PREFACE TO ORIGINAL EDITION.

The volume which is now presented to the public contains all the decisions made by the Hon. Elon Farnsworth while acting as chancellor, which have been preserved. Prior to the year 1836, there was no court of equity distinct and separate from the courts of law. The Ordinance of Congress of 1787, for the government of the territory northwest of the River Ohio, did not establish a distinct and separate tribunal for the exercise of powers usually conferred upon courts of chancery. Neither did it vest in the courts of law any authority to exercise such powers. The provisions relative to the legislative power authorized the governor and judges to adopt such laws of the original States as might be necessary and best suited to the circumstances of the district, which were to be in force unless disapproved of by Congress. Among the earliest acts of the territorial government of Michigan, was one relative to the jurisdiction of the courts, which was passed July, 1805, and declared that the Supreme Court should have original and exclusive jurisdiction in all cases, both in law and equity, where the title of lands was in question, but no suit in equity shall be sustained in any case when adequate remedy could be had at law. The same statute provided that "on trial of cases in equity, oral testimony and the examination of witnesses in open court should be admitted." In 1820 the governor and judges, who were still vested with the legislative power, passed an act directing the mode of proceeding in suits in chancery. By this law the county courts of the several counties were invested with jurisdiction in all cases properly cognizable in a court of chancery, in which plain, adequate and complete remedy could not be had at law, where the title to land was not in question, and when the sum or matter in dispute did not exceed the sum of one thousand dollars; and the Supreme Court had jurisdiction in all cases where the title of lands was in question, and where the sum or matter in dispute exceeded the sum of one thousand dollars. The Supreme Court had also appellate jurisdiction in all cases heard and determined in the county courts.

In 1823, some doubts having arisen as to the powers of the courts, Congress passed an act declaring that "the powers and duties of the

judges of the said territory should be regulated by such laws as are or may be in force therein, and the said judges shall possess a chancery as well as common law jurisdiction."

In 1827, the laws of the territory were revised, and the circuit courts, which had been organized, obtained concurrent equity jurisdiction with the Supreme Court, subject, however, to an appeal thereto, and were invested with the exclusive power of deciding appeals from the county courts. It was provided by the law of 1827, that proceedings in chancery, "when they are not regulated by the statutes of this territory, shall be regulated by the judges thereof, conforming to the rules and proceedings established by courts of chancery in England, so far as the same shall be consistent with the laws and constitution of the United States and the laws of the Territory of Michigan." In 1833 the laws were again revised, but no material alteration was made relative to the mode of proceeding in suits in equity.

By the constitution of the State, adopted in 1835, the judicial power was vested in one Supreme Court and in such other courts as the legislature might from time to time establish. At the first session of the State legislature a separate tribunal was created, which was invested with all the equity powers previously conferred upon the several territorial courts, and in July, 1836, Elon Farnsworth, Esq., of Detroit, was appointed chancellor. Mr. Farnsworth continued to perform the duties of chancellor, with great satisfaction to the public and the members of the bar, until March, 1842, when he was compelled to resign the office on account of his health. During the time Mr. Farnsworth was chancellor, the practice of the court was regulated by a well digested system of rules prepared by him, which are published with the present volume.

In 1838 provision was made by law for the appointment of a reporter of the decisions of the court of chancery, and in February, 1839, E. Burke Harrington, Esq., received the appointment and entered upon the duties of his office. About one-half of the present volume was published under his immediate supervision, in January, 1841. The destruction, by fire, of the printing office, with a portion of the manuscript prepared for the press, suspended the publication for a time, and the repeal of the law soon after effectually put a stop to the work until 1844, when the legislature passed another act requiring the judges of the Supreme Court and chancellor to appoint a reporter of the decisions of these courts. Mr. Harrington received the appointment under the last act, and continued to perform the duties of the office until his decease in August, 1844. The last half of the present volume was then partially in press, and almost wholly prepared by him. The undersigned was appointed to fill the vacancy occasioned by the death of Mr. Harrington, and has superintended the publication from his manuscript since that time.

The decisions of the court are in all cases given as they were delivered in writing at the time, or prepared by the chancellor from his notes. A second volume of the decisions of the court of chancery, commencing with the appointment of Chancellor Manning, is now in press, prepared by the undersigned, and will be published during the ensuing year.

HENRY N. WALKER.

DETROIT, November 30, 1844.