theless; and that States could not without danger, as well as disgrace, depart in practice from doctrines which they had professed in theory to be the guide of their relations with the commonwealth of Christendom. The precedents of crime no more disproved the existence of international than of civil law. The necessity of justice to the existence of society was not denied, but was not more obvious than the necessity of justice to the intercourse of States. It clearly concerned the general interest of humanity and the administration of justice that, so far as possible, the rights acquired by individuals should be governed by the same principles when they were brought under the consideration of the legislation or judicature of different States. Having pointed out the distinctions to be observed in treating of international comity and international law, he proceeded to insist that the *jus gentium*, like the *jus inter gentes*, was built upon the hypothesis of a common law for a commonwealth of States. To treat the foreigner and the native as entitled to a like measure of justice had become the manifest interest, as it had ever been the clear duty, of States. Glancing at certain exceptional restrictions, of a political, moral and religious character, which limited in a commonwealth of States the application of the principle of a common law, he said this branch of jurisprudence had been and was being scientifically developed by judges and by jurists, and it was matter for rejoicing that it had escaped the Procrustean treatment of positive legislation, and had been allowed to grow to its fair proportions under the influence of that science which worked out of conscience, reason and experience the great problem of civil justice. A code of international law, if it was ever to be effected, must be, "not the hasty product of a day, but the well-ripened fruit of wise delay."

Mr. IRVING BROWNE, who has been a contributor to the *Albany Law Journal* since its commencement, has succeeded the late Mr. Thompson in the editorial management of that journal. Mr. Browne has also assumed the editorship of the American Reports. We are pleased that these important publications have fallen into good hands. Mr. Browne is the author of "Short Studies of Great Lawyers," noticed in Vol. I of the *Legal News*, p. 372.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1879.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

[From S. C. Montreal.

BAIN v. WHITE et al.

Jury Trial—Nonsuit—Motion for new trial—Jurisdiction of Court of Review under 34 *Vict. c.* 4, *s.* 10.

JOHNSON, J. This is a case where the authority of three Judges of the Superior Court is invoked under the 34 Vic., c. 4, amending Art. 494 of the Code of Procedure. It is a case in which a trial by jury was ordered, and the day fixed was the 6th of June, and on that day the Court was opened, and the parties being called, the defendants appeared, but the plaintiff did not. The defendants thereupon did not get a default recorded against the plaintiff, upon which, if it had been recorded, he might have been nonsuited at once under Art. 394, C. P.; but it seems to have been taken for granted that the case was to go on, for, notwithstanding the plaintiff's absence, the jurors were called, and were about to be sworn, when the learned Judge ordered the plaintiff to be again called, which was done, but he failed again to appear. The case, even after this, still seems to have been treated as one in which the parties were present and ready to proceed; for the jury were actually sworn, and, of course, they could only be sworn to try issues between parties there present, according to the practice, either by themselves or their counsel; but after swearing the jury to try the issues in the case (which presupposes the presence of the parties), a person said to be the plaintiff came into Court, and left at once. The defendants declared they were ready to proceed; and thereupon the jury being in the box, and already sworn to try the issue, the plaintiff was a third time called, and on his failing to appear this time, the Judge gave judgment of non-suit with costs against him, *sauf à se pourvoir*. The plaintiff now moves us to set aside this judgment or order, and to let him go to trial again, on the ground that he was present in reality, and only momentarily went out of the room to look for his counsel