

Reviews and Notices of Books.

History of the Court of Chancery, and of the Rise and Development of the Doctrines of Equity.—By A. H. Marsh, Q.C. Toronto: Carswell & Co.

This little work depicts the struggle between the Common Law and Equity; and the author has clothed the otherwise dry details, necessary to such a history, with an interest originally intended to be manifested in his lectures before the Law School.

We are carried along a connected chain, link by link, to the present time, from the days of the Curia Regis, whose component parts are now represented by the Privy Council, House of Lords, and House of Commons, as well as the several Benches of judges. On these links we find in succession the Chief Justiciar—an Administrator of Justice during the then ofttime absence of the sovereign; the Chancellor—"the keeper of the king's conscience"—; the rise of the Chancellor's power, first acquired by obtaining Common Law Jurisdiction; the failure of the Statute of Westminster the Second (*in consimili casu*), by which it was sought to adapt the existing writs to the exigencies of each case arising; the popularity of the Chancery, on account of the absence of fines; but, on the other hand, the abuse of the procedure by vexatious suits. Following this, we find many interesting instances of the conflict between the Chancery and the Common Law, notably that between Lord Coke and Lord Ellesmere, the Court of Exchequer—exercising as it did, a certain equity jurisdiction—being especially jealous of the Court of Chancery. An interesting account is given of the form of pleadings, originally commenced by a petition addressed to the Chancellor, without the preliminary issue of a writ. Verbose pleadings, even at that early date, did not find favor, for we are told that a replication of six score sheets was reckoned to be above five score too many, and the offender, with the replication hung around his neck, was led through the courts of Westminster, and, in addition, heavily fined. Such an example as this in the present day could not fail to lighten the burdens of our taxing officers. The author shows how the judges were first paid by fees and afterwards by salary, now, indeed—in Ontario—far too inadequate.

The extraordinary discretion, over-riding the law of the land, which was allowed to the Chancellors, to the intense disgust of the Common Law jurists, is thus tersely referred to by Lord Mansfield, in *Reg. v. Wilkes*. "Discretion, when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humor. It must not be arbitrary, vague, and fanciful, but legal and regular." A book such as this one, on perusal, shows itself to be, cannot fail to be of benefit to, nay almost a requisite for, the student—and we are all students—as well as entertaining to the general reader.