

'MISERA SERVITUS'—LYNDHURST AND BROUGHAM.

nion on two points: 1st, whether the issue raised by a replication of 'necessaries' to a plea of infancy, in an action for goods sold, must in all cases be submitted to a jury; and 2nd, whether evidence is admissible to show that the infant was, at the time of his purchase, already furnished with an abundant supply of the articles bought, no proof being offered that the vendor knew him to be so supplied. On the first point, the Exchequer Chamber decided that the question of 'necessaries' was one of fact, to be submitted to a jury like all others, but that the modern rule, unlike the former practice, does not require the judge to submit to the jury a question of fact, merely because there may be a scintilla of evidence, but only where there is such evidence as might reasonably satisfy the jury that the fact sought to be proved is established. Applying this rule, the Court held that there was no evidence in the case to show that a pair of diamond sleeve buttons, costing £25, were 'necessaries' for the infant purchaser, and that the plaintiff should therefore have been nonsuited.

So far the judgment will readily commend itself to the bar as a satisfactory settlement of an open question. But on the second point, which is a mere rule of evidence, which had been fully argued, and had been the subject of divided opinion in the lower Court, the Exchequer Chamber deliberately refused to give an opinion, with the avowed purpose of leaving it open for future dispute at the costs of some unfortunate litigant, and to the annoyance and perplexity of every dealer in England. Nothing but an habitual narrowing of the mind to the technicalities of the profession could possibly shut the eyes of the Bench or the Bar to the really monstrous injustice which is thus created by a too rigid system of adherence to rules established in a bygone age. Reason indicates that the duty of judges is to determine disputed question of law that are properly brought before them by *bona fide* litigants; and if there be a dozen points readily raised and susceptible of final decision, the highest function of the judge is to aid the Commonwealth in determining them, so as to protect it from '*misera servitus ubi lex aut vaga aut incerta est.*'

The language of the decision of the Exchequer is, that the second question raised in the case is one of some nicety, 'to be determined hereafter on the balance of authority and on principle, without being fettered! (*sic*) by a decision of this Court.' What an utter subversion of all sound ideas as to the true functions of a Court, that its decisions on disputed points of law are fetters to bind the limbs, instead of lamps to light the path of those who are seeking for guidance in the pursuit of justice! The contrast on this point between the English and Continental jurisprudence as derived from the Roman law has more than once been the subject of comment; and the learned author of the Principles of Jurisprudence tells us in his eulogy on the precision

and compass of the Roman law, that the student will find 'no awkward attempts at misplaced subtilty, which entail litigation and misery on generation after generation . . . no doubts wantonly flung out, like low-born mists, to spread darkness and confusion everywhere, and perpetuating a feeling of insecurity; no avoiding points which it is for the public welfare to decide; but strong sense in transparent language, confounding sophistry, abounding in happy illustrations, and bearing down obstacle after obstacle till the path of truth is clear, and the way of justice is made straight.'—*Law Journal*.

LYNDHURST AND BROUGHAM.

Lives of Lord Lyndhurst and Lord Brougham
By Lord CAMPBELL. London: John Murray.

No one can charge Lord Campbell with Boswellianism. No one can say that he has been kind to the virtues or blind to the faults of his friends. Lord Lyndhurst was a Tory, and therefore Lord Campbell was certain to show him no favour; but we were not prepared for such extravagant vituperation of the late venerable ex-Chancellor. Lord Lyndhurst, like Lord Brougham, was wont to amuse himself by worrying Lord Campbell, and we should not have been surprised if Lord Campbell had indulged in a little retaliation, but we never could have anticipated such a biography as that before us. Lord Campbell was not able to understand the chaff of his noble and learned friends. He believed that they were in earnest. So impossible for him was it to comprehend a joke, and so miraculous was his credulity, that he was under the impression that Brougham was jealous of him! It is plain that Lord Campbell deemed himself a better lawyer than Lyndhurst, a cleverer man than Brougham, and a better citizen and a better man than either of them. Lyndhurst and Brougham never did right, while Campbell never did wrong. Campbell became Lord Chief Justice of England and Lord Chancellor by reason of his unequalled abilities and merits, and in spite of the jealousy of Lyndhurst and Brougham, whilst Lyndhurst and Brougham attained to high office by intrigue and by sheer luck. As an instance of Lord Campbell's marvellous faith in his own infallibility, we may take this instance. At page 27 we read:—

Smith O'Brien was convicted of high treason in Ireland when I was a member of the Cabinet, guiding the deliberations of the Government in such matters. He was clearly guilty in point of law and fact too; but this rebellion was so ludicrously absurd that I thought it would take away all dignity and solemnity from the punishment of death if it should be inflicted upon him, and my advice was followed in offering him a pardon on condition of transportation. So foolish was he that he denied the power of the Crown to commute the sentence without his consent; and he insisted on being immediately liberated, or hang-