COMMENTARIES ON MODERN EQUITY JURISPRUDENCE AS DETERMINED BY THE COURTS AND STATUTES OF ENGLAND AND THE UNITED STATES. By CHARLES FISK BEACH, JR. Two Vols. New York: Baker, Voorhis & Co., 1892.

NEGLIGENCE OF IMPOSED DUTIES, CARRIERS OF PASSENGERS. By CHARLES D. RAY, LL.D. Rochester, N. Y.: The Lawyers' Co-Operative Publishing Co., 1893.

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

BOOK REVIEWS.

A TREATISE ON THE ACTION OF EJECTMENT AND CONCURRENT REMEDIES FOR THE RECOVERY OF THE POSSESSION OF REAL PROPERTY. By MARTIN L. NEWELL. Chicago: Callaghan & Company, 1892.

We have never had a more difficult work to review than Mr. NEWELL'S. The preface gave us little idea of the plan of the work, or the conception of the author, and a perusal of the text, as far as our power of endurance lay, did not add greatly to our enlightenment. The work seems to suffer from the vice of many legal text-books, that is, trying under a single title to treat of all legal subjects. Thus, Chapter II is a short treatise on "Evidence," more or less confused, probably from the fact that the author's mind during its preparation was fixed on "Ejectment" and not on "Evidence." A great deal of this chapter, even on the conception that something should be said about "Evidence" in every legal work, no matter on what subject, could have been omitted. As, for instance, remarks on the subject of pedigree, on entries in Bibles, and matters of pedigree generally, and a hundred other headings which we might mention. Mr. NEWELL commences his work with a short history of the "Action of Ejectment," taken largely from BLACKSTONE, ADAMS, and the author of "Walker's American Law."

An examination of Chapter II will give us an idea of the author's general method of treatment, if method it can be called. The first section deals with, "When Ejectment is the Proper Remedy." The general statement is made that an ejectment will only lie for corporeal hereditaments. One would have thought, since almost every known legal principle is more or less explained somewhere in the book, that a statement of what are and what are not corporeal hereditaments would follow. What actually does happen, however, is a list of cases where it has been held that the action of ejectment is a proper remedy. The next few paragraphs deal with the question whether an action for ejectment will lie for accretions. Fur-

ther on, however, in Section 14, we find that, without notice, we are reading, not about the kind of property for which ejectment will lie, but what persons can bring ejectment. Thus, Section 16 commences with the statement that "the assignee of widow's dower cannot maintain an ejectment." At Sections 17 and 18 we return again to the discussion of such things as fisheries and fixtures. On page 33 are two paragraphs which illustrate the confusion between the property for which ejectment can be brought and the persons who can bring the action. Thus, Section 25 begins, "For an Island in a River," and Section 24, "Ejectment Lies in Favor of an Infant for the Recovery of Lands Conveyed During Minority." The same confusion is observed in that part of the chapter which deals with the cases in which ejectment will not lie. Every now and then, as on page 50, a report of a case, not on a subject of any special importance, is inserted in full, including the briefs of counsel. At the end of the chapter there is a list of the statutory provisions of the different States. Being collected together in alphabetical order, instead of being referred to in notes under the proper sections, they serve to confuse what little knowledge is gained in reading the chapter. The shortness of the paragraphs, the number of black headings, and the fact that important principles of law and unimportant statements are all placed in the same kind of type, give an utter want of perspective and render it practically impossible for one turning over the pages to find any principles or questions of law for which he is in search. For instance, on page 23 are the following headings: "Section 2. It Lies for Accretions. Section 3. Alluvion—the Term Defined by Mr. Justice SWAYNE. Section 4, By BLACKSTONE. Section 5, By the Code Napoleon." Now, what person picking up such a work would understand that accretions and alluvion were the same things, or would know whether the words "By BLACKSTONE," heading Section 4, and "By the Code Napoleon," heading Section 5, meant to discuss a principle previously stated, the question of ejectment for accretions, or some new subject? Since the work is evidently to be used as a digest, it not being supposed that any one would have the courage to read it as a book, the multiplication of headings and confusion between important and unimportant subjects, placing them all on a level, becomes a great fault, because it renders the work largely useless for the only conceivable purpose for which it could be consulted. In fact, we have taken the trouble to turn to the title of "Ejectment" in Brightley's Digest of Pennsylvania Cases, comparing the rapidity with which a question could be answered by reading the synopsis of cases in the Digest, and by looking for the question in Mr. NEWELL'S work. We found that the Digest was the more convenient.

It is not pleasant thus to condemn a work which has evidently cost the author, as its size proves, a great deal of labor; but legal writers should remember that the collection of material, however exhaustive and accurate, is of little use to the profession unless it is carefully digested by the writer and logically arranged and placed in a concise form. A work which is essentially one of scissors and paste is not redeemed by the fact that a great many snips have been given and a great deal of paste has been used, and a very great number of printed pages added to our legal

literature. We doubt very much whether the general practitioner will find that a work on a subject of practice or remedial law, which is not confined to a discussion of his own State statutes and decisions, but is rather an attempt to digest all the statutes and decisions in the different States of the Union, can ever be of great use. Take, for instance, the lawyer of a particular State. So far as cases on ejectment in other States illustrate general principles of the action applicable to ejectment in his own State they are useful to him, but concerning the statutes and particular decisions of other States, for our part we do not believe that he desires to confuse and burden his mind with them.

W. D. L.

UNITED STATES COURTS OF APPEALS REPORTS. Vol. IV. Cases Adjudged in the United States Circuit Court of Appeals for the Eighth Circuit for October Term, 1891. SAMUEL A. BLATCHFORD, Reporter. New York and Albany: Banks & Brothers, Law Publishers, 1893.

UNITED STATES CIRCUIT COURTS OF APPEALS REPORTS, containing the Cases Determined in all the Circuits from the Organization of the Courts. Fully reported with numerous Annotations, by Members of the Editorial Staff of the NATIONAL REPORTER SYSTEM. Volume I. St. Paul: West Publishing Co., 1892.

A COMPARISON.

Some time since we received from the West Publishing Co., the firm whose energy and enterprise has given so many reports to the profession, the first volume of the United States Circuit Courts of Appeal Reports. In order that we might compare the same for the benefit of our readers with the official edition, published by Banks & Brothers, we have waited until the receipt of the first volume of Mr. BLATCHFORD'S reports. In the first place we want to say that, so far as we can judge, the work of reporting, both in the official edition and in that of the West Publishing Co., has been excellently done, though the fact that the official reports are the work of one man gives to these reports a unity of system which, perhaps, is necessarily lacking in those of the West Publishing Co. A comparison, therefore, must be one of the general make-up rather than one which deals with the merits of the reports as reports.

As the difference in the titles indicates, each volume of the official edition contains all the cases reported in a single circuit; as, for instance, the volume above contains cases in the Eighth Circuit, and in the Eighth Circuit only. Volume IV, which in the advance reports was devoted to the Eighth Circuit, is the first one completed. The West Publishing Co.'s reports, on the other hand, are cases published in the order of publication in the advance reports, each volume containing cases from all the Circuits. The general make-up of the official edition is best explained by saying that it is in every respect similar to the official reports of the United States Supreme Court.

The type used in the West Publishing Co.'s reports is smaller and not

so heavily leaded. This is a disadvantage to the eye, but it enables about twice as much matter to appear in the 704 pages as in the 689 pages of the official reports. The West Publishing Co. state that their reports contain numerous annotations. The notes can hardly be said to be very numerous, but where a note is appended to a case it will be found of considerable value. The official reports contain something which all reports not of those of courts of last resort should contain, and that is a list of the cases in the volume, and in the subsequent volume covering the Circuit, which have been reviewed, or which it has been sought to have reviewed, by the Supreme Court of the United States, and a short statement of what was done with the case in that court, and a reference to the page and volume of the Supreme Court reports on which the case can be found. There is also a table of cases in which petitions for a rehearing have been filed, and the disposition made of the same by the Court. The syllabi are somewhat more exhaustive and full in the official reports than those of the West Publishing Co. In those cases in which we have compared and examined the statement of the case and the extracts from the argument of counsel the amount of matter has been about the same in both reports. This was rather a surprise to us, as we had understood that the statement of the case, etc., was somewhat fuller in the official reports. We presume, however, that the West Publishing Co. has seen the mistake which it makes in the *Federal Reporter* in cutting the statement and almost invariably omitting the argument of counsel. The official reports contain a table of statutes cited in the opinion. As the syllabi are transferred to the index, and the index of the official reports also contains cases followed and applied, cases overruled, besides an elaborate index of the rules of court, the index is much more elaborate than in the volume of the West Publishing Co. Both reports contain the rules of court. The rules in the official reports, however, are not annotated. The official edition contains the minutes of the court in the proceedings at its organization, and what makes the volume complete, cases not otherwise reported, and a list of cases dismissed under Rules 16, 20 and 22.

The Bar in the United States is very fortunate in having the privilege of choosing between two such excellent works. Mr. BLATCHFORD deserves all praise for the great care which has been displayed in the preparation of his reports, and the time which has evidently been spent in making the volume as complete as possible. We cannot close this notice without at the same time calling attention to the energy of the West Publishing Co., which has placed in the hands of the profession such a complete system of reports, and to whose stimulating competition we owe the very marked improvement which has taken place in nearly all official reporting. W. D. L.

THE PRINCIPLES OF THE AMERICAN LAW OF CONTRACTS AT LAW AND IN EQUITY. By JOHN D. LAWSON, D.C.L., LL.D. St. Louis: The F. H. Thomas Law Book Co., 1893.

The purpose of Dr. LAWSON'S book is to write a distinctively American work on the principles of contracts, with a view to the necessity of

students in law schools and of lawyers who desire in a short time to refresh their memory on the principles which govern the legal consequences of agreements between man and man. Dr. LAWSON tells us that the works of HILLIARD, PARSONS, STORY and WHARTON are in no sense treatises on the principles of contracts, but rather digests. The works of ADDISON, ANSON, LEAKE and POLLOCK, of England, possess a radical defect in that they treat of the law of England and not of the United States. Dr. LAWSON seems to have the greatest admiration for Professor ANSON'S treatise, acknowledging that had it been the work of an American jurist, and devoted to American instead of English law, there would have been no necessity for his own work.

The work is divided into five parts, which treat respectively of the formation of the contract, the operation of the contract, the interpretation of the contract, the discharge of the contract, and the remedies upon the contract. All our law which may be said to centre around the principles which should govern the rights arising out of an agreement between man and man being treated in 542 pages, the work is necessarily elementary in character. Short and concise statements of the law as it exists to-day, followed by apt illustrations of its application, principally taken from actual cases decided in this country, are the features of the work. The division is logical; the notes are clear. In fact, what Dr. LAWSON has attempted to do he has done thoroughly and well. All his works appeal to the same class of persons; those who desire in a short time to acquire a knowledge of the principles of law. His work is not a digest on the one hand, or a critical treatise on the other. It is plain statement, not of cases, but of principles, and where there has been a conflict the varying principles are stated without any discussion or comment as to the correctness of any particular view. Thus, on page 99, in treating of the Statute of Frauds, he states the rule that in England the seventeenth section, like the fourth, prevents a contract not in writing from being proved, but does not make it void; and the American rule that contracts under the seventeenth section not in writing are absolutely void, without entering into any discussion or expressing any individual opinion as to whether the Statute of Frauds, as a rule, should be considered a law relating to evidence or to the substance of contracts. And on page 103 he states, without comment, the rule in England that the consideration must move from the plaintiff, and that a third party has no right to sue upon a contract, and the conflicting rule in this country that if one person for a valid consideration makes a parole promise to another for the benefit of a third person, the third person may maintain an action on the promise. On page 35, in speaking of the revocation of the acceptance of an offer, there is a paragraph which is not entirely clear. Dr. LAWSON says: "An acceptance may be revoked by a communication to that effect before the acceptance is received, but not after," citing the cases of Potter *v.* Sanders, 6 Hare, 1; Com. Ins. Co. *v.* Hallock, 27 N. J. (L), 645; 72 Am. Dec., 380. Then he adds: "In Scotland it has been held that if notice of the retraction of an acceptance is received before or simultaneously with the receipt of the notice of acceptance, the contract is not binding." Thus, the law of Scotland seems to agree with the general statement made in the first sentence. Then we read: "But the

American and English rule is that the contract is complete when the letter or telegram of acceptance is despatched, which cannot be affected by any subsequent retraction of its acceptance though received by the offerer before the acceptance is in his hands." Thus it may be that Dr. LAWSON considered the American and English rule as different from the rule as stated in the first sentence of the paragraph, and from the rule in Scotland. The citation for the last statement is Tiedeman Sales, Section 42. As a matter of fact, we do not know of any case which has involved the point, and we cannot believe that any American or English court will hold that if A accepts B's offer by letter and subsequently telegraphs a revocation of the acceptance, and B receives the revocation before he receives the letter of acceptance, that there is a contract between A and B.

Dr. LAWSON, in treating of implied contracts, very properly separates contracts whose existence is implied from the evidence of acts rather than the evidence of parole agreements, and contracts created by law against the will of the parties, which are, properly speaking, not contracts at all, but which are rights and liabilities similar to the right and liabilities arising out of contracts, which the law creates as the penalty for certain acts. Remembering our own experience, we can only hope that for the benefit of future students these contracts created by law, which are not contracts, will be banished from treatises on contracts, or tucked away in a part by themselves.

On the whole, nothing but praise should be accorded to the author for the admirable manner in which he has done the work he has set himself. The profession has long needed a work on contracts of this elementary character. But the very simplicity and concise nature of the statements of law, which render the work such easy reading and so valuable to one who, having a knowledge of those principles, requires to read up for an examination or any other special purpose, render it impossible, we believe, for him to obtain from such a work a knowledge of the law which will stick in his memory. Personal experience and observation has brought us firmly to the conviction that the only method by which the principles of the law can be firmly fixed in the mind and rendered so as to be readily applied to new cases, is to look at the study from the standpoint of its historical development. This much has been said not to detract in the least from the merits of the book, which are great, or from its usefulness to the student or the lawyer, but to protest against the idea that this usefulness springs from the fact that the student can easily and rapidly acquire a useful working knowledge from such a work, and to point out that its usefulness lies in that it is a work which can be used for the purposes of review after the principles of law have been acquired under a totally different system. If the object of teaching is to place in the student's head in the least possible time a fair knowledge of the subject, so that an examination may be passed, then the exclusive use of such text-books can be commended; but if the object of teaching is to improve the student's capacity to acquire further knowledge, and to render such knowledge as is given permanent, then such text-books as the one before us can be used only to round out a more serious and critical study.

W. D. L.

A PRACTICAL TREATISE ON THE LAW OF CHATTEL MORTGAGES AS ADMINISTERED BY THE COURTS OF THE UNITED STATES. By J. E. COBBEY. Two volumes. St. Paul, Minn.: West Publishing Company, 1893.

This is in substance a digest of statutes and decisions upon the law governing the mortgaging of personal property. Upon his title page the author states that the work is "complete and exhaustive," and after an examination we see no reason to question his statement. If, indeed, by the term "complete" Mr. COBBEY means to imply that his treatise has all the features and characteristics of a scientific monograph upon the branch of law in question, then we must differ from him. The work is not a scientific monograph or a scholarly text-book, but it is, as just stated, a *digest*, and as a digest it is substantially complete.

The object which the author seems to have kept before him is to present to the profession a comprehensive statement of what the law is, to-day: *why* the law is what it is, and *how* it grew to its present proportions, are subordinate considerations. Accordingly, we find him saying in his preface: "I have quoted more largely from the later decisions and given more weight to them, other things being equal." He thus justifies his use of the term "practical" as descriptive of his book. To it the lawyer may turn with the confidence that he will find a case or a statute which will throw some light upon the point under investigation. When he opens the book he will find a clearly-printed page, with foot-notes, set forth in type of sufficient size to be readily legible, and as he turns the pages he will discover that a method of division and arrangement has been adopted which may be said, in general, to facilitate reference to the various departments of the subject. He will mark one peculiarity, which doubtless has some good reason for existing, although no such reason suggests itself to the reviewer, and that is the fact that the numerals in the body of the text which refer the reader to the foot-notes, instead of beginning with the numeral "one" at the top of each page, progress in a continuous series from the beginning to the end of each chapter, so that the last foot-note to Chapter XXV is numbered 404; to Chapter XII, 229, etc.

But the work is colorless. It would be hard to imagine that one could persevere in reading the book from cover to cover, and if he did so, it is quite certain that he would carry away no permanent impression of the state of the law. Of course, it may be said to be unfair to criticise the author for not doing more than he intended to do, and, moreover, the reviewer is aware that there is a large demand at the American bar for "practical treatises" or digests of this description. But the reviewer would not be performing his whole duty if he were to fail to remind the author that there is a higher and a better kind of treatise known to the law than that kind which is here exemplified, and that a writer who deliberately sets out to prepare a practical treatise in the technical sense of that word must be content to forego all claim to a place in the ranks of that noble army of scientific investigators who really help on the development of our jurisprudence. He must even relinquish all claim to be known as the "author of a book."

But if "practical" treatises must exist, let us have such treatises as Mr. COBBEY'S. This is no scissors-and-paste work. It is the result of a careful collation of statutory provisions and judicial decisions from all the States in the Union and from England. It is true that the cases have not been examined critically, except with respect to points on which there is an open and notorious conflict; but the substance of the decision is in each case clearly and accurately stated. In short, the entire work gives evidence of the industry, care and patience with which the author has accomplished his task.

G. W. P.

MILITARY GOVERNMENT AND MARTIAL LAW. By WILLIAM E. BIRKHIMER, LL.B., First Lieutenant and Adjutant Third United States Artillery. Washington, D.C.: James J. Chapman, 1892.

This is one of the most delightful works which we have received. Unlike many others which it has been our duty to review, it is not the result of the laborious compilation of material by one who wrote as he collected his data, but the natural overflow of a mind filled with and interested in his subject. The style is, therefore, natural and easy, and the illustrations, while full and accurate, do not obtrude themselves upon the reader, nor are they brought in to show the number of authorities which the author has consulted. Lieutenant BIRKHIMER, besides evincing a minute knowledge of military history of our own and foreign States, shows himself to be a good constitutional lawyer and a close student of political science; a combination which renders him peculiarly fitted to treat of the subject with which he deals. The first part of his work treats of military government, or the exercise of government in enemy's territory. The power to declare war, the right to establish martial government, the temporary allegiance of the inhabitants of the conquered territory, and the rights of the conqueror and governed are treated in logical order, and the reader passes easily and naturally from one chapter to another. The keynote of this part of the work is in the author's opinion that when the government of a country has been overcome and driven out the inhabitants owe temporary allegiance, at least, to the government established by the conqueror, and that the people should not be encouraged to rise *en masse* against the conqueror, and that individual guerilla warfare of any kind, rendering it necessary for the military commander of the conquering army to use harsh and repressive measures against the inhabitants, should be discountenanced. This view coincides with the one taken by Dr. BLUNTSCHLI, in his "Laws of War," and by most of the larger continental powers, and combated by Mr. HALL in his "International Law," and in fact by nearly all English writers, by the English government, and smaller continental States.

The second part of the work treats of martial law, or a military government of the people of the State which creates the government. After showing the distinction between military and martial law, and the theory of martial law under English jurisprudence and in the United States, as also the necessity justifying martial law, we come to the Federal authority