

REVIEWS.

try was concerned, supplied a want. Mr. Mayne undertook to do for England that which Professor Sedgwick had done for the United States. And it is no disparagement of Professor Sedgwick's labours to say that Mr. Mayne proved himself no mean rival. From the moment that Mayne's treatise appeared, it secured for itself a place in every good law library, and a companionship with Roscoe's *Nisi Prius* on almost every circuit. This was because the arrangement of the work was good, and the views of the author in general reliable. His selection and examination of English and American cases was all that could be desired in a work of the kind. Had he explored the Canadian field of forensic jurisprudence as well as the American, he would have enhanced the value of his work. But as it was, from incongruous and widely scattered materials he succeeded in elaborating a concise and readable treatise on a very interesting branch of law.

One of his great difficulties was to distinguish between the right to recover and the amount to be recovered. People of little reflection may be inclined to smile at the mention of such a difficulty; but, as pointed out by the author in his preface to the first edition, the right to sue often depends upon the existence of the very circumstances which determine the right to damages. For instance, where the wrong complained of affects the public generally, the particular loss sustained by the plaintiff is the fact which at once gives him a right of action, and gauges the compensation he is to obtain. So in actions against executors, the possibility of obtaining any real satisfaction may depend entirely upon the form in which they are sued, whether in their representative or personal capacity. In many cases of torts, no measure of damages can be stated at all, and the only way of approximating to such a measure is by ascertaining what evidence could be adduced in support of the particular issues.

The author did much to overcome the difficulty we have mentioned. His inability to do so altogether, made some portions of his work resemble a treatise on the Law of *Nisi Prius*, rather than one exclusively appropriated to Damages. For this he apologizes in his preface to the first edition. But no apology was necessary. The fact that his work in some parts resembles a treatise on *Nisi Prius* Law

is no objection to it. On the contrary, the whole subject of Damages is one so essential for consideration at *Nisi Prius*, that a work on the subject is a necessary *vade mecum* to a *Nisi Prius* counsel.

There was a portion of the work more open to objection, and of little use to a *Nisi Prius* practitioner, viz., that which collected compensation cases. This class of cases is *sui generis*. Of late it has grown to such dimensions as to demand treatises relating almost exclusively to railway and other companies having compensation clauses in their acts of incorporation. In this connection we more immediately refer to the law of railway companies by Messrs. Godefroi and Short. The editor of the edition of the work now before us has, we think prudently, omitted this class of cases. He has, however, in all other respects, retained the original work in its original form. His additions, which are bulky, are placed within brackets, so as to distinguish his work from that of Mr. Mayne. Notwithstanding his efforts to compress, the second edition of the work contains one hundred pages more than the first edition.

A new edition of Mayne on Damages has been long needed. Often have we wondered that a second edition was not sooner issued. Of late years the decisions on the question of damages have been numerous and interesting. The accumulation of decisions during the sixteen years that have elapsed between the first and second editions have been so great as to increase the size of the work one-fifth beyond its original dimensions.

Mr. Lumley Smith, the editor of the second edition, has been very modest in attempting to proclaim what he has done. He does not even give us the number of additional cases included in the work, but these cannot fall short of a thousand. The original work contained references to about two thousand cases. This edition has no less than three thousand cases. The reading of these cases so as to understand them, and the placing of them when understood in the appropriate parts of the work, was a task of great labour and heavy responsibility. The editor has also, we should mention, made a selection of American cases since 1856. In a future edition we hope there will be some references to the decisions in this part of the British Empire. Of late we have had occasion to point out the omis-