SELECTIONS.

SIR JOHN STUART.

We are compelled at times to discharge the painful duty of publishing memoirs of worthy judges and lawyers whom death has removed from their spheres of action. On the present occasion we are more fortunate. To write some few eulogistic words concerning Sir John Stuart upon his retirement from the bench in a ripe age, yet in the vigour of his mind and body, is a happy obligation, and the only drawback on our pleasure is the fear of not doing justice to our subject. We regret his departure from Lincoln's Inn, but there is one class of persons to whom his resignation will bring joy and gladness. These are the usurers, the extortioners, the fraudulent trustees, who dreaded a bill in Vice-Chancellor Stuart's Court with inexpressible horror, knowing the revelation that awaited their most skilful combinations, and the biting censure which would knaw into the remnant of their withered conscience. Other judges have attempted to emulate Sir John in this respect, but not with equal success. Their castigation has been too rough and ready, and they have melted the gold out of the ore by administering the process to the wrong objects. When Sir John Stuart branded a man as guilty of knavery, it did not happen that the Court of Appeal pronounced the same person to be honest.

When the bar assembled on Saturday last to bid farewell to Sir John Stuart at the close of the sittings of his Court, the intention was not so much to declare him a great judge, as to mark their sense of his high and noble character, his integrity, his gentlemanly demeanour, his courtesy to the bar. There was something wonderfully fine in his faith in the dignity of an English judge. Sir John was above anything like empty personal pride and vanity, but he had an extraordinary belief in the honour of his office, and deemed it one of the first duties to sustain and, if possible, enhance that honour. His peculiar adherence to an ancient and imposing style of dress on the bench was an outward emblem of the sentiment which reigned within him. His authority in Court was assisted by this feeling. While he gave attention to the junior members of the bar in a way which encouraged them to reward him by industrious research and proper preparation of their arguments, he possessed the important faculty of knowing how to check the exuberant audacity of senior members whom prolonged familiarity with the Court might tempt to forgetfulness of its dignity. He was also a good friend to the reporters. He delivered his judgments clearly audibly and precisely. Knowing that judgments were of no value except when reported, he so spoke as to render it easy to record what he said, and thereby set an example which merits imitation in Lincoln's Inn.

His career at the bar and on the bench extended over a vast period of time. It is a huge stride from November 23, 1819, to March 25, 1871, and yet during all those years Sir John was an advocate or a judge. Fifty-two years of Courts prove a rubust frame and a robust mind; and the love of country and country sports, skill with the rod and skill with the gun, go far to explain the immensity of his physical power. For twenty years Sir John practised at the junior bar. In March 1839 he was appointed Queen's Counsel, and in 1852 he was elevated, on the death of Sir James Parker, to the Bench. This nineteen year's tenure of office finds its record in three volumes of Smale and Giffard's Reports, in the Law Journal, and in the Law Reports. But in proportion to the work accomplished by him during those years the number of reported cases is not large. The first reported case was *Flott* v. *Mullins*, 1 S. & G. 1., and was decided by him on the day on which he took his seat as a judge at the commencement of Michaelmas Term 1852.

Sir John Stuart was sworn on Her Majesty's Privy Council on Friday last. This mark of honour was his due, but Sir John has well earned his leisure, and cannot be expected to serve on the Judicial Committee.—*Law Jour.*

CRITERIA OF PARTNERSHIP.

(*From the American Law Register.*)

Although a distinguished writer discourages any attempt to determine questions of partnership by reference to common principles, yet it will hardly be denied that the tendency of recent adjudications lies unmistakably in that direction. The doctrine of *Grace* v. *Smith*, 2 W. Bl. 998, affirmed in *Waugh* v. *Carver*, 2 H. Bl. 235 and in many subsequent decisions, has been emphatically overruled, and the arbitrary notion that a mere participation in the profits of an undertaking or business created a partnership liability as to third persons, has been superseded by the adoption of a new criterion involving the principle of agency: *Cox* v. *Hickman*, 8 H. L. C. 268; *Bullen* v. *Sharp*, L. R. 1 C. P. 85.

Still, it may be doubted even now, whether these decisions furnish a rule of general application and utility. For if, as Lord Wensleydale observed in *Cox* v. *Hickman*, "the maxim that he who takes the profits ought to bear the loss, is only the consequence and not the cause why a man is made liable as a partner," it might, at least, with some semblance of reason, be said that the mutual relation of principal and agent results from the *fact* of partnerships, which is first to be proved, but does not give existence in that fact. "I do not think it proper for us to inquire," said Mr. Justice Blackburn in *Bullen* v. *Sharp*, "whether this rule of law is more or less expedient than the rule laid down in *Waugh* v. *Carver*. This is a question for the legislature, who may alter the law as to them