws regulating the conditions of employers and employed, is a matter of great interest and importance at the present time. The demands for the extension or rather the lowering of the franchise, have brought with them, as a fringe of seaweed on rough waves, new theories and assertions respecting the compacts between those who command and those who obey. Perhaps no subject is of more social importance than the just regulation of hired services, and all the more so, when a sort of protest against injustice is made by the hired. Much is to be said on both sides, for, as regards the master equally with the servant, the law permits hardships.

It is not here proposed to deal with any other topic than that of domestic service. But the writer must record his entire agreement with an admirable suggestion in the *Law Times*, of September 8th, 1866, in regard to the alteration of the statute 4 Geo. IV., chap. 34, which authorises an imprisonment with hard labour to be inflicted on servants leaving employ, &c. The suggestion is, in order to obviate the supposed inequality between master and servant, that summary jurisdiction be given to the county court judge, to award damages, and, in default, imprisonment, against either party, for breach of contract.

The words "domestic service," says a writer in the *Alexandra Magazine* :—

"Instead of conveying the idea of a condition—which properly belongs to them—of happiness and peace, are suggestive of a complication of ills, which form a social grievance of no small magnitude; the causes are various, but the evil exists in some shape or other, and there is no doubt about it; but as regards the remedy, it is not so easy to speak; some persons are for 'waiting,' in the expectation that 'the evil will cure itself;' as to that suggestion, it is only necessary to say, that we seem to have waited long enough without any sign of amendment in the matter: others, who think that something should be done, are much divided concerning the means that ought to be employed in order to palliate or correct some of the more glaring abuses."

With the social remedies for this state of things we of the law have nothing to do, further than to remark, that the last words spoken in the shadow of death by the great and good poet-judge, are pregnant with meaning. Talfourd has told us solemnly, how great a power is the sympathy between classes; and it may

be that his words will yet bear fruit little dreamed of. But our province is to point out the present state of the law upon this matter, the defects which are complained of, and the remedies which are feasible.

1. *The contract between employer and employed.*—In domestic service it seems that a general hiring is, in point of law, a hiring for a year, on the terms that either party may terminate the hiring by a month's notice, or its equivalent in wages. (*Fawcett v. Cash*, 5 B. & Ad., 904). This rule is held to apply merely to domestic servants; a principle, we believe, illustrated in the case of *Smith v. Hayward* ("Adolphus & Ellis, 544"), and of course the power of paying a month's wages in lieu of notice, to secure instantaneous departure of an objectionable servant, is counterbalanced by the power of the servant to leave immediately, an sacrificing a month's wages.

In a paper laid before us on the subject of domestic service, written we believe, by Mrs. Baines, who has devoted much time and labour to the subject, this latter facility of leaving service is spoken of as a great grievance. We are inclined to think, that in many cases it acts hardly against the mistress or master left suddenly in the lurch. But no one-sided provision can be thought of; and the remedy must equally protect the servant from sudden dismissal (often the source of calamity), and the master from sudden abandonment by his domestics. The writer would suggest a summary power of awarding damages, and in default imprisonment, lodged in the county court judge, against either party; the rule to be laid down, that a month's notice shall entail for that month the *status quo ante*.

2. *Causes of dismissal.*—If a servant is guilty of misconduct, he or she may be discharged at once without either notice or wages. But to justify immediate dismissal, moral misconduct must be proved, or wilful disobedience of orders. The fact of a servant having caused his master's apprentice to run away, having assaulted feloniously a female servant, and having made fraudulent entries in accounts, have all been held good causes for immediate dismissal; and where a justifiable cause of dismissal exists, it is not needful to state such cause in dismissal. All these facts evince the possession of power by the master, though some writers dwell only on the varied tyranny by servants over mistresses, which "servantgalism" has bloomed into luxuriant profusion.

3. *Medical attendance.*—Chitty tells us that the law does not bind the master to have medical attendance for his sick servant, though we should imagine any person with common humanity would consider himself under a moral contract so to do; but if the master send for the medical man he must pay the latter's bill. (*Sellen v. Norman*, 4 C. & P.)

4. *Responsibility of Masters.*—For every trespass or tortious act committed by the servant in the course of his ordinary employment,