

Those who require it, however, we also think, can easily furnish themselves with the most convincing proof, by taking at random any single page, for instance, of Mr. Addison, and testing with the help of the Reports the value of his citations. But we are minded even to spare them even that labour. We have at hand two works (of the second rank, perhaps, but yet of the highest grade in that rank), both published within the last year, one of them indeed late in the summer of this year. Of both we have had occasion to express—what we felt and feel—the greatest admiration. They are, and in all probability must remain, not in name merely, but in fact, the standard works upon their respective subjects,—“The Law and Practice of Injunctions in Equity;” and “The Law of Mortgages and Securities upon Property.” If then it be made clear to their readers that not even Mr. Williamson Kerr, nor yet Mr. William Richard Fisher, may be implicitly relied on, and that, on the contrary, it is absolutely necessary to probe and examine into the accuracy of either, before adopting his opinion, or acting according to his advice, in order to be quite safe, they will be the first to acknowledge that we have chosen two very striking illustrations of the perils which environ them.

Let us commence with Mr. Kerr, the earliest in order of publication; and first let us open his pages on “Titles to Light,” under the Prescription Act.

The reader of the treatise is *not* informed of the statutory abrogation of all customs to the contrary; and he is informed that, “after an obstruction has lasted for a year,” without proceedings being taken, “the custom of London or other local custom will prevail” (p. 357); a most erroneous method of stating what must have been Mr. Kerr’s meaning—viz., that the obstruction in the case supposed will have the effect given to it by that statute.

With respect to “patents,” we find it said that (p. 423) “*until entry of registration* the original patentee is to be deemed and taken to be the sole and exclusive proprietor of the patent;” and (Ibid) “*the registration of a patent* will complete an inchoate title;” and for these manifestly erroneous propositions, the 15 & 16 Vict., c. 83, s. 35, is cited. Turning to that section, however, we find that the “registration” there spoken of is that of “*assignments of patents*;” which is quite another thing. With even greater inaccuracy it is denied, on the supposed authority of the cited cases, that (p. 408) “the plaintiff has any right to the discovery of particulars on which the plaintiffs relies, as shewing a user of the thing patented prior to the date of the patent;” the true point decided being that he has no right to such discovery as to the like particulars when relied on by the *defendant*.

A still stronger contrariety between, the learned author’s note of the point of decision, and the decision itself, occurs at p. 643, where Lord Romilly, M.R., is made to hold that “an

injunction restraining a defendant, his servants, and agents, does extend to his tenants;” his lordship having expressly holden the very contrary—viz., that it does not extend to the tenants, and will not be enlarged so as to extend to them.

The authority of 1 Railw., C. 616, is cited for the startling position that (p. 632) “the question, whether there has been a misrepresentation or concealment of material facts upon the application for an *ex parte* injunction, *cannot* be taken into consideration, *on appeal from an order* made by the court in which the injunction was granted, or by which it was continued.” The marginal note—as usual, a very inaccurate one—does certainly favour that erroneous reading of the judgment. But the report shews the true reading to be simply this:—That, to entitle the party objecting to an order to dissolve on that ground, he must lose no time after discovering the fact in moving the court below, and if he neglects to do so (*e.g.* as in the principal case, during the whole of the long vacation), neither that court, nor, on appeal, the court above, will entertain his application.

A student—if he be led to believe (what he is told at p. 498) that “*it is not necessary*, in order to render such evidence (*i.e.*, parol evidence of particular meaning of phraseology) admissible, that there should be any ambiguity *on the face of the instrument*, which has to be construed,”—will certainly be very much misled. And if, notwithstanding, he should hold to the familiar distinction of *ambiguitas patens* and *ambiguitas latens*, it will probably be that, to borrow the words of an epilogue of Lord Coke, he has “at some other time, and in some other place,” found the requisite instruction. We do not for a moment suppose—and far less wish others to suppose—that Mr. Kerr really intended to lay down the proposition in question. All that we mean to say of this instance of inaccuracy, and of those which have gone before, as also others which we had selected, but to which we must for brevity’s sake be contented to refer in a footnote,*—that there is a great want of precision in the language of the abstract, and that, here and there, it is too evident that the toil of compilation has given place to the easier labour of transcription.

It is always toward the end, or at least the middle, of a great work like Mr. Kerr’s otherwise valuable treatise, that these blemishes first appear or become frequent. We cannot help thinking that the real secret is there. It is in the literal meaning of the hackneyed phrase to “the hurry of composition” that

* The following cases appear to have been more or less misunderstood—viz., *Coutts v. Gorham*, *Needham v. Oley*, *Sweet v. Benning*, *Reade v. Conquest*, *Reade v. Lacy*, *Pollard v. Clayton*, and *Grand Junction Canal Co. v. Dimas*, at pp. 355, 437, 454, 464, 526, and 641 of Mr. Kerr’s. Of points imperfectly stated, the cases of *Wynne v. Griffith*, at p. 537, of *The Attorney-General v. G. N. R. Co.*, and *Hare v. L. & N. W. R. Co.*, at p. 543, of *Beesching v. Lloyd*, with its sister cases at p. 551, and of *Thornhill v. Thornhill*, at p. 640, may serve as examples.