Enclosure B in No. 15.

Re Opinions of Mr. Hemming, Q.C., and Lord Justice Lindley.

It may be inferred that it is intended to be implied that for such work, viz., law reporting, an inferior degree of speed in the writer will suffice, if he be only skilful in apprehending the meaning and noting down the substance of what he is attempting to report. No such implication or intimation is intended. On almost anything that one may be engaged in reporting, a very high speed is likely, at least for a few moments, to be required, and no amount of intelligent appreciation of the subject-matter can wholly supply the place of the ability to write at a very rapid rate, however much it will enable one to smooth over and conceal the shortcomings incident to lack of speed. In many cases, as in taking extracts from papers read, some of which you are sure you can never get access to, the slow writer is absolutely lost. The question is what the rapid writer, with full notes before him, can do to improve the form of that which he reports, and so render his record more acceptable.

And now, just as I am writing what I supposed were the last words of this already long paper, comes the July number of an able English law Review, in which I find an article by G. W. Hemming, Q.C., who is intimately connected with the Council of Law Reporting in London—in which article, besides answering some strictures on certain features of the reports that are brought out by the council, he states facts and makes observations that are very interesting. One of the four causes which, he says, operate to render the issuance of their numbers less prompt is "the delay in obtaining the necessary papers and shorthand notes." This incidentally serves to show the constant recourse had to the shorthand-writer in the production of this great series; though, in Lord Lindley's article—which is the one containing the strictures referred to—the Lord Justice says, "In cases of real difficulty the Judges take time to consider their judgments, and then they usually reduce them to writing."

In these two articles the subject of the reporting of cases for the use of the legal profession is discussed—in the one from the standpoint of a great jurist, in the other from that of a barrister, who has, from the inception of this series of reports, about twenty years ago, been the editor of about half of the volumes. The latter, looking at the subject from his editorial and non-judicial standpoint, does not favour so great latitude in condensation and revision as does the distinguished jurist; but he presents, in a few lines, the two sides of the question so well that I think the space occupied in quoting them could hardly be better employed. He says, "No doubt Lord Lindley is quite right in saying that oral judgment will generally admit of improvement by vigorous condensation and careful revision, and he is possibly right in thinking that even written judgments may in some cases admit of compression. Few men were greater masters of polished diction than Lord Westbury; no style could well be more terse and graphic than Vice-Chancellor Bacon's. And yet I have heard each of them say that a mere shorthand note of his judgment might with advantage be pruned and condensed before publication. . . . No (other) modern reporter, I believe, ever used as much freedom in condensing and re-writing judgments as I was in the habit of using when I reported in the Court of Vice-Chancellor Page-Wood. . . . So far as I prudently could I have urged the reporters in this direction; but, without being assured that the Bench desired it, I could not encourage them to introduce more than a very trifling measure of compression and emendation. Even to the small extent which I thought permissible, I have found no great alacrity on the part of the staff to avail themselves of a legitimate liberty in this respect. The safer practice of relying on verbatim notes seems to have attractions too powerful to be overcome. Some of the reporters, I have no doubt, possess both the courage and the literary aptitude to undertake the duty."

Mr. Justice Lindley takes a view of the writing of opinions which may at some time so impress our own Judges as to cause them to introduce in our own Courts the practice prevailing in England of delivering them orally. Should they ever do that, it would necessarily very much widen our field of labour; because the making of our volumes of reports would then depend on the taking-down of those oral opinions stenographically. The nearest approach to such a system of which I am aware as existing in this country is reached in the dictation, to a shorthand reporter, of many of the opinions of our first department Supreme Court general term, by Presiding Justice Noah Davis, who, as one of his associates has informed me, possesses a remarkable facility in expressing himself readily and accurately for that purpose. On the respective merits of written and oral opinions generally Lord Justice Lindley says, "If an oral judgment is taken down, and afterwards carefully revised, it is for all practical purposes as useful as if it had been written beforehand." In these words he recognizes the necessity for that for which I have been contending—namely, intelligent revision by a person competent to make it.

And, while I am not contending that a stenographer could often hope to so successfully revise his report of a Judge's oral opinion as to make it as perfect in style or as clear in meaning as it would be if thoroughly revised by the Judge himself, still some approach to that might be made, and the value of a report thus very much enhanced. For this, unquestionably, a very high degree of ability on the part of the stenographer, independently of mere shorthand ability, would be required. But, holding as I do that to make a first-rate report of anything whatever, except something the most simple, the reporter should know a good deal about the subject that is talked about—that to be a good law stenographer he ought to know at least the general principles of the law, and as much more as he can possibly find time to learn, in order that he may appreciate all the points, technical and other, that arise—this seems to me not to be an unattainable thing. The report of a lawyer's argument would certainly often be worth more to him if it came to him in such shapely form that he would feel compelled to apply to it only a minimum of revision. I have an idea, which may, of course, be very chimerical, that our "profession," as I think we may call it, will never attain its highest dignity and usefulness until, coupled with the ability to write shorthand rapidly and accurately, there shall be also the ability to present in our reports a pretty close approximation to what Lord Justice Lindley contemplates in the words I have last quoted.