

## BOOK REVIEWS.

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PSYCHOPATHIA SEXUALIS, with especial reference to Contrary Sexual Instinct: A Medico-Legal Study. By DR. R. VON KRAFFT-EBING, Professor of Psychiatry and Neurology, University of Vienna. Authorized Translation of the Seventh Enlarged and Revised German Edition. By CHARLES GILBERT CHADDOCK, M.D., Professor of Nervous and Mental Diseases, Marion Sims College of Medicine, St. Louis; Fellow of the Chicago Academy of Medicine, etc. Philadelphia and London: The F. A. Davis Co., Publishers, 1892.

We have read this book with unusual interest, both on account of the eminence of the learned author and the nature of the subject-matter, which, in this country, may be said to be practically *terra incognita* to the great majority of the legal profession. One branch of the subject has been brought prominently before the public in the case of the State of Tennessee *v.* Alice Mitchell, recently tried for murder in Memphis, Tenn. The frequent and atrocious Whitechapel murders have also brought another side of the subject prominently before the English-speaking races; but aside from these cases, which are very imperfectly understood by other than the medical profession, the crimes and the mental states of the nature described in this volume, though probably not so infrequent as one might suppose in this country, have thus far attracted little attention, in fact, practically no attention, at the hands of the ordinary practitioner of law. This book, then, must prove of especially great value in cases of sexual perversion hereafter coming before the courts for investigation.

The purpose of the treatise, as described by the learned author, "is a description of the pathological manifestations of the sexual life, and an attempt to refer them to their underlying conditions.

The work is divided into five parts. Part I treats of the Psychology of the Sexual Life; Part II, Physiology; Part III, General Pathology; Part IV, Special Pathology; and Part V, Pathological Sexuality in its Legal Aspect. It is enriched with numerous illustrative cases, collated from all accessible sources with an industry that is in refreshing contrast with some recent works on legal medicine which might be mentioned. The work of American authors has received such notice as it deserves, and from an author's standpoint nothing seems to have been neglected.

The spirit of the work may be better understood from the following quotations from the preface:

"The importance of the subject for the welfare of society, especially financially, demands that it should be examined scientifically. . . . He who makes the psychopathology of sexual life the object of scientific study sees himself placed on the dark side of human life and misery, in the shadows of which the god-like creations of the poet [describing the psychology of love] become hideous works, and morals and æsthetics seem out of place in 'the image of God.' It is the sad province of medicine, and especially psychiatry, to constantly regard the reverse side of life—human weakness and misery.

“Perhaps in this difficult calling some consolation may be gained and extended to the moralist if it be possible to refer to morbid conditions much that offends ethical and æsthetic feeling. Thus medicine undertakes to save the honor of mankind before the court of morality, and individuals from judges and their fellowmen. The duty and right of medical science in these studies belong to it by reason of the high aim of all human inquiry after truth.”

The translator of this edition is entitled to great credit for having really transferred the work of the author into *good* English—by no means an easy task. In reading the work it seems as if it had originally been written in English.

The typographical execution of the book is excellent, and having read the book entirely through we heartily commend it to all who wish to extend the scope of their knowledge in legal medicine.

MARSHALL D. EWELL, M.D.

*Chicago, Jan. 17, 1893.*

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AMERICAN RAILROAD AND CORPORATION REPORTS. Being a Collection of Current Decisions of the Courts of Last Resort in the United States Pertaining to the Law of Railroads, Private and Municipal Corporations, etc. Edited and Annotated by JOHN LEWIS. Vol. V. Chicago: E. B. Meyers & Co., 1892.

The fourth volume of this valuable publication was reviewed in the August number (1892) of the AMERICAN LAW REGISTER AND REVIEW, and at that time we said of the volume that it was on the whole well worth attentive perusal, and that to “the lawyer with a brief to write it will prove only less useful than to the student who desires to keep abreast of the development of corporation law.” A careful examination of the volume before us enables us to repeat these words of praise. The general make-up of the volume resembles that of its predecessors; and the selection of cases is equally as good. Among them Mr. LEWIS has given Budd *v.* New York, the well-known decision which called forth from Mr. R. C. McMURTRIE’S pen the article which appeared in the January number (1893), of the AMERICAN LAW REGISTER AND REVIEW, entitled, “A New Canon of Constitutional Interpretation.” A peculiar interest attaches to these decisions of the Supreme Court of the United States with respect to which the Court is divided, and Budd *v.* New York is no exception to the rule in view of the dissent of Mr. Justice BREWER, Mr. Justice FIELD, and Mr. Justice BROWN. Mr. LEWIS, indeed, points out that this is not strictly a railroad or corporation case, but he says in a note upon it that it deals “almost wholly with railroad and corporation decisions, and determines questions of vital importance to all railroads and corporations. The business to which the case relates is also one which is largely, if not mostly, in the hands of corporations. We deem this a sufficient justification, if any is needed, for including the case in these reports.”

Among the other cases of interest which the volume contains we note the decision of the Supreme Court of Iowa in Union Building Association *v.* Rockford Insurance Co. Where an insurance policy was issued with a provision that the loss, if any, should be paid to the mortgagee of

the premises in question, and that it should not be of any effect until the premium was paid, it was held that the company could defend on the ground of non-payment of the premium when the assured had sent the policy to the mortgagee without paying the premium, the mortgagee having no notice of the failure to pay. Mr. LEWIS appends to this case an annotation or note which is in substance a digest of recent decisions in the law of fire insurance. Such collections of authorities as this are of use to the profession, but it would be better if editors were to do more independent work in such cases, and not merely avail themselves of the privilege extended to them of making use of the matter contained in the various reporters of the West Publishing Company. This right has been accorded Mr. LEWIS, and he makes the most of it. We have taken the trouble to compare a large number of the cases digested with the abstracts of the same cases as printed in *Finch's Insurance Digest for 1891* (which was also reviewed in the August number), and we find the statements of the case in the two publications to be identical in the great majority of instances. These statements are in effect the syllabi which have appeared in the West Publishing Company's Reporters, and this liberal use of them arouses a suspicion that the editor of the volume before us, as well as the editor of the *Insurance Digest*, has not made an independent examination of every case.

The brief opinion of BLODGET, J., in pronouncing the judgment of the Supreme Court of New Hampshire, in *Waite et al. v. Nashawa Armory Association*, gives occasion to a lengthy note upon the powers of the president of a corporation. This is as useful a collection of authorities as any in the volume, and we commend it to the consideration of our readers. The note to *Demarest v. Flack*, on "Foreign Corporations—Rights by Comity," is also valuable.

The index to the volume is unusually good, containing as it does a complete set of references to both the reported cases and the notes.

G. W. P.

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PENNSYLVANIA COLONIAL CASES; the Administration of Law in Pennsylvania Prior to A. D. 1700, as Shown in the Cases Decided and in the Court Proceedings. By HON. SAMUEL W. PENNYPACKER, LL.D. Philadelphia: Rees, Welsh & Co., 1892.

This volume is the outgrowth of an address delivered by the author in 1891 before the Law Academy of Philadelphia. In the concluding paragraph of the book Judge PENNYPACKER uses this language: "The cases which you have now had the opportunity of reviewing show that the law in that early time was administered in Pennsylvania with a considerable measure of technical skill, and what is of far more importance, that an enlightened spirit of justice and fairness controlled both the findings of juries and the decisions of judges. Women who had been maltreated, servants who had been abused by their masters, and poor creatures endangered by the credulous superstition of the age, appear to have gone into those primitive courts with a faith, justified by the event, that neither prejudice, interest nor fanaticism would be thrown into the

scale against them. Gross crimes did not occur, and ferocious punishments were never inflicted. The blood of a man or woman, whipped through the public streets for difference of opinion, never stained the soil of Pennsylvania. It may well be a source, not of boastfulness, but of pride, that our jurisprudence, from its beginning, justified to a large extent the appreciative language of the Abbé Raynal when he says: 'If despotism, superstition, or war should again plunge Europe into the barbarism from which the arts and philosophy have rescued it, these illuminations of the human mind will flash forth in the New World, and the light will first appear in Philadelphia.' "

When the result of a fair and impartial examination of cases justifies such a statement as that which has been quoted above, it would be superfluous for the reviewer to declare that this work is one not only of great interest, but also of some importance. The author has added to the six or eight cases upon which his address was based as complete a report as circumstances would permit of judicial proceedings from the time of Penn's colonization to the year 1700. These reports, gathered from various sources and exhibiting as they do the every-day life of our forefathers in Pennsylvania, give us glimpses of manners and customs, of the state of public feeling, of the morals of the times, and of various personal characteristics of the people themselves, which are fascinating to the antiquarian and useful to the historian.

From the first case reported—that of Noble *v.* Mann (20th, 4 mo., 1683) down to the last case of Heather, dem. of John Henry Sprogel *v.* The Frankfort Co. (January 13, 1708), there is not one case which will not more than repay the reading. We may mention in particular the Proprietor *v.* Moore (15th, 3 mo., 1685), which is the record of the earliest attempt to impeach an official in Pennsylvania, in the person of NICHOLAS MOORE, the first Chief Justice of the Province. The impeachment came to nothing, and of it Judge PENNYPACKER says: "An examination of contemporary records makes it, I think, quite clear that the accusation was the outcome of the dawning politics of the time, and was one of those events marking a divergence of interest between the proprietor, aided by the council and appointed officers, and the popular party, represented by the assembly."

If the following order made on the 4th day of 5 mo., 1693, by the Quarter Sessions of Philadelphia, were to be enforced to-day there would surely be weeping and mourning in the Seventh Ward, in Duponceau Street, and in the other strongholds of the colored population. The order directed "The constables of Philadelphia or anie other person whatsoever, to have power to take up negroes, male or female, whom they should find gadding abroad on the first dayes of the week, without a tickett from their Mr. or Mrs, or not in their Compy, and to carry them to goale, there to remain that night, & that without meat or drink, & to cause them to be publickly whipt next morning, with 39 lashes well laid on, on their bare backs, for which their sd. Mr. and Mrs. should pay 15d to the whipper att his deliverie of ym to their Mr. and Mrs. & and that the sd order should be confirmed by the Lieut.-Governor and Councill."

The report of the case of Peter and Bridget Cock *v.* John Rambo

(7th, 8 mo., 1685), is complete in all its parts, from the binding over of the prisoner to final judgment. The defendant was indicted for fornication and other misdemeanors, which he was charged to have committed under somewhat peculiar circumstances. The prisoner was convicted, and at the close of the proceedings Peter Cock, one of the prosecutors, "was (for swearing in the open face of the Court "By God") fyned 5 shillings."

Upon page 112 of the book will be found a subsequent development of this same case (also under the title *Bridget Cock v. John Rambo*), which is the record of the first known instance of a trial in Pennsylvania for breach of promise of marriage. This last case also affords positive evidence of the fact "that an ecclesiastical court once actually sat within the limits of this State and gave a judgment which it was endeavored to enforce."

Under the date of 2nd, 4 mo., 1686, we find the first record of the adoption of a set of Rules of Court. Many of them are extremely quaint. We reprint the third rule in full: "That plfs. defts. & all other psons speake directly to the point in question, & yt they put in their pleas in writing (this being a Court of record), & that they forbear reflections & recriminaons either on the Court, Juries, or on one another under penalty of a fine."

On page 141, at the conclusion of the report of the case of the Proprietor *v. Geo. Keith, et al.*, Judge PENNYPACKER makes an interesting suggestion that the Pennsylvania judges are to be credited with the honor of initiating the legal reform which culminated in Fox's Libel Act.

Some of the presentments of the Provincial Grand Jury are curious and interesting. Under date of 2nd, 4 mo., 1686, we find the following: "Wee present Sarah Howell for yt on or neer ye 27th of last month shee sold Rum to an Indian. The wife of Robert Jeffries for at some time within the last six mos., by her owne acknowledgment, she mixed Rum with water & sold ye same to some Indians, & widow Kee for selling Rum to ye Indians. John Straten for concealing ye name of one of yt sold a bottle of Rum to an Indian." A year earlier the grand jury had presented "the highway on the flatt on the other side Schuilkill opposite to the Ferrie house as insuficient for passage." Also "Samll. hersent for not Securing in fetters Bethell Langstaffe when committed to him for robbing Richard Reynolds."

Lack of space forbids that we should make further extracts from this interesting volume. Nothing short of a reprint would do it justice. We take pleasure in commending it to our readers as containing much that is both instructive and entertaining.

G. W. P.

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THE LAW OF MANDAMUS. By S. S. MERRILL, of the St. Louis Bar. Chicago: T. H. Flood & Co., 1892.

This is a work of value. It is the result of an examination of a large number of judicial decisions, which are discussed in a temperate and discriminating manner. The author assures us in his preface that he has

himself carefully examined every decision cited, and that his readers may safely rely on the correctness of the citations. At this day, when so many law books are made with scissors and paste, and when the work of assistants is so largely utilized, it is cheering to meet with such an assurance as this upon the threshold of the volume.

The author defines the writ of mandamus and gives an outline of its history. He discusses the scope of the writ and the general principles governing the issue of it; treats of the discretion of the court in regard to it, and then takes up, one by one, the various uses of the mandamus and examines the principles applicable in each case. The work ends with a chapter devoted to forms in mandamus proceedings, which is preceded by a chapter on "Miscellaneous Principles." It may be remarked in passing that the contents of this last-named chapter might have been with advantage distributed through the book under various specific heads. So much of the chapter as relates to the reciprocal bar of mandamus and suits for damages could have been not inappropriately treated in connection with § 51, which deals with the denial of the writ when other remedies exist. So much of the chapter as discusses the rule that an injunction will not issue against the prosecution of a mandamus might have been treated under § 3. Indeed, Mr. MERRILL has found it necessary to cite the leading case of *Lord Montigue v. Dudman* in support of the same proposition printed at the beginning and at the end of his work. So much of the chapter as deals with the principle that mandamus is not always issued when there is no other remedy might have formed part of Chapter II, while the subject of the statute of limitations might have been relegated to Chapter V, and the subject of *res judicata* to Chapter XIX. Indeed, the only adverse criticism which we have to make of this book is that the author has been apparently overwhelmed by the torrent of miscellaneous decisions, and that, while he has struggled manfully against the flood, and has done much toward confining the unruly element in its proper channels, he has not entirely succeeded in his task; and, in consequence, several streams are left flowing in a single bed when it would have been proper to direct them into different courses.

We here find, however, the whole law of mandamus. Moreover, we find the principles clearly stated and the cases satisfactorily summarized. Doubtful questions are approached in a scientific manner, and upon such a point as the question whether a private party can be the relator to enforce a public right (§ 229), we find an able marshaling of authorities. The same remark can be made with respect to many parts in the work; among them we may mention (§ 242), "Can third parties be subsequently brought in as relator or respondents?" and (§ 167), "Will a mandamus lie to restore to membership in a private corporation when no pecuniary interests are involved?" This last paragraph should be read in connection with § 49, where the cases on the subject are carefully reviewed.

We are convinced, upon the whole, that Mr. MERRILL has done his work carefully and well; and it is doubtless safe to predict that the profession will accord to this volume the welcome which it unquestionably deserves.

G. W. P.

A TREATISE ON THE LAW OF LARCENY AND KINDRED OFFENSES.  
By STEWART RAPALJE. Chicago : The Wait Publishing Company,  
1892.

There are two conceptions which a legal author can have in his mind when writing a text-book for the profession. One, that he should endeavor to discover what has been the development in the past of the particular branch of law of which he treats, showing the cases which have developed the law in what he considers the right direction, but yet condemn, in moderate terms, all cases which he considers wrongly decided. A writer with this conception of a legal treatise seeks to make his work a factor in the development of the law. Its value depends entirely upon the ability of the writer. If his mind is made of the stuff that great jurists' minds are made of, then his work will be a valuable one to the profession, and he will influence the trend of decision and cause courts to correct mistakes. If he is not a jurist, the book is not worth the paper on which it is written. The second conception which a writer can have before him is to place in the hands of the profession a concise statement of the law as he finds it expressed in the decided cases. Where there is a conflict he will give more weight to those of later authority or of superior tribunals. He will not find a place for any criticism of the unjustness or value of the rule of law laid down. What the lawyer is supposed to want is the law as it is; that and that alone will be given. That such books, if well done, are also useful, no one will for a moment question. They are expanded, logically arranged and carefully digested digests. They are to be used as a digest—as a lawyer's tool.

Last month we reviewed a book written by Judge VANFLEET on the "Law of Collateral Attack on Judicial Proceedings." It was a fine example of the first class of text-books. In the above work we have before us an excellent treatise written from the second standpoint. The ideas of the author and the nature of the book appear clearly from the opening sentence of the preface: "The purpose for which this book was written, and which has been kept steadily and rigidly in view in all stages of its preparation, is to furnish to those members of the profession who have to do with criminal cases, either as judges, prosecuting officers or advocates, an accurate and exhaustive presentation, in as concise a form as practicable, of all that has been decided in the reported adjudications of the courts of this country upon the constituent elements, prosecution, defense and punishment of that large class of crimes against property which are committed *lucri causa*." We feel pleasure in saying to the judges and lawyers, for whom this book was written, that the idea expressed in the author's preface has been carefully, accurately and conscientiously carried out in the body of the work. Besides larceny, he has treated exhaustively of burglary and also of embezzlement, together with blackmailing, conspiracy to defraud, robbery and trespasses depriving of property. Mr. RAPALJE has discussed the remedial as well as the substantive side of the law of each of these crimes. The parts of the work which treat of the constituent elements of the crimes are much more valuable and important than those which deal with such subjects as the indictment, the evidence necessary for conviction, and verdict, etc.

One unfamiliar with the principles of the crime of larceny could gain a most exhaustive and accurate knowledge of the present state of the law by reading this work, but it goes without saying that the knowledge of the law of evidence, of proof, of indictments, and criminal procedure generally, is a necessary introduction to reading those portions of the work which deal with circumstantial evidence in the case of larceny, or convictions, or proof of ownership, or instructions to the jury. The author, however, is not writing for the student, but for the lawyer, and it is, undoubtedly, very convenient for one who has a case of larceny on his hands to be able to find, in a convenient form, the particular application of the principles of the laws of criminal procedure to the subject.

Each paragraph commences with a clear statement of the principles; then follow the illustrations, which are, as a rule, carefully selected. The notes are, in their way, excellent. The idea of giving short statements of the most important cases, or the cases which best illustrate the text in the notes, is a very good one, and the author has carried out the plan excellently.

We are sorry to see that heavy black letters are used for the headings of the paragraphs. The practice of heading each paragraph is good when the desire to fill the book with headings does not destroy the logical arrangement of the work, a fault which is too common at the present time, and which we are glad to see Mr. Rapalje avoids. But is the legal profession blind that we should require the headings in ugly black letters in order to enable us to see them?

Mr. Rapalje's index deserves special notice and approval. It is one of the most complete and accurate we have seen. Each subject is indexed under every word with which, by any possibility, it could be supposed to commence. This is as it should always be. The table of contents should set forth the logical arrangement of the work, but the index should be so arranged that any one could find a reference to what he wanted, no matter under what absurd heading he looked for it.

We have criticised the heavy black headings. It is only proper to say that, with this exception, which is a mere matter of taste, the general make-up and typographical work is excellent; the print being clear and legible both in the body of the text and in the notes.

W. D. L.

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THE LAW OF THE CANADIAN CONSTITUTION. By W. H. P. CLEMENT, B.A., LL.B. Toronto: The Carswell Co., Ltd., 1892.

This work is a fair presentation of the law of the Canadian Constitution with reference to the position of Canada as a colony of the empire, and to its self-government under the federal scheme of the British North American Act.

The work is a strange contrast to a similar work on our own Constitution. The dignity, the enthusiasm, which seems to inspire all writers on American constitutional law is here wanting. One realizes, as he reads, how little the British North American Act has of the spell which surrounds the word "Constitution." And little wonder. The act was

the act of a parliament whose members the Canadians never elected. It was the gift of what, in some senses, was a foreign people, and not, as with us, the act of the people themselves in the most critical period of their history. How different sound the flippant opening sentences of Mr. CLEMENT'S work from the grand preamble of our Constitution. He says: "By virtue of a certain act passed by the Parliament of the United Kingdom, and Her Majesty's proclamation pursuant thereto, the Dominion of Canada became 'a new thing under the sun' on the first day of July, 1867."

A careful reading of the book, however, gives one a very good idea of the skeleton of the government of our neighbors over the border. All who care for the comparative study of constitutional governments would do well to read it carefully. The publication of the text of the British North American Act, with notes, will also be of great use to any one who cares to study more minutely the government of Canada.

We will recite one or two opinions expressed in the opening chapters to illustrate the general position of the author on disputed questions of political science. He thinks that the Constitution of the United Kingdom is similar in principles to that of the United States; or, in other words, that they both are federal governments, the difference being one of degree rather than of kind—the United States having many federal questions and the British Empire few which affect the mother country and all the colonies. He considers the real difference between the government of the United States and that of the British Empire to be that, while here we have the idea that the executive and legislative functions of government should be distinct, in England and in Canada they have the parliamentary principle; that is to say, that the executive should be the creation of, and directly responsible to, the legislature. Mr. CLEMENT has not the slightest hesitation, as he tells us, in saying that he prefers "the system of cabinet government which obtains in England." His idea of the American system of constitutional government as opposed to a cabinet ministry, has been obtained evidently from Prof. WILSON'S entertaining little work on congressional government. Prof. WILSON'S book is most brilliant, but can hardly be considered a philosophical discussion of the subject with which he deals. It is a pity that foreigners should take their idea of American politics from Mr. SHAPLEY'S "Solid for Mulhooly," and of the workings of congressional government from Prof. WILSON. Prof. WILSON has shown the evils which arise from the complete separation of executive and legislative functions, as we have it in America. He has a practical knowledge, gained by close observation, of the evils of our system. He prefers the cabinet system, of which he has no knowledge. We doubt very much, however, whether, if Prof. WILSON had studied the actual working of parliamentary governments as closely as he has our own, he would come to the conclusion that parliamentary government is apt to produce better results. The principal trouble with the parliamentary system is the large majority required by the government to carry on the work of constructive legislation. Mr. GLADSTONE has to-day a majority of forty, yet there is a serious doubt of his ability to carry any legislation. In Congress, with sensible

rules, a majority of ten is a working majority. Mr. CLEMENT shows that he has a knowledge of the workings of a parliamentary system, but his knowledge of a congressional system is simply a knowledge of its evils as brought out by Prof. WILSON. He condemns the theory of checks and balances of the legislative on the executive department as creating friction between them when harmony would be conducive of the best results. But here is the whole essence of the matter.

The separation of legislative from executive, the complete independence of the president of the United States except on the will of the people to whom alone he is responsible, and on whom alone he depends for his office, is no theory without substance, as is the independent position of the Queen in the British Constitution. It is a fact with all its attendant evils, and also with its attendant benefits. It sometimes produces great friction, as in the case of President JACKSON and of President JOHNSON. The legislature is not always the strongest. A president, disputing with Congress, may sometimes have the sentiment of the people back of him.

It is the assumption that the legislature always represents the people, which to us is the fallacy which underlies the assumption that a cabinet system of government must be the best. There are times, too, in a popular government when legislatures make poor leaders. The American idea of separation has stood the test of civil war. As the result of the division of legislative and executive functions, the power of President LINCOLN was almost absolute. No fear of adverse majorities in Congress hampered him. As a system of administrative law, our system worked well in a dire emergency. In other words, our position as opposed to that of our author's and Prof. WILSON'S is: That there are advantages in a government conducted by one man, and there are advantages in a government conducted by a legislature. In the United States, by rendering the president independent of the legislature, and yet making him an integral part of the legislature, we have combined many of the advantages with few of the defects of either system. The defects we have are defects, as Prof. WILSON and Mr. CLEMENT have pointed out, which result from the friction of the executive with Congress. Yet a comparison of the merits and defects of the two systems is, in a sense, useless. The Englishman or the Canadian is not going to adopt the American system, neither is the American going to sacrifice the benefits of the independent position of the president for the benefits of a cabinet system. Prof. WILSON, in America, and Mr. CLEMENT, in Canada, now that the former has pointed out the defects in our system, will confer a great favor on their respective people if they now turn their attention to improving the systems which already exist. Show how cabinet government and committee government can be each improved, so as to be more efficient engines for constructive legislation.

W. D. L.

THE ROMAN LAW OF TESTAMENTS, CODICILS AND GIFTS IN THE EVENT OF DEATH. By MOSES A. DROPSIE. Philadelphia: T. & J. W. Johnson & Co., 1892.

So much of the civil law has been incorporated into our law of wills that a volume such as this is not only of interest to the student, but of value to the practitioner. However familiar one may be with the general proposition that the common law has in this respect been influenced by the Roman system, one cannot fail to be surprised when, through an examination of such work as this, he becomes acquainted with the details of the resemblance, and becomes familiar with the extent of the influence.

In speaking of the law of "wills," we have, from force of habit, disregarded the point which Mr. DROPSIE makes so clearly in his introduction, to the effect that the proper term for the "embodiment of the last will in a legal manner" is the term "*testament*." "By the Roman law," says Mr. DROPSIE, on page 11, "if a testament should lack some legal form, the prætor, in some cases, will sustain it as an *ultima voluntas* (last will), by granting the administration of the estate to the heir named in the instrument, who must be guided by the provisions of the instrument—somewhat akin to the administration *cum testamento annexo*. And in other cases, when the writing lacked the requisite essentials for a testament, it might stand as a codicil. The distinction between will and testament was observed in the fourteenth and fifteenth centuries, as will appear by a collection of testaments gathered from the Court of Probate, London." The author then gives us an interesting list of testamentary dispositions of property, in each of which the instrument begins with some such expression as the following: "I do make and ordeyne my present *testament* of my last will in this manner."

Passing from the introduction to the body of the work itself, it appears that the general arrangement of the text is based upon GLÜCK'S treatise upon the Pandects. The first volume of this great work appeared in 1797, and has been continued by eminent writers to the present day—now numbering about seventy volumes, and still far from completion.

The arrangement of Mr. DROPSIE'S book involves a division of the entire subject into some sixty-four chapters, which, however, are in many instances so short that they scarcely deserve any other name than that of "section" or "paragraph." Thus, Chapter LIX contains only about a dozen lines, and is yet not the shortest in the work.

The earlier chapters treat of testaments, their subject and character. Then "testamentability" is discussed. Chapter XX deals with the form of testaments, external and internal, and the different sorts of testaments arising therefrom; and of regular, irregular, public and private testaments. Then various subjects are treated in more or less logical order, and the work concludes with a treatise upon the origin, history and nature of codicils, and with a similar treatise upon gifts *mortis causa*. The reader finds himself longing for a better classification of the subject, and he cannot escape from the impression that if the chapters had been shuffled and allowed to arrange themselves in chance order, little would have been lost as far as the orderly development of the subject-matter is

concerned. Within the chapters, however, everything is clear, and the treatment of the subject-matter is satisfactory. The discussion of the subject of codicils is particularly interesting. "Codicils were certainly not in use before the reign of AUGUSTUS; for LUCIUS LENTULUS, who originated *fideicommiss*, was the first to introduce codicils, when, at the point of death, in Africa, he wrote several codicils which were confirmed by his testament, and in these he requested AUGUSTUS, by a *fideicommiss*, to do something for him. The Emperor complied with the request, and many other persons followed his example, executed *fideicommissa* committed to them, and the daughter of LENTULUS paid legacies which could not have been legally claimed from her. It is said that thereupon AUGUSTUS, having convened certain jurists, among them TREBATIUS, who at that time enjoyed the highest reputation, and asked them whether codicils could be sanctioned, and whether they were not repugnant to the principles of law, but TREBATIUS persuaded AUGUSTUS to admit them, and said that they were most convenient and necessary to citizens, on account of the great and long journeys which the aged made, upon which one who could not make a testament might, however, be able to make a codicil. And subsequently, LABEO having made codicils, no one longer doubted the perfect validity of codicils." The distinction between testaments and codicils is clearly drawn, and there is a discussion of the rule that "in codicils an inheritance can neither be given nor taken away."

With respect to *donationes mortis causa*, the treatment is so brief as to be merely an outline. The striking definition of such a gift, taken from the institutes, is given as follows: "A gift in the event of death is where the donor would rather have the thing himself than the donee should have it, and that the latter should rather have it than his own heir."

After a careful examination we are inclined to think that the author will be gratified in respect of the wish expressed in his "foreword," that the book will prove a useful addition to English legal literature.

G. W. P.