

BOOK REVIEWS.

THE FEDERAL POWER OVER COMMERCE. BY WILLIAM DRAPER LEWIS, LL.D., OF THE PHILADELPHIA BAR. University of Pennsylvania Press, Philadelphia, 1892.

The writer of this monograph takes the ground that the extent of the constitutional power of Congress to regulate commerce among the several States can only be determined by an examination of the decisions of the Supreme Court of the United States interpreting the commerce clause of the Constitution; and the book itself is an excellent though compendious review of those decisions, particularly so far as they define the word "commerce," the nature of the Federal power over it, the effect of the commerce clause upon the general legislative power of the States, their right of taxation, and their police power. Each branch of the general subject is considered historically, and the whole is followed by a most convenient index of decisions, in which the cases are classified according to their different subjects.

The commerce clause of the Constitution has perhaps given rise to more litigation than any other, except that defining the judicial power of the Federal Government, and that inhibiting States from passing laws impairing the obligation of contracts. While the general limits of this power may be regarded as conclusively settled, there is still much uncertainty with respect to the authority of the States over commerce not wholly internal, particularly in respect to their police power, and their power to tax the subjects of interstate commerce. Even since this book was published, and during the term which has just closed, several important cases have been decided, which are claimed by some to qualify to a certain extent the principles laid down in prior cases. Thus in *Maine v. Grand Trunk Railway Co.*, 142 U. S., 217, it was held, though by a bare majority of the Court, that a State statute requiring every railroad within the State to pay an annual tax for its franchise, to be determined by the amount of its gross transportation receipts; and further providing that, when ap-

plied to a railroad lying partly within and partly without the State, the tax shall be equal to the proportion of the gross receipts in the State, did not conflict with the Constitution of the United States. In this case Mr. Justice BRADLEY made his last public utterance from the bench in a strong dissent, concurred in by three other Justices, taking the position that the laying of a tax upon the gross receipts of a company, including receipts for interstate and international transportation, was substantially a taxation of the revenues derived from interstate commerce, which had been held in many previous decisions to be unconstitutional; citing *Philadelphia Steamship Co. v. Pennsylvania*, 112 U. S., 326, and several other cases. The majority of the Court, however, was of the opinion that this was an excise tax upon the corporation for the privilege of exercising its franchises within the State, and that the rule of apportioning the charge to the receipts was reasonable, and likely to produce the most satisfactory results both to the State and the corporation taxed. A distinction was drawn, which to the minority of the Court seemed to be unsound, between a levy upon the receipts themselves, and a reference to them simply as a means of ascertaining the value of the privilege conferred.

In the *Horn Silver Mining Co. v. New York*, 143 U. S., 305, it was held, Mr. Justice HARLAN alone dissenting, that a statute of New York imposing a tax upon the corporate franchise or business of every corporation organized under a law of any other State, to be computed by a percentage upon its whole capital stock, was not an unconstitutional interference with interstate commerce, when applied to a manufacturing corporation organized under the laws of Utah, and doing a greater part of its business out of the State of New York, but doing a small part of its business within such State.

The principle involved in the case of *Munn v. Illinois*, 94 U. S., 113, which has given rise to so much controversy, was carefully reconsidered and adhered to in the case of *Budd v. New York*, 143 U. S., 517, although in this case, as in the *Munn* case, there was a dissent by three of the Justices.

In *Ficklen v. The Taxing District*, unreported, a statute of Tennessee, imposing upon brokers a tax measured by the amount of capital invested or used in their business, was held to be proper, although the business done by the broker in question was in the purchase of cotton for customers residing outside of the State. The gist of the decision was, that as the State has the right to tax occupations, where a resident citizen engaged in such business, the fact that the business done chanced to consist wholly or partly in negotiating sales between resident and non-resident merchants, did not necessarily make the tax one upon interstate commerce. The case was distinguished from *Robbins v. Shelby County Taxing District*, 120 U. S., 489, in the fact that the tax in that case was imposed upon drummers and all persons not having a regular licensed house of business in the district, and it was held as against non-resident drummers to be an unlawful interference with interstate commerce.

In the *Lehigh Valley R. R. Co. v. Pennsylvania*, a tax upon receipts for transportation between places in Pennsylvania, over lines partly in Pennsylvania and partly in another State, that is to say, passing out of Pennsylvania into other States, and back again into Pennsylvania in course of transportation, was lawful. In this case the Lehigh Valley Company operated a line from Mauch Chunk to Philadelphia, by the way of a line entering New Jersey at Phillipsburg, and running thence by way of Trenton to Philadelphia. This was held to be internal commerce only, and the fact that a part of a continuous transportation was performed outside of the State did not affect the character of the traffic.

Finally, in the *Interstate Commerce Commission v. B. & O. R. R. Co.*, the Supreme Court entered, for the first time, upon the consideration of the Interstate Commerce law, a statute which is likely to be fruitful of litigation, and held that the practice of issuing a single ticket for the transportation of ten or more persons at a reduced rate from the ordinary passenger fare was not an "unjust discrimination" or "an undue or unreasonable preference,"

within the meaning of Sections 2 and 3 of the Interstate Commerce law, and was, therefore, legal. This practice originated with the issuing of tickets to the managers of theatrical and operatic companies for the transportation of their entire troupes, and has become general throughout the country. The decision was strictly within the line of the construction given to the English traffic acts by the courts of the United Kingdom, and the Court carefully excluded the question of discrimination as applied to the transportation of freight. Curiously enough, this decision is seized upon by a portion of the newspaper press as indicating the hostility of the Court to the Interstate Commerce law, when nothing could be further from this than the language of the opinion.

The difficulties surrounding the interpretation of the commerce clause of the Constitution are apparent, not only from the number of decided cases, and the multiplicity of questions dependent upon this clause, but from the fact that the members of the Court itself have never been, and in the nature of things probably never will be, entirely harmonious in their views. Rarely has an important case, involving the construction of this clause, been decided without a dissent from one or more members of the Court, and the most that can be hoped for is the determination of each question as it arises, and the gradual settlement of principles as they can be extracted from these cases.

The book of Mr. LEWIS contains an accurate statement of these principles so far as they can be considered settled by the adjudications of this tribunal.—H. B. BROWN.

CORPORATIONS IN PENNSYLVANIA. By WALTER MURPHY, author of "PARTNERSHIPS, ETC., IN PENNSYLVANIA." Two volumes. Philadelphia, 1891. Rees Welsh and Company.

In these two volumes Mr. MURPHY presents to the profession a digest of Pennsylvania decisions on the law of corporations, as well by County Courts as by the Supreme Court of the State. The work includes an elaborate index, which is in itself a digest, for it includes under the appro-

priate headings a summary of the matter set forth at greater length in the text. One of the most valuable features of this index is the chronological list of Acts of Assembly from 1713 to 1890, the date of each act serving as a caption of a paragraph of a summarized decision in construction of the statute. In his preface the author expresses the hope that his work may be useful. There is no doubt that this hope will be realized; with Mr. MURPHY'S digest in hand the lawyer will have little difficulty in finding what the courts have said on a given point. The system of references and cross-references is reasonably good, and the division of topics is on the whole satisfactory. What we call "Corporation Law" is as yet a heterogeneous mass, and it would be unfair to criticise the maker of a digest on the ground that his classification is not always logical. There is in this work perhaps too strong a tendency to place implicit reliance in the syllabus of our reported cases as a faithful exponent of the decisions. An examination reveals a few instances in which the opinion of the Court in a digested case does not fully sustain the reporter's syllabus.

On the whole the digest is a good one. It is convenient in size and the general "make-up" of the book is excellent. But the book is only a digest; we cannot assent to the author's statement that it "possesses all the qualities appertaining to a treatise or text-book on the subject of corporations." It contains the materials for a treatise, but then, too, the census tables contain materials for an essay on population.

G. W. P.

LEADING CASES SIMPLIFIED. A COLLECTION OF THE LEADING CASES OF COMMON LAW, LEADING CASES IN EQUITY AND CONSTITUTIONAL LAW, AND LEADING CASES ON CRIMINAL LAW. Three volumes in one. By PROFESSOR JOHN D. LAWSON. Bancroft, Whitney Company, San Francisco, 1892.

This is not a new edition of Professor LAWSON'S book. The three volumes in which the work originally appeared are now bound together and sold as one volume. This renders the whole more convenient to handle and, we presume, effects a reduction in the price. The change in form,

if not in substance, renders it fitting that something should be said concerning the work itself. In his preface to the first volume the author sets forth his objects as follows: "In this little book I have aimed at these results: (1) To give the student a collection of the acknowledged leading cases on the common law." (Subsequently the author has added Equity, Constitutional and Criminal Law.) (2) "To present these in a style which shall arrest his attention and render it possible for him to acquire their principles readily, and fix those principles in his mind unincumbered by unimportant and sometimes unintelligible facts."

Of the last object it may be said that no praise is too high for the many merits—there are few defects—of Prof. LAWSON'S style. Though the cases are presented in as humorous a light as possible, to use the author's own words, "humor has never been indulged in at the expense of truth."

Since the publication of the "Comic Blackstone," the idea that the dry statements of law can be presented to the student coated with the sugar of absurdity, is very prevalent, and Mr. LAWSON'S book is partly a justification for it. He has shown that many cases can be made funny without sacrificing either the statement of the facts or the principles of law. Of course all discussion of the merits and defects of a principle is necessarily eliminated. But his reports also prove that the facts of many cases are invariably dry. It is seldom that the (humorous?) report of any case on constitutional law will raise a smile on the most risible. In those cases which are really funny the humor will be appreciated much more by a lawyer, who thoroughly knows the cases, and therefore requires no effort to grasp the principles, than by a layman, who reads for the purpose of self-improvement. In fact, one may venture to predict that the value of the work is chiefly as an aid to one desiring to review, and fix in his mind, the principles of the law originally learned in the lecture-room, through text-books, or from the-reports. For this purpose, it is well worth reading, not only by the student who desires to prepare for an examination, but by the lawyer who wants to refresh his memory

in the easiest and pleasantest way, of those cases which best illustrate the principles of law.

Prof. LAWSON has published the Six Carpenters Case and other reports in rhyme by the "Apprentice of Lincoln's Inn." This fact alone would render the book well worth owning.

Concerning the author's first object, it may be said that there are two ways in which a student can obtain a knowledge of the principles of law: Through a direct examination of the principles themselves as stated in the text-books, or through a review of the reports of cases which illustrate those principles. A mixture of these two ways is the method which has been adopted by most compilers of "Leading Cases." A case is given, and then the principle, together with its modifications, is discussed. Concerning the merits of the system nothing need here be said. Minds are not all cast in the same mould. To many the notes on Smith's "Leading Cases" have proved a mine of information, to others a hopeless labyrinth of confused knowledge. Prof. LAWSON has adopted a radically different principle in his "Leading Cases."

The reader will not only find the fifty or sixty cases which are ordinarily spoken of as leading, simply because they, or the notes which commentators have written to them, are constantly referred to in the opinions of the courts, but some two hundred and fifty additional and carefully selected cases. In fact, many of the cases reported, especially from the American courts, can hardly be called leading, in the sense that they are widely known by the profession. This, however, does not detract from the merits of the work, which is rather a collection of cases in illustration of the leading principles of law, than simply a collection of acknowledged leading cases. The large number of cases enables the compiler not only to illustrate a principle, but often to show its leading modifications without resorting to notes. Thus, in illustrating the law of contracts we have, under the head of "Consideration," not only the rule that forbearance to sue is a sufficient consideration, shown by the case of *Hockenbery v.*

Meyers,¹ but the modification that there must be a legal cause of action is illustrated by the report of *Palfrey v. Portland R. R. Co.*² In several instances two or three cases illustrating the same rule are given. Thus, under the head of "Contracts by Post," are reported *Adams v. Lindsell*,³ *Taylor v. Merchants' Fire Ins. Co.*,⁴ and *Household Fire Ins. Co. v. Grant*.⁵

Though there is only one note in the report of sixty odd cases on contracts, one who fixes these cases in his mind will have a very fair idea of the subject. The whole affords, we believe, a much clearer view of the law than could possibly be gained from reading elaborate notes to a smaller number of reported cases.

But all branches of the law are not capable of such simple illustration. The cases illustrating the judicial interpretation of the Statute of Frauds, for instance, give one but an inadequate idea of the confusion of thought which has resulted from the attempt to construe what ought to have been made a part of the law of evidence, as a codification of the substantive law of contracts.

In reporting equity cases, Prof. LAWSON seems to have given up the attempt to give, through the reports of decisions, an adequate outline of the law. Thus, in the very commencement, under the head of Uses and Trusts, in the attempted report of *Tyrrel's case*⁶ he says: "The facts need not be given here, for it is sufficient for the student to remember only the important principle it decides. . . . *There cannot be a use upon a use.*" Then follows a note on the Statute of Uses and the doctrine of Trusts. In the same way, it has been found necessary to add a note to almost every equity case in order to give the reader any conception of the law at all. It may be said that the value of the work falls in proportion to the increase in the number of the notes. More cases and less notes would have been advisable.

Dealing with Constitutional law, Prof. LAWSON seems

¹ 34 N. J. L., 346.

³ Barn & Ald., 68r.

⁵ 4 Ex. Div., 216.

² 4 Allen, 55.

⁴ 9 How., 390.

⁶ Dyer, 155 a.

to find the same difficulty of illustrating the law as it exists to-day through concise reports of cases. It may be suggested that one of the principal reasons for this is the fact that in this branch the same care in selection of cases, which, with accuracy, conciseness and clearness of statement, is the chief merit of the rest of the work, has not been displayed. Constitutional law has undergone so many modifications of late years, that many cases, once justly called leading, no longer illustrate the present position of the Court.

From the fact that the report of the case of *New York v. Miln*¹ and the report of the *License Cases*² are both retained, it is evident that the work has not been revised since 1882, when the last volume was published. Such a revision would have eliminated these two cases, as it is extremely doubtful whether the former expresses the law as it exists to-day, and the latter has been expressly overruled.³ The logical arrangement of the subject, however, largely redeems this part of the work from these serious defects.

W. D. L.

A TREATISE ON THE LAWS OF INSURANCE; FIRE, LIFE, ACCIDENT, MARINE; WITH A SELECTION OF LEADING ILLUSTRATIVE CASES, AND AN APPENDIX OF STATUTES AND FORMS. BY GEORGE RICHARDS, OF THE NEW YORK BAR, AND LECTURER ON INSURANCE LAW IN THE SCHOOL OF LAW OF COLUMBIA COLLEGE. New York and Albany: Banks & Brothers, 1892.

This is a book of peculiar interest and importance. It is an admirable work to put into the hands of students, for whose use it is primarily designed. It will also be of service to the profession, as well on account of its clear statement of important principles, as by reason of its satisfactory discussion of the law applicable to standard fire and other policies now in common use. It may, therefore, justly be called an important book, and it is an unusually interesting book, because it represents "the result of an effort to combine the advantages of the two more prominent

¹ 11 Pet., 102.

² 5 How., 504.

³ *Leisy v. Hardin*, 135 U. S., 100.

methods in use for teaching law, commonly known as the text-book and case systems, the comparative merits of which have recently aroused widespread and thoughtful attention." Such is the author's own statement in the opening lines of his exceptionally thoughtful and well-reasoned preface. Mr. RICHARDS contrasts the treatise or text-book system of instruction with the case-book system, characterizing them as follows: "The former method is more synthetic and abstract, the latter more inductive and concrete. The former is more theoretical, and, in a sense, more scientific; the latter, while embracing a narrower range of decisions, is, with respect to the particular adjudications and principles which it includes, more definite, practical and thorough." Believing that each of these methods "possesses points of superiority over the other," Mr. RICHARDS has endeavored in this work to combine the advantages of both systems, with the hope, as we suppose, that as a result of the combination the disadvantages of both will be eliminated. Accordingly, the second part of the book consists of a reprint from the original report of leading cases illustrative of the principles discussed. These cases, between fifty and sixty in number, are carefully selected and are grouped under chapter headings corresponding with those in the first part of the work. When these cases are read in connection with the chapters to which they correspond, the advantages of Mr. RICHARDS' method of combination become evident. The dangers and disadvantages of the text-book system are, to a great extent, avoided, while the greatest objection urged against the case system, that the student is induced "to pin his faith to isolated decisions," is altogether overcome.

On the other hand, the combination method, as exhibited in this book, does not do full justice to the case system. It is impossible, in the nature of things, that the most characteristic advantages of that system should be here exhibited. The reader does not see the law grow before his very eyes as he does when he peruses a larger volume of well-selected cases arranged in chronological order. He cannot, under the combination method any more than un-

der the text-book system, study the *past* of the law in the way in which he is compelled to study its *present*. We have no option as to the way in which we shall keep pace with the present development of legal principles ; we must read such cases as we deem important as fast as they are decided—day after day—year after year. It is, indeed, true that we cannot say with certainty of a given case, “ This decision will be law a century hence ”—while we can assert, without hesitation, of many a case a century old that it is not law to-day. But the accuracy of our judgment respecting a new decision will approach certainty if our legal knowledge has, so to speak, “ grown up with the law ”—if by watching the development and evolution of principles we have become imbued with the genius of the law. By means of the case system we become familiar with the methods by which results are reached as well as with the results themselves. We can not only survey the completed structure, but we can mark the progress of the work and scrutinize the process of fitting stone to stone; and it is to be observed that the stones which the builders have refused possess an educational value as well as those which have been accepted ; so that overruled cases are only less instructive than those which represent the law to-day.

The advocate of the text-book system, and even Mr. RICHARDS himself, might reply to these observations in the language of a very eminent English judge of our own day. In the introduction to his Digest of the Law of Evidence, SIR JAMES FITZJAMES STEPHEN uses the following language :

“ LORD COKE wrote, ‘ It is ever good to rely upon the books at large; for many times *Compendia sunt dispendia*, and *Melius est petere fontes quam sectari rivulos*.’ Mr. SMITH chose this expression as the motto of his ‘ Leading Cases,’ and the sentiment which it embodies has exercised immense influence over our law. It has not, perhaps, been sufficiently observed that when COKE wrote, the ‘ books at large,’ namely the ‘ Year Books’ and a very few more modern reports, contained probably about as much matter as two, or at most three, years of the reports published by

the Council of Law Reporting; and that the *compendia* (such books, say, as Fitzherbert's 'Abridgment') were merely abridgments of the cases in the 'Year Books' classified in the roughest possible manner, and much inferior both in extent and arrangement to such a book as Fisher's 'Digest.' In our own days it appears to me that the true *fontes* are not to be found in reported cases, but in the rules and principles which such cases imply, and that the cases themselves are the *rivuli*, the following of which is a *dispendium*. My attempt in this work has been emphatically *petere fontes*, to reduce an important branch of the law to the form of a connected system of intelligible rules and principles." To this reply may be made that if any such work could be completely successful, Mr. Justice STEPHEN'S Digest would be. But a most thorough test of that truly wonderful book, made within the writer's own observation, has demonstrated that a student who has thoroughly mastered its clear and concise statement of principles is, nevertheless, incapable of applying them successfully to the solution of a case stated, unless he has studied—not merely syllabus-examples, like those which Mr. Justice STEPHEN appends to his text—not merely "illustrative cases," like those which Mr. RICHARDS prints—but the very cases, in their chronological order, from which, as from a *fons splendidior vitro*, Mr. Justice STEPHEN has deduced the principles themselves.

But, after all, even if such a criticism has validity, it amounts to nothing but this—that "Richards on Insurance" is not a perfect book, because it does not possess all the advantages of every conceivable method of teaching law and avoid all the disadvantages of those methods. The fact is, as a most thorough examination has convinced us, that the book is a careful and scholarly presentation of the subject. It is clear and concise, and even the more abstruse questions discussed are treated in such a way that they will be readily understood by the merest tyro. It is to be regretted that the work is not provided with an index. The table of contents, though full, does not take its place, and the value of the treatise as a book of reference is somewhat impaired by the omission.

G. W. P.