JUDGMENTS.

QUEEN'S BENCH.

Present: DRAPER, C. J.; HAGARTY, J.; MORRISON, J.

Saturday, November 26th, 1864.

Gayner v. *Salt*.—Rule discharged.

In the matter of Sheriff Davidson and the Chairman of Quarter Sessions in and for the County of Waterloo.—Rule discharged without costs.

In re James v. *McKibben.*—Rule absolute to enter verdict for plaintiff.

SELECTIONS.

LAW REPORTING.

Some months since we gave place in our paper to some remarks by a gentleman of this bar—to whom our readers have been often indebted for contributions of a more amusing character—on the subject of law reporting. The remarks attracted notice in England. They were quoted in the *London Jurist*; and we soon after received a letter from the *Solicitor's Journal and Reporter*, asking for a copy and proposing an exchange. They were also quoted much at large and with approbation in the *Upper Canada Law Journal*. The subject is attracting great attention now in England. It deserves to attract much attention here. We accordingly asked our correspondent to favour us with a more extended form of his reflections. He has done so in a manuscript of length. We shall publish it in numbers. To one class of our readers the topic possibly may not be very interesting. To another—and a large one, we hope—it will be much so. We believe that as a whole, no paper published in America has gone so much into the *principles* of the subject. We give the first number to-day.

No. 1.

It will be admitted, I presume, by that part of the profession whose freedom from active duties has allowed them to observe its literature at all, that great dissatisfaction has existed both in England and with us, of late, as to the matter of these records of judicial judgments. On the other side of the Atlantic the discontent has exhibited itself quite lately in a meeting of the Bar of England in its corporate capacity; the Attorney General presiding.* And the result has been an effort to work a fundamental change in the source and issues of these exponents of British jurisprudence. The report of the committee appointed at the great meeting in Lincoln's Inn Hall, December 2, 1863, after much "discussion and deliberation," and after minute inquiries into the systems of Germany, France and the United States, proposes to put the whole subject under the immediate management of the Inns of Court, and to break up every system which has ever prevailed at any time in England.† Every response, the committee informs us, received by them in reply to circulars of inquiry "sent to the judges and extensively distributed among both branches of the profession," has exhibited "a very general desire for amendment."

In America, owing to the numerous centres which from State organizations characterize our bar, and from the comparative feebleness of the attraction which operates from its Federal and only common centre, no dissatisfaction has with us been expressed by the united profession. Dissatisfaction has nevertheless everywhere exhibited itself. In some regions the Legislature has sought to bring a relief. Certain States have compelled the judges, themselves, to report their decisions. In others, as in my own State, the remedy has also been sought through statutory force; though force acting in a different direction: for in Pennsylvania, judges are deprived of most authority in the matter; having, now, neither power to appoint their own reporter nor to decide unreservedly what opinions they may publish! In other States the same sense of professional discomfort may be seen, I think, in the efforts which have been made from time to time to *codify* decisions; a process by which it is hoped that the difficulties of "judge-made law" may be obviated;—difficulties arising, in reality, from the complexity of science—the result of increasing wealth and civility—but which popular impression attributes more to obscurity in the forms in which the law is delivered. In some courts, including the Supreme Court of the United States, those "Condensed Reports," which have from time to time appeared, point in one direction to the evil;* while the popularity of "Leading Cases," every where show that the form of evil here aimed at is one common in all the courts, English and American, Federal and State alike.† Even where Legislators have not given expression to this sense of *malaise*, and where neither condensers nor compilers have exerted their efforts, dissatisfaction has been long and greatly felt; exhibiting itself sometimes in complaints through professional and other journals;‡ sometimes in vain vituperation of reporters, in Law Libraries and "Conversation Rooms" attached to courts; and oftenest, perhaps, of all, in the suffering, merely, "that patient merit of the unworthy takes."

Discontent about the reports is not confined to the British Isles and to the United States. "If the profession in England," says a recent writer in the *Law Journal of Upper Canada*, "are dissatisfied with *their* reports, how loud must be *our* complainings, when we regard the present condition of our own."§ And the able editors of that journal observe that these remarks of their correspondent will "find an echo from *many* a city, town and village of Upper Canada."‖ Elsewhere they commend as "medicinal" to their own reporters or to some of them, a series of as sharp remarks on a reporter of our country as any that have appeared,**

The whole matter of reporting, seems, in short, to have reached climacterick. Is it a fifth and last one? to be followed by a dissolution of the system wholly?

This dissatisfaction as respects ourselves is not surprising. In 1788 we had not a single volume of American reports. We have now a legion; and the number is increasing in alarming ratio. Under any circumstances it is not easy to tell what the law as contained in such numerous pages may be; but if in addition to this *number* of books, obscurity, confusion and an extensive bad discharge of the reporter's duty belong to them, the office of telling what it is that courts have adjudged becomes an impossibility pure. Precedents become buried in their own masses, and authorities are disregarded in virtue of the very means that should insure to them respect.

The causes of complaint in England are quite different from the causes of complaint with us; and so, apparently, they

* *London Times*, December 3, 1863. Also *Law Magazine and Law Review*, vol. xvi., p. 387.

† *The Jurist*, June 25, 1864; vol. x., new series, 249. See also the *Law Magazine* and *Law Review*, August, 1864, vol. 34, new series

* The Reports of Mr. Wheaton, which needed it as little as any volumes in the Federal series, have been *twice* condensed.

† The *sixth American* edition of Smith's Leading Cases is now in preparation the fifth (of 2000) copies having been long exhausted.

‡ See the *North American Review*, vol. 3, p.—; Id vol. 8, p. 71, an article written I believe, by Mr. Webster; *Pennsylvania Law Journal*, vol 1, p. 22; Id. vol 2, p. 130, *Philadelphia Legal Intelligencer*, vol. 21, p. 52; an article spoken of in the *Upper Canada Law Journal* as "well written," and reproduced in it; quoted also in the *London Jurist*, vol 28, O. S. p. 189, and in the *Solicitor's Journal*; *New York Transcript* as quoted in the *Upper Canada Law Journal* vol. x. 64; March, 1864 The (London) *Law Magazine*, and the (London) *Jurist*, have been for years complaining on this topic. See the former vol. xi., O S. 1848, p. 1, and the latter vol vii., p. 223; x., p. 395, xii., p. 261. See also (London) *Law Magazine* and *Law Review*, ix., p. 321; xvi., 122.

§ *Upper Canada Law Journal*, vol. x., p. 109; April 1864.

‖ Id. p. 110

** Id. p. 88; March, 1864.