

chiefly in connection with the text. Their function is to illustrate the author's statement of principles, and they are not intended in any sense to be used as a basis of study by means of the "case system."

G. W. P.

BOOKS RECEIVED.

[To be Reviewed in February Number.]

THE RAILROADS AND THE COMMERCE CLAUSE. By FRANCIS COPE HARTSHORNE. Philadelphia: University of Pennsylvania Press, 1893.

A TREATISE ON THE LAW OF STREET RAILWAYS. By HENRY J. BOOTH, ESQ. Philadelphia: T. & J. W. Johnson & Co., 1893.

A TREATISE ON FEDERAL PRACTICE IN CIVIL CAUSES. By ROGER FOSTER, ESQ. In two volumes. Boston: The Boston Book Company, 1892.

THE LAW OF COLLATERAL ATTACK ON JUDICIAL PROCEEDINGS. By JOHN M. VANFLEET, ESQ. Chicago: Callaghan & Company, 1892.

THE BEHRING SEA CONTROVERSY. By STEPHEN B. STANTON, PH.D. New York: Albert B. King, Publishers, 1892.

PSYCHOPATHIA SEXUALIS. A Medico-Legal Study by Dr. R. VON KRAFFT-EBING. Translated by CHARLES GILBERT CHRADDOCK, M.D.

COMMENTS ON RECENT DECISIONS.

THE O'NEIL CASE AGAIN.¹

Not the least shocking part of the decision of the Supreme Court of the United States in the case of *O'Neil v. Vermont* is the refusal of the Court to decide whether the punishment inflicted on the defendant was cruel and unusual, basing the refusal on the ground that there were not enough exceptions taken in the trial court, and because enough errors had not been assigned to raise that question. To a man on the way to prison for more than fifty-four years for selling liquor *with* a license, and shipping it into another State, there does not seem to be much consolation in being told that the mistake of his counsel is the reason his appeal for justice has not been heard. It was to save suitors from the consequence of such mistakes that the rules of the Supreme Court pro-

¹See Editorial Notes and Communication of "Sentinel," in September issue (1892) of this periodical.—[ED.]

vide that the Court may, at its option, notice a plain error not assigned or specified, and that this rule was not overlooked is shown by the opinion of Mr. Justice FIELD, dissenting. As to the exceptions, we hope that the time is not far distant when they will not be required, as is the case in England, where an appeal or re-hearing, as they call it, lays open the whole case on its law and facts, for review and correction if wrong, without any exception being required. In Pennsylvania the rule of law is that exceptions to the charge of the judge need not be tendered to him, but that errors may be assigned to any part of it in the Supreme Court. This is sensible and liberal, and it tends to the preservation of liberty.

O'Neil, as was said by Mr. Justice FIELD, was found guilty of criminal offences in Vermont, where he was not present. He was convicted of 307 offences of selling liquor, all on one day, according to the complaint. In Pennsylvania the Supreme Court has decided that there can only be one indictable offence of selling liquor on one day, although it be to different persons, and that there cannot be what is called a second offence on the day on which the first is charged to have been committed. But even if a man could be charged and convicted of two or more offences of the same kind on one day, it is an indispensable requisite that there shall be a separate indictment for each offence. If each separate act of selling liquor should be made a separate count, then, according to the Tweed case, there cannot be cumulative sentences imposed. It is true that on an indictment for a distinct offence, proof of the commission of other offences of a like kind by the defendant may be received, to show the motive, and this in such a serious crime as murder; but this is to show a motive, and not to increase the punishment.

However, this whole business shows the extent to which we are ruled in this country by fanaticism and hypocrisy. In the laudable zeal to get rid of the curse of drunkenness, we are pursuing wrong methods. We are punishing the sober people and pampering the drunkards. Let a man, who has committed a murder, say that he was drunk when he committed it; instantly a lot of self-constituted philanthropists are at his back with oranges and bananas, tears and anathemas on the tavern-keeper (who no doubt would be glad to be rid of such customers at any price), next on the brewer or distiller; and why they stop short of the farmer, who raised the grain-yielding alcohol, is hard to tell. Fanatics clamor for enactments, which are unwise and unreasonable, and hypocritical legislators enact laws which they know are unwise and cannot be enforced. Judges and jurors try, convict and imprison men for doing the very thing they do themselves on Sunday. This is undeniable truth, although it shows little to the credit of public men for honesty, candor and integrity.

But it is sometimes said that the law in liquor cases is exceptional. So it is if consistency or justice is a test. And yet there are other articles of commerce under the bar of intolerant men. Take oleomargarine for instance, and see the injustice done in the crusade against it. A man who bought it for butter and supplied it to his customers at his dining table, was convicted in a criminal court for doing something he did not know he was doing. He was branded as a criminal for being deceived.

We are living in an era of fanaticism, cant and hypocrisy. England passed through it a hundred years ago. We are in the thick of it now, but we are on the turn and are coming out. Meanwhile we are degrading our judges by appointing them to license taverns, to judge of the necessity for places they dare not visit. Let us hope relief may come before they become corrupt. We are lessening popular respect for law by making a monopoly of the liquor business and driving the unfavored mass of the people to lawbreaking and others to blackmailing and perjury. We have in our efforts to decrease saloons, substituted therefor gilded palaces for guzzling rum drinkers, created a horde of illicit dealers, and stamped out the old-fashioned inn or tavern, where men drank as human beings should drink; enough, but not too much. We have caused more drunkenness, especially on Sunday and election day, than ever existed before, and this at the behest of well-intentioned but misinformed zealots.

If this O'Neil case shall prove a theme which will cause men to think, and, thinking, to act, then statesmen will once more hold sway, wise laws be enacted, and sensible decisions made by our judges.

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