PUBLISHED BY JOSEPH GALES & SON.
Weekly paper, $3 per annum.
Semi-weekly paper, $5 per annum.

REFORM OF BRITISH LAW.

The interest excited in England, and amongst the Lawyers of this Country, by Mr. Brougham's great Speech in the House of Commons, on the 7th of February last, on his proposed Reform of the Law of that Country, induces us to give the Exordium and Conclusion of his Address, and an analysis of its subjects, under the several distinct heads :

Mr. Brougham said that, in bringing before the notice of the House certainly one of the most important subjects to which it was possible for the Legislature to turn its attention, he felt his mind deeply impressed with the largeness of the task he had undertaken. He felt that he had engaged himself to bring before the House the whole of the Common Law of this realm, as contra-distinguished from Equity, as administered to the King's subjects, with a view of pointing out those defects which were inherent in its original structure, or which time had engendered, and which were now so inveterate as to require some strong measures to correct them. And he would assure the House that nothing at all comforted him, or bore him up under the pressure of an undertaking which might otherwise overwhelm him with its weight, except the consideration that this was a point of such importance and moment, that it was necessary that inquiry should be no longer delayed, and amendment no longer postponed—and except also the feeling he had in his breast that he would so deal with the subject—from his deep veneration for the institutions of the country—from his profound and habitual respect for those in whose hands the administration of the laws was placed—that, animated by these sentiments, he would be able so to deal with the subject, as neither to offend the prejudices of one class, nor to interfere with the personal feelings of the other.—He felt also a confidence unspeakable on another ground. As he was about on the one hand not to cavil—not to speak before men who were ignorant of the details and niceties of the profession, and who, under that unavoidable ignorance, could not be supposed to be perfect judges as to the merits of those niceties—as he was determined not to say any thing which would enable him to avail himself of their want of information, in order to purchase a futile and pitiful triumph over what was valuable in the subject—as he did not intend to attach blame to any one point which, from his own experience, was not proved to require revision and correction—so, he said, he derived unspeakable confidence and satisfaction that, from accidental circumstances he had acquired an experience by which he had been better able to see the practical application of those details in the administration of justice in the Courts of Law ; and that he was not under the necessity of taking his speculation from the views of other persons, but that they were furnished by his own personal knowledge of the subject. He pledged himself that night, that, so long as the House should honour him with a hearing, he should not in any one instance—at least he did not anticipate that he should, in any one instance——hazard any one observation, denounce any one practice, observe upon any one defect, of which he had not himself a competent knowledge and an actual experience, not only as Counsel, but, still further, as Counsel in the particular cause, and to which, having practised on behalf of one or other of the parties, he was not fully competent to bear testimony, because personally acquainted with it. These were the considerations by which he was urged and supported on the one hand, and which at the same time furnished him with an opportunity of bringing this large matter before the house. He would, in the first instance, state the points which he intended wholly and altogether to repudiate from his consideration.

1. He announced his intention of bringing before Parliament the whole state of the Common Law. He does not mean to include Equity, unless when it interferes incidentally with the Courts of Common Law. Besides, the subject has already engaged the attention of a Parliamentary Committee, and bills founded upon their report are to be introduced by the present Lord Chancellor. He excludes also the Criminal Law from his consideration, because it has occupied the labors of such men as Sir Samuel Romilly and Mr. Peel, who, he trusted, would not pause in a work which had already been so useful, & which he had proved himself so eminently qualified to undertake. He leaves Commercial Law also out of the question, because, as it is the newest, so it is the freshest, clearest, and the purest.

2. Under the 2d head, we class Mr. Brougham's history of the Courts of King's Bench, Common Pleas and Courts of Exchequer—their original jurisdiction, and the encroachments they have made upon each other. He points out the monopolies established in the Court of Common Pleas and Exchequer, which produce the effect of preventing suitors from going to these Courts, and necessarily obliges them to have recourse to the King's Bench, which is thus overloaded with business. So great a disproportion exists, that when there may be only six causes before the Exchequer, there may be upwards of eight hundred before the Court of King's Bench. As a remedy for a defect in the working of the Court of Exchequer, a Bail Court was instituted, but the attempt failed, for the Judges in the Bail Court had no power to transact other business. Mr. Brougham thinks that Barristers of five years standing might act as Commissioners for taking bail, the presence of a Judge would then be unnecessary, and the important business of the Courts would be materially forwarded.

[illegible] amount of judicial business. This addition would be valuable on another account; it would afford an opportunity of reforming the Welsh judicature—the most defective part of our judicial administration.—The two additional Judges might go to the Welch Circuits, not permanently, but in rotation, as the judges now take their turn at the old Bailey.

4. Approves of the salaries of Judges being fixed ; but suggests some additional stimulus in the nature of fees.

5. Blames the manner in which the Judges are nominated on account of their political opinions, and not as they ought to be, on account solely of their learning industry, and talent. He alludes to two exceptions to this rule, furnished by Mr. Peel, and acknowledges that the whig party acted in the same manner as the tory.

6. Points out the defects of the Welsh judicature, under which business accumulates and delays take place, and suggests that the number of Judges being increased to fourteen, one Judge might go the Welch Circuits with a Welch Judge.

7. Insists upon the necessity of altering the existing law terms, and of fixing the period when the Easter and Trinity terms shall be held, which are now moveable.

8. Provides that two Judges should sit at the same time at *Nisi Prius*, compelling them to take each a different set of causes; by which means, "you will soon ride out of the paper." Suggests, also, a better division of business between the three Courts, by which their labors would be more equalized.

9. Proceeds to the Civil Law Courts, the Judges of which ought to be better paid, particularly the Judges of the High Court of Admiralty, whose salary was 2500*l* in time of peace, and would be above 10,000*l* a year in time of war ; thus subjecting him to a dreadful bias in deciding upon delicate neutral questions, and on matters connected with, or relative to foreign powers.

10. Objects to the Judges of Civil Law being appointed (except the Judge of the High Court of Admiralty,) by the Archbishop of Canterbury and the Bishop of London, who are neither removable nor responsible. The same objections apply to the Spiritual Judge within the diocess of York. He shows the vicious consitution of the Court of Delegates, where appeals from the great Judges of the Civil and Maritime Courts (Sir W. Scott, Sir John Nicoll, and Sir Christopher Robinson) are heard before four or five of the Judges in the Court, who must be of necessity, the advocates least employed in the Courts, of the eminent individuals just named.

11. Dilates upon the constitution and character of the Court of Privy Council. They are superior Judges in the last resort in all prize causes—in all plantation appeals from every one of our colonies—from colonies containing a population of nearly one hundred million—points out the difference of the laws in different colonies—that the Judges in this Court are not Lawyers, but men brought up to professions and pursuits not at all connected with the law. He suggests the necessity of having a bar duly educated for colonial appeals. He alludes to the settlement of Ceylon, where the system he recommends was tried with perfect success.

12. Relates to Justices of the Peace, whose appointment, character and conduct, are reviewed at great length. He decidedly disapproves of the manner of their appointment. They are now appointed solely by the different Lord Lieutenants, who are not subject to any control. The Lord Chancellor indeed, issues the commission, but the Lord Lieutenant executes it, and there is no interference on the part of the Lord Chancellor. It has been the rule of Lord Eldon not to strike off any Justice from the Commission, unless a sentence of a Court of Law be passed against him.—The appointment of Clerical Magistrates is more particularly objected to. Its tendency is to injure two useful characters—a Clergyman and a Justice. The Clerical Magistrates were more imbued with local prejudices than any other Magistrates.—He dwells upon the abuses in the licensing system, which is replete with corruption, partiality and injustice. The magistrate without control ; the power of punishing them by mandamus, impeachment, criminal information, is stated to be seldom, if ever, effectual. The manner in which these processes is pointed out. The Magistrates are often in league with brewers—the licenses are refused to persons whom the brewers do not favor. The case of the Guildenlane is mentioned. When first set up, it improved the quality and diminished the price of beer ; but during the eight years the brewery existed, it could not procure a license to open a single House and finally failed. Mr. Brougham next alludes to the conduct of Justices of the Peace in convictions under the game laws. There cannot, he says, be a worse constituted tribunal, than that empowered to make summary convictions under these laws. There is no appeal from its decisions.

13. Relates to the copyhold system, and shews the defects in it with respect to the entailing or bequeathing property. "In one manor," says Mr. B. "a man is able to entail his property, in another he has not that power. With respect to wills, also, although it is of the utmost importance that a man should be enabled to dispose of his property, yet from the inequality that prevails, I may say, nothing of the kind can be done. In one manor a man is enabled to make a will, in another he cannot ; in one manor the eldest daughter succeeds her father, to the exclusion of her other sisters, like the succession amongst the daughters (where no son exists,) of a King of England ; in another, the daughters inherit together as coparceners. In some, a wife has a dower of a third or some other proportion of the copyhold, by the name of Free Bench, while in others she takes [illegible]

[illegible] apparent.

Mr. B. enters into a review of the relative situation of the Crown and the individual in cases of property which had fallen into the hands of the Crown. This review is to shew that there is no equality between the Crown and the individual—a particular case is cited to strengthen the argument. The next point touched upon is the summoning of Special Juries in a Crown Case ; where all the special Jurors do not attend, a Tales cannot be prayed without a special warrant from the Crown. A case is stated which occurred in the Court of Exchequer.

14. Points out what measures for the improvement of the Law should be adopted, in order, to prevent the recurrence of unnecessary suits. "To effect this great object," says Mr. Brougham, "I would first propose to remove the encouragement given to rich litigious suitors, by lessening the expense of all legal proceedings. Secondly, I would put an end to all harrassing & unjust defences, by adopting expedition as a ground work of all suits in Courts of Justice. Next, I would not allow any action or proceeding to be permitted, in which only profit is to be derived to the petitioners and the granting of which is a matter of course ; but that all actions might be allowed to be done, which may now be done on a simple application to the Court. Thirdly, that no party shall be sent to two Courts, where one is able to afford him a remedy—nor to a dear and bad Court, when he can elsewhere have a cheaper and a better remedy. Fourthly, that whenever a presumption of right appeared on the part of the Plaintiff, the onus of proof should be thrown on the defendant. This I would extend to all such cases as bills of exchange, mortgages, and other such securities. In those cases, I think the plaintiff should be considered so much in the right as to get what he asked, unless good cause be, in the first instance, shewn to the contrary. Fifthly, I would propose, that in all cases where prospective suits are to be anticipated, proceeding might be adapted for the quieting of possessions, although nothing at the present moment existed which could bring either of the parties claiming into Court. Sixthly, I would abolish all those absolute proceedings which are only a trap for the unwary, and operate merely as tools for the litigious."

Mr. B. next proposes to abolish at once the whole system of fines and recoveries. If a man be a tenant for life he cannot get rid of the entails by which he is restricted ; but if he be a tenant in tail, and if he have an ancestor die in a long vacation, he can go, on the first day of Michaelmas Term, and levy a fine, which destroys those entails ; and afterwards, by means of a recovery, he can get rid of all remainders over.

Mr. B. then proposes to put an end to all trusts for securing contingent remainders. He highly approves of the English law of entails. He proposes that an agreement for a lease shall be equivalent to a lease ; and he would allow a legatee to sue an administrator for his legacy ; and the mortgagee the mortgager, for his rights. He suggests that the Court of King's Bench shall have an equal number of Masters of Chancery. In ejectments he would no longer have processes requisite, an ejectment and a mesne process.—Mr. B. next discussed the principle of imparlance to which he objects, and suggests a remedy. He proposes the establishment of arbitrators to settle differences amicably, without going into Court.

15. Continuing to suggest improvements in the laws, Mr. B. proceeds to the commencement of a suit. His first object here is to prevent debtors from escaping, or delaying doing justice to their creditors, by wilful absence, and also expedite proceedings as much as possible. His second is to give debtors notice of their cause coming on in such time, that they may fairly defend thamselves. His third is, to give the debtor no unnecessary inconvenience till found to be in the wrong, that is, actually indebted, as far as is consistent with due security to the plaintiff. The present system is, that no proceeding can take place without an actual appearance. We outlaw a man to compel an appearance. Why can we not in this case proceed as in an ejectment, where a notice is left at the dwelling house ? Why can we not leave a writ at a man's house, stating what you sue him for ; and only when you think him about to fly, call upon him to give surety.

Mr. B. objects to arrests upon mesne processs altogether. He dwells next upon special pleadings, and proposes, first, "to compel each party to disclose his claim ; secondly, that no needless impediments should be thrown in the way of the other party ; thirdly, that all repetitions should be prevented, all repugnant and inconsistent pleas disallowed. There is no one acquainted with the practical administration of the law in this country, who does not learn, at the outset of his career, that the plea generally tells as little of the case as the declaration. Now, if instead of the plea being made the means of concealing the real nature of the matters in dispute, it was actually so constructed as to disclose to the plaintiff the defendant's case, one vast course of encouragement to perjury would be effectuallly cut off, and the trial of suits at law, instead of being contests of perjury would make a nearer approximation to the discovery of truth."

Mr. B. dwells at great length on the subject of pleading.

16. The subject continued.—Under this head we class Mr. Brougham's observations upon Juries, of the institution of which he approves in the highest degree ; but he wishes to restore to it the powers of which it had been deprived by the growing and encroaching power of the Equity Courts, where many questions are decided, which in ancient times, came within the jurisdiction of that tribunal. He wishes not to exclude the testimony of parties in a cause. Speaking of affidavits he says, "tho' the principle of justice & fair dealing, be extended to the other branches of the investigation, yet I must say, that the whole system of affidavits is a nest of perjury, where the seeds are sown of those falsehoods which subsequently mislead the jury, and work injustice to the parties." Upon the subject of the libel, Mr. B. says—one farther improvement still remains to be effected, that of allowing evidence of the truth to be given on actions of slander let it have what weight the Jury pleases, but at least let it go to them. As the law stands, if a man be found guilty of libel, although he has spoken or written nothing but what is perfectly true ; and the truth or falsehood of the libel, in most cases, is not left to the consideration of the Jury ; and yet much may be said to prove the propriety of sending the fact of the truth or falsehood of the libel to the jury to assist them in their decision. I am clearly of opinion that no case can arise in which it is not desirable to admit evidence on this subject."

With respect to persons giving evidence, Mr. Brougham maintains—"Again, I ask, why should any class of persons be excluded from giving evidence in criminal cases, notwithstanding their testimony is admissible in cases of civil nature. A quaker is precluded by his religious belief from taking an oath, yet his affirmation is, to a certain extent, recognised by the law ; he can give evidence in a civil, but not in a criminal case. There can, in my opinion, be no reason for excluding any individual, be he of what religion, sect, or persuasion he may, from giving testimony in cases of every kind, provided he believes in the existence of a God and a state of future rewards and punishments, and is not openly infamous and undeserving of credit."

Mr. B. considers all presumptive evidence bad, and he will have no presumption of facts. He sees no reason why the Court should always take upon itself to construe every description of written and documentary evidence, while the construction of parole evidence is left to the Jury. In the construction of wills, he is desirous of getting rid of all technicalities.

The difficulties of making wills securely, that is, to meet the wishes and intentions of the testator, are clearly and forcibly pointed out. The circumstance of a man's making two wills, and cancelling one, and the possibility or probability of this involving the annulment, or cancelling, both wills, is stated.

17. The propriety of having all descriptions of evidence brought into Court is enforced. All descriptions of evidence, including all records, all writings, and all the testimony of every kind, which a party can possibly procure, should be brought into Court, in order to facilitate the administration of justice, and render it more perfect. In the Court of Chancery no oral evidence is received—no witnesses are ever seen. In the Law Courts, a contrary proceeding is adopted, and with very beneficial results. He would propose to make the same description of evidence applicable in Courts of all sorts, and would have one uniform and rational law founded thereupon.

18. In the Statute of Limitations, Mr. Brougham presses the necessity of considerable alteration, and his maxim would be, that nothing should take a matter out of the Statute of Limitations, but a document in writing.

He objects to the variations in real actions relative to property, and considers trials by writ of right to be an insult to common sense, for the person in possession fifty-nine years and three quarters must, according to the legal representations, expose his titles and pedigree to his opponent. He enforces the necessity of some limitation in church rights.

19. As Judges are found occasionally to be incorrect takers of notes, he suggests the employment of sworn short-hand writers in Courts of Law.

20. He recommends that each party should, not only in pleas, but in briefs for counsel, state distinctly the nature of the action ; and in their briefs, the true and actual defence. He suggests the propriety of a Counsel being allowed to comment on his case after, as well as before, the examination of witnesses.

21. He states broadly his proposition, that all the debts of a man ought to be taken out of all his goods—that his person should only be taken when he refuses to give up his goods ; and that all his property—all his goods—should be made available to his creditor, be they real, or be they otherwise. "I would not take his person" says Mr. B. "unless for criminal or *quasi* criminal conduct. I would take his person when his debts and embarrassments arose out of rash speculation, swindling, buying goods, and immediately selling them again to raise ready money. I would punish by imprisonment, partly as a means of extorting payment, but chiefly as a punishment for his criminality—and this I would do, by enabling the Judges to condemn him to imprisonment for a period proportionate to his offence."

22. Under this last head we class writs of error, which have occasioned great evil. For that evil a very obvious remedy presents itself, by compelling the party to give security in the event of the appeal going against him, and then there would be an end to the practice.

[The Hon. Gentleman concluded in the following strain : the peroration is beautiful :]

I may be told, "touch not our laws, rendered respectable and venerable by antiquity." Is that a reason why they should be immortal ? Take the authority of Lord Hale, than whom none ever existed more tenaciously attached to the Constitution of the country, both in Church and State.—No greater authority can be cited than Lord Coke—and Littleton himself, whose opinions were in unison. Shepherd, too, England's balmy lawyer—the author of *The Touchstone*—one of the highest authorities that could be referred to—[illegible] ject? "[illegible] take away the weeds, will not injure the wheat." Do these convince ? If not—if any further evidence were wanting, it is to be found in one of the ablest books lately published, the work of a Mr. Parkes, a Solicitor of Warwickshire, in which he incidentally points out the reform that is wanted in much of the common law. A necessity, and an attempt to reform the laws, is not of very modern date. We find, that in 1654, in the days of the Commonwealth, two Committees were formed with this object. At the head of the first, within doors, was that honorable man, Lord General Cromwell—my Honorable Friend's more martial and less learned predecessor. Sidney was another. From these no great efforts at legal improvement could be expected. But in the second out of the house was "Mr. Matthew Hale," as he is called in the Record I refer to, afterwards Sir Matthew Hale, one of the greatest luminaries that ever blazed in the legal hemisphere—one of the most learned and enlightened lawyers that ever existed. From these committees, several acts emanated, of the most valuable kind ; some of which still remain. Among them were Acts for the abolition of fines and recoveries, for ascertaining copyhold rights, for regulating county Courts, for the regulating criminal prosecutions, for the examination of witnesses for the defendant on oath. That was an innovation, a rude innovation—a cruel departure from the previous just and equitable and humane practice—[a laugh]—which having been received by the commonwealth, was afterwards adopted by the good Queen Ann. [Hear.] In short, 30 or 40 Acts were, during five years, suggested by those Committees, deliberated upon, and several of them brought in, such was the industry and disposition of our ancestors upon this subject. If immediately after the restoration, a Committee had been appointed to examine into the state of our law ; and if upon that Committee sat Sergeant Maynard and other great lawyers—fifty-one of them in all—if they brought in four bills, which proceeded through several stages in this House, we could do nothing for which our country would be more thankful than in speedily, vigorously—but with a due deliberation—enter into a similar task. There is nothing more certainly within our power. If I have spoken clearly upon what my hopes of effecting these improvements are founded, shall I be told that the vine shall no longer bear fruit, that the fig-tree shall be barren ; that there are in the present government men of liberal opinions, we have the authority and the sanction of their own late declaration—men from whom, although I do not agree with them on all subjects, I anticipate candid and powerful support. But be they, or be they not what they have declared, it is not to them, it is to this house I look—it is upon this house I repose my confidence, that it will constitutionally aid me in this noble work. A great, a glorious race to run is open before you : you have it in your power to make your names go down to posterity with higher sound, and with the fame of more useful importance attached to them, than any Parliament that ever has preceded you—[Cheers.] You have seen the greatest victor of the age—the conquerer of Germany and Italy—who, having achieved triumphs more transcendant than any upon record, said, "I shall go down to posterity with the Code in my hand"—[Loud cheering.] You have beaten the warrior in the field—try to rival the legislator in the more useful arts of peace.—[Hear, hear, hear.] The glories of the Regency—gorgeous and brilliant as they were—will be eclipsed by the milder and more beneficent splendors of the reign of the King. [Great and continued cheering.] The flatterers of the Edwards and the Henries compared them to Justinian, but how much more justly may it not be applied to our own Sovereign, when to his other glories this shall be added ? [Cheers.] It was said by Augustus, that he had found Rome of brick and left it of marble. An honourable boast certainly—and one which cast into the shade many of the cruel and the tortuous acts of his early course. But how much higher and prouder would be the boast of our King, to have it said, that he found law dear and he left it cheap—[Cheers]—that he found it a sealed book, and left it an open letter—that he found it the patrimony of the rich, and left it the security of the poor—that he found it a two edged sword in the hands of the powerful,& left it a staff for the protection of the people. [Loud and continued cheering.] There is no object of pride or ambition which a man of sense honestly could court more, than that of having aided in a work so honorable. It is one which I should prize above all others. Patronage I care not for. Employment I seek not. I can support myself from the honest and honorable fruits of my labour. I ask not for power. I have lived half a century, and I have learned that the only power to be desired, is that of assisting our fellow countrymen to obtain their just rights. [Cheers.] I have had the honour of advocating them in this House, and of acting as their coadjutor in asserting them out of it. That is a power which no Ministry can give, and which no government can take away. [Loud and long continued cheering.] When it had subsided, the Hon. and learned Gentleman moved, "that an humble Address be presented to his Majesty, praying that he may be graciously pleased to direct that a Commission be appointed, to inquire into the defects occasioned by time and other circumstances, in our laws, and to propose such a remedy as may be deemed expedient. The Hon. and learned Gentleman then sat down amid renewed cheering, having spoken for nearly six hours."

J. GALES & SON have just received No. 1 of the Southern Review.
The Southern Review will be published in February, May, August and November. Each number will consist of about two hundred and fifty pages. Terms : $5 per annum.