

ness in other States, either under the amendments to the Constitution or the Constitution itself, has been determined, as has also the power of the State to render void all contracts made by the agents of unauthorized foreign corporations within the State. But Mr. McMurtrie, now, for the first time, raises the question of the power of the State to prohibit the individual citizen from making, by his own agent, a contract with a corporation outside the State. This was what Biddle had done. By failing to send his agent to Boston, he had impliedly become a party to a contract of insurance on his mill. The Supreme Court intimated that, had they been compelled to construe the insurance laws of the State in such a way as to result in the fining of the defendant one hundred dollars for this action, such a law would be constitutional.

The act of a foreign corporation in the State, not relating to interstate commerce, cannot be said to be a part of that intercourse between the States which the Constitution preserves inviolate from the interference of State legislation. But it may be well argued that a contract between the agent of a citizen resident in State A and a corporation chartered under the law of State B, both agent and corporation being in State B at the time the contract is made, though the contract relates to land in State A, is intercourse between the States, not because the fulfilment of the contract necessarily implies such intercourse, but because the very making of the contract is itself intercourse. The fact that the agent employed is the United States mail does not alter the case.

BOOK REVIEWS.

THE LAW OF CONTRACTS IN RESTRAINT OF TRADE, WITH SPECIAL REFERENCE TO "TRUSTS." By GEORGE STUART PATTERSON, Ph.B., LL.B. Philadelphia: University of Pennsylvania Press, 1891.

The industrial development, not only of this country, but of others, has been of recent years so largely in the direction of combination or association of those engaged in

the same line of business, that the word "Trusts" has received a new meaning, and is used to apply generally to such combinations or associations, without regard to whether or not their terms are such as to make a technical trust. This tendency has largely been the result of the recognition, by business men, of the evils of excessive competition. Of course, the success of one combination has suggested the formation of others. But, in most instances, the individuals desiring to form the combination have had to be educated up to the idea; some years of hard work, with little or no profit, leading to an appreciation of the saving in expense which they could effect by a close union among themselves, as well as the benefit to be derived from stability of prices. This tendency has presented new questions to both lawyers and legislators. The legislators have inclined to endeavor to strangle the tendency by stringent legislation, which legislation has increased the difficulty of the lawyer in formulating plans to accomplish the objects desired by his clients. Comparatively few cases of such combinations have been before the courts. How the law will finally regard them cannot be said to be settled. Of course they must be considered in view of the established principles of law in analogous cases. This little book by Mr. Patterson reviews the origin, reasons and limits of the rule of law which holds certain "contracts in restraint of trade" to be valid, and others to be void. The ordinary run of decisions on this question do not involve precisely the same issue which is presented for decision in the case of a "Trust." The reasons which induced the contracts which were before the courts, in these cases, are not exactly the same as those which induce the formation of "Trusts." But these cases are plainly the most analogous of the old decisions. Mr. Patterson's review of these cases is, up to date, scientific and the most satisfactory of any known to the writer, and will be helpful to any one who has to consider the problem of modern combinations. The last chapter of Mr. Patterson's book is entitled "Restrictions on Competition and Production." In this chapter he cites most of the decisions on its subject-matter. So far as it goes, the chapter

is satisfactory ; but one reading it, regrets that the limit of space imposed upon the writer prevented his going more fully into the decisions—for instance, such a case as that of *Mogul S. S. Co. v. McGregor* (L. R. 23, Q. B. Div., 528). This chapter is followed by the text of the Act of Congress of July 2, 1890. The reader may perhaps wish that he had been furnished also with the texts of the Acts of Missouri, Michigan, Illinois, Louisiana and Texas, on the same subject.

Mr. Patterson states that the only change made by the passage of the Act of Congress “in the law of contracts in restraint of trade is, that if such a contract is void at common law, and is in the province of the Federal jurisdiction, then it is a misdemeanor to be a party to it, and is punishable as prescribed by the act.” Without finding fault with this construction, it may be noticed that the act begins by declaring that “*Every contract* combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.” What contracts in restraint of trade were illegal at common law, and what were not, are pointed out by Mr. Patterson in the earlier part of his work, and must be presumed to have been known to Congress at the time of the passage of the act. Quære, therefore, whether Congress has, by this act, made illegal every contract in restraint of trade, whether void or valid at common law.

B. H. LOWRY.

THE AMERICAN DIGEST. (Annual, 1891.) Being Volume 5 of the United States Digest. Third Series Annuals. Prepared and Edited by the Editorial Staff of the National Reporter System, St. Paul, Minn., 1891: West Publishing Co.

This volume unquestionably represents the highest stage of development of the mechanics of reporting. In its five thousand closely (but clearly) printed pages it presents a summary statement of all the decisions of the Supreme Court of the United States and of the other Federal courts, of the courts of last resort in all the States and Territories, of the

Court of Claims, of the Supreme Court of the District of Columbia, and of the Intermediate Courts of New York State, Pennsylvania, Ohio, Illinois, Indiana, Missouri and Colorado. When we learn that an addition to this volume contains notes of English and Canadian cases, memoranda of statutes, annotations in legal periodicals, a table of cases, and a list of decisions overruled, criticised, followed, distinguished and otherwise commented upon during the year, we are amazed at the completeness of the system which results in putting into the hands of the profession so much that is valuable within so short a time. But what solemn thoughts this volume suggests to the lawyer who looks at it for other purposes than the investigation of a particular point! From a rough calculation, based upon the table of cases digested, it appears that about 80,000 decisions are represented in this volume. If Lord Coke could exclaim in his day: "God forbid that counsel should know the whole law—or, for the matter of that, the judges either"—what language would his lordship give vent to if this volume of the American Digest could be exhibited to him and he could be informed that it represented the spawn of a single season? But the language of that learned and irascible judge, strong as he might make it on such a provocation, would surely become a thousandfold stronger if he were to examine the conclusions which have been reached in some of these 80,000 cases. If his learning had comprehended all the legitimate development of the law since his day, he would doubtless divide this mass of decisions into three classes: first, cases which involve points already well settled—useless cases; second, cases wrongly decided—worse than useless cases; third, cases which involve a real question and decided in accordance with principle and authority—useful cases. Would that the wheat could be thus separated from the chaff, and the chaff excluded from the American Digest!

Doubtless, if this were the function of the Digest-maker, the West Publishing Company would find some means of accomplishing it. The volume before us shows that they are not to be daunted merely because to the uninitiated the task seems a superhuman one. G. W. P.