

the chancellor deems it wholly unnecessary to say one word respecting himself. When he accepted the office of chancellor of Maryland, he

now under consideration. The New York court of last resort is composed of the Senate aided by and together with the chancellor or the judges. The senators are compensated for their attendance by an allowance of so much for each day's attendance; and the chancellor and judges are paid as judges of the courts of original jurisdiction; but receive nothing in addition for the discharge of their duties in this appellate court.

This ultimate tribunal of New York, if not the very best, is admitted on all hands to be fully equal to any court of last resort in the Union. Its business has never been suffered to accumulate or fall unreasonably behind hand; and the reports of its decisions are received every where as illustrations and guides of the highest respectability. It was organized in 1776; and, on being reviewed, by the convention, called together in 1821, for revising the constitution, it was continued and reestablished without a dissenting voice. (*Debates New York Convention, 1821.*) The senators bring into it a mass of sound common sense by which cases are met upon their merits; the propensity to overmuch technicality is checked; and there is besides, found among the senators a degree of legal science often superior to that of the bench, and always sufficient to keep down the mere *esprit du corps* of the regular judges. The senators come from, and at short intervals return to the people; and hence it has been truly and emphatically called "the court of the people;" and as such its proceedings attract much and general attention; and have necessarily a widely extended publicity which does not always follow, and can rarely be given to the proceedings of a court attended by none but lawyers, and whose decisions are selected and reported for their use only.—(*Debates N. York Conv. 517, 609, 611.*)

Although in cases of family disputes in chancery, to save the feelings of the parties and with their express consent, the matter may be privately heard; (*In the matter of Lord Portsmouth, Coop. Rep. 106.*) yet in all other cases the matters in controversy must be heard in open court; for, publicity in judicial proceedings is of the very greatest importance; "it is one of the best securities for the honest exercise of a judge's duty, that he is to exercise that duty in public." (*Wellesley v. Beaufort, 2 Russell, 9.*) Publicity is also one of the best shields which a skilful and impartial judge can have against the assaults of party, of prejudice, or of intrigue. It is to the enlightened and powerful public opinion to which the judges of Westminster Hall are constantly exposed, and by which they are always held responsible and protected, that their great diligence as well as their luminous and impartial judgments are to be ascribed.—(*Debates Virg. Con. of 1829, page 734.*)

But whatever may be the composition or structure of a court of last resort, it is important, that it should have assigned to it no duties but such as are properly appellate, as regards the *substance* of the case, or the *points* involving the merits which have been controverted and adjudicated upon by the court of original jurisdiction. According to a well regulated course of judicial proceeding the parties to a controversy should have the means, and be allowed an opportunity of bringing before the court of first resort all their allegations and proofs in any way pertinent to the subject in litigation. And, when the case has been so prepared for final decision, the judgment should, as nearly as practicable, be pronounced upon the merits, or upon those *points* on which the parties themselves have relied as involving the merits.

To allow the revising court to reverse the judgment of the tribunal of original jurisdiction, because of any mere technical objection; would be, nine times in ten, to put aside the real merits in dispute for the purpose of correcting a mere matter of form which had either been deemed unworthy of attention in the court below, or which might have been at once amended there had it been noticed in time; or to