

A TREATISE ON THE LAW OF PERSONAL PROPERTY. By HORACE E. SMITH, LL.D. Chicago: T. H. Flood & Co., 1893.

CODE PRACTICE IN PERSONAL ACTIONS. AN ELEMENTARY TREATISE UPON THE PRACTICE IN A CIVIL ACTION, AS GOVERNED BY THE PROVISIONS OF THE NEW YORK CODE OF CIVIL PROCEDURE. By JAMES L. BISHOP. New York: Baker, Voorhis & Co., 1893.

COMPANY LAW. COMMENTARIES ON THE LAW OF PUBLIC CORPORATIONS AND POLITICAL OR GOVERNMENTAL CORPORATIONS OF EVERY CLASS. By CHARLES FISK BEACH, JR. Two Vols. Indianapolis: Bowen-Merrill Company, 1893.

PRACTICE IN COURTS OF REVIEW THAT SUBSTANTIALLY FOLLOW THE COLORADO PROCEDURE. By JOHN C. FITNAM. Chicago: E. B. Myers Company, 1893.

THE LAW OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS IN THE STATE OF ILLINOIS. By SIDNEY RICHMOND TABER. Chicago: E. B. Myers Company, 1893.

COMMENTARIES ON 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 ON IMPOSED DUTIES, CARRIERS OF PASSENGERS. By CHARLES D. RAY, LL.D. Rochester, N. Y.: The Lawyers' Co-operative Publishing Company, 1893.

A TREATISE ON THE ADMISSIBILITY OF PAROL EVIDENCE IN RESPECT TO WRITTEN INSTRUMENTS. By IRVING BROWNE. New York: L. K. Strouse & Co., 1893.

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## BOOK REVIEWS.

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A TREATISE ON WILLS. By THOMAS JARMAN, Esq. The Fifth Edition by LEOPOLD GEORGE GORDON ROBBINS, Esq. Sixth American Edition by MELVILLE M. BIGELOW, Ph.D. Two volumes. Boston: Little, Brown & Co.

These two large volumes, well printed and handsomely bound, will receive from the profession the welcome that is always accorded to an able book ably edited. The edition is published under the new International Copyright Law, and it is a pleasing contrast to such American editions of English text-books as those issued by "The Blackstone Publishing Company." The English editor, Mr. ROBBINS, and the American editor, Dr. BIGELOW, are so well and favorably known to the profession that our readers will readily accept the assurance that their work is thoroughly well done.

And their task has been no light one. The scope of the author's plan is so comprehensive that all branches of the law which are directly or indirectly connected with the subject of wills are treated or in the text. Indeed, it might well be questioned how far a writer on wills is justified in treating at length such subjects as the "Rule Against Perpetuities" and "Restraints upon Alienation and Marriage," which, being rules of property, may be discussed with equal propriety in connection with conveyances *inter vivos*. But be this as it may, the editors have not shrunk from the attack upon the enormous number of decided cases which they were compelled to examine, and the text and notes have grown under their hands into an exhaustive treatise, supplementary to the original work.

If we take, for example, the portions of the book which relate to the "Rule Against Perpetuities," we shall readily appreciate the value of the editors' work. Dr. BIGELOW has been wise enough to keep before him Mr. GRAY'S admirable monograph, and he has not hesitated to cite from it freely. The note to \* 214 is an example of this. The same remark applies to the note to \* 229, in which reference is made to Mr. GRAY'S demonstration of the incorrectness of the decision of the Supreme Court of Pennsylvania in Smith's Appeal.<sup>1</sup> This decision, by the way, has since been overruled. In connection with the subject of "Limitations of Property" we are glad to note the English editor's criticism of the decisions of KAY, J., in *Whitby v. Mitchell*<sup>2</sup> and *Frost v. Frost*.<sup>3</sup> In these cases that learned judge declared that the giving of an estate to an unborn person for life, followed by an estate to any child of such unborn person, is forbidden by an absolute rule independent of the rule against remoteness—a rule identical with the old rule, forbidding limitations by way of remainder of a possibility upon a possibility. Mr. ROBBINS, following closely an admirable article by Mr. VAIZEY,<sup>4</sup> advances considerations which go far toward convincing the learned judge of error.<sup>5</sup>

Dr. BIGELOW has reprinted, in the form of a note to \* 32, the chapter on "Probate," which was prepared for the fourth American edition. It contains a valuable collection of authorities, carefully arranged and intelligently discussed.

We read with satisfaction the note to \* 326, where Dr. BIGELOW, in speaking of the interpretation of wills, says: "Much of the subject of uncertainty in the language of wills, like much of the more general subject of interpretation and construction, though commonly treated as part of the law of wills, does not in reality belong to the law of wills at all, or to any other law than the vague one which requires of the critic the use of that sound understanding and correct thinking which are common to every department of criticism."

Among the other longer notes which we have examined with interest and profit may be mentioned the note to \* p. 1131, on "Estates in Fee

<sup>1</sup> 88 Pa., 492.

<sup>2</sup> 42 Ch. D., 494. Affirmed in Court of Appeal, 44 Ch. D., 85.

<sup>3</sup> 43 Ch. D., 246.

<sup>4</sup> Law Quart. Rev., October, 1890.

<sup>5</sup> \* 249.

without Words of Limitation," and the note to \* p. 1320, on the "Definite and Indefinite Failure of Issue."

The book is provided with a separate table of American cases, and the distinction between the notes of the English editor and those of the American editor is marked by printing the latter in double columns. The plan of omitting the brackets from the body of the text cannot be too strongly commended. Their presence subserved no useful purpose; their absence makes the page more readable and more sightly.

G. W. P.

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THE LAW AND PRACTICE OF INTERNATIONAL EXTRADITION BETWEEN THE UNITED STATES AND THOSE FOREIGN COUNTRIES WITH WHICH IT HAS TREATIES OF EXTRADITION. By JOHN G. HAWLEY. Chicago: Callaghan & Co., 1893.

This work, which is the first in America that has appeared devoted exclusively to the subject of International Extradition, will prove of great value and use to the profession. The sixty-nine pages of text have no other than paragraph divisions. Each paragraph commences with a plain statement of the law discussed, and set in large bold type. One by simply turning over the pages can, in a very short time, gain a very good general idea of the subject. We could have wished, however, that the author had collected under the title of "Contents" the principles discussed in the different paragraphs. The text contains a rather minute description of the proper proceedings, together with the forms to be used in cases of extradition. The appendix of the work, which is much more voluminous than the text, has a copy of the revised statutes of the United States, Title LXVI, Extradition; the Act of 1882, 47 Statute, Chapter 378, to regulate the fees and practice in extradition, and the extradition treaties in existence between the United States and foreign powers. It would have added greatly to the convenience of the reader if Mr. HAWLEY had inserted a table giving in a condensed form the extraditable crimes under existing treaties with each foreign government. We also regret that, while mentioning the particular construction placed upon the clauses of the treaties in the body of the text, he has not seen fit to annotate the treaties themselves. Concerning the text itself, while we cannot but admire the clearness of Mr. HAWLEY'S style and the accuracy of his statements of law, we regret he has not embraced the opportunity afforded him and written a complete and exhaustive treatise. Compare, for instance, the paragraph dealing with the question whether a fugitive extradited for one offense can be tried for other offenses than those for which he has been extradited, with the opinion of Mr. Justice MILLER on the same point in the great case of *United States v. Raucher*, 119 U. S., 407, 1886. Mr. HAWLEY'S statement of the controversy is clear and accurate, but here, it seems to us, that there was a chance for the author to enter upon an exhaustive and critical discussion of the force of the different arguments advanced to sustain the position maintained by the majority of the Supreme Court in the above-cited case, and the position adopted in the case of *Adraince v. Legrave*, 59 N. Y., 110, and supported by Secretary FISH in his con-

troversy with Lord DERBY over the Winslow case. At least, citations to all the materials of the controversy should have been made. Mr. HAWLEY confines himself to the citation of cases and the article by Judge COOLEY. It is evident, however, that Mr. Justice MILLER'S mind, from what he says in his opinion, page 429, was much more influenced by the able articles of Mr. LAWRENCE and of Judge LOWELL than he was by anything found in reported cases. In short, our criticism of the work would be that Mr. HAWLEY might have written an exhaustive and able monograph or critical discussion on international extradition, collecting all the data on the subject. What he has done is to give a concise statement of the leading principles of the law of extradition as interpreted by the courts of the United States, with a clear statement of the history of the conflict between different principles. Yet the book in its present shape is of great interest and use to the profession, and we take great pleasure in recommending it to our readers.

W. D. L.

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THE RAILROADS AND THE COMMERCE CLAUSE. By FRANCIS COPE HARTSHORNE, Member of the Philadelphia Bar. University of Pennsylvania Press, 1892. Pp. 165.

It is rare that a writer can find a subject at once so new and so important as this: it is rarer still that he can treat it in a manner so satisfactory. The power of Congress over the railroads has been extremely ill-defined. It rests largely on a clause in the Constitution framed before railroads were invented, and requiring deeper analysis than most judges have felt themselves ready to give. State commerce and interstate commerce are so linked that it is almost impossible to regulate either one effectively without a good deal of incidental regulation of the other. The author recognizes this fact, and holds that the constitutional power to regulate commerce between the States carries with it the power to regulate State commerce, so far as this is a necessary means to that end. The number of decisions which can be alleged in support of this view is not as yet very large; but we imagine that they will grow more numerous in the immediate future. The line of reasoning adopted by the author seems cogent; it certainly has the merit of reducing to a system the definition of rights which have hitherto been chaotic and conflicting.

If Congress uses the powers which the author attributes to it, there will be little room for State regulation of rates; for each rate forms part of a general system, and it is usually impossible to touch one without affecting a hundred others. What, then, it may be asked, is left to the States? The author believes that their action would be confined to the sphere of police regulation, and within that sphere he thinks they would have large room to act. We do not believe that the distinction can be drawn as clearly as Mr. HARTSHORNE supposes. There is about as much intermixture of State and interstate matters in police regulation as in rate regulation. Mr. HARTSHORNE apparently holds (97, 98) that a State may prescribe the use of a *particular* automatic coupler. Suppose two adjacent States prescribe different couplers, each good for the purpose in

view, but neither of them coupling well with the other. It is obvious that regulations of this kind—of which a few years ago there was some danger—would amount in many cases not merely to a regulation, but to a prohibition of interstate commerce. While each law might be proper enough in itself, the combination of the two would be inadmissible. A similar point might be made with regard to much of the tax law of different States. The difficulty is often not so much connected with the inherent wrongness of State tax laws as with the possibilities of conflict and interference; and the same line of analysis which Mr. HARTSHORNE applies to rate regulation might, perhaps, have been extended with equal pertinence to taxation.

If Congress does not use the power which it possesses, there is more room left for the action of the State legislatures, with all the dangers that such action involves. Nor is the common law protection against such danger as effective as most people think. The author is right in saying that the remedy must, in the majority of cases, be political rather than judicial. But we think that he fails to appreciate the many cases in which this political remedy can be applied; and, in particular, the legitimate work of railroad commissions. He thinks of a commission as a poor kind of court. If a commission tries to be a court, it is undoubtedly a poor kind of court. The best commissions, like those of Massachusetts twenty years ago, or Iowa ten years ago, have not tried to be courts at all. Their work has been educational rather than judicial. They have not been adjudicating between parties hostile in interest, but have been protecting the common permanent interest of both parties against the momentary interest of one side or the other. Their business has been to prevent fights, not to settle them. It was in some respects a misfortune that the Interstate Commerce Commission was composed wholly of lawyers, for they were led to attribute a judicial character to their work which has interfered with its success. What Mr. HARTSHORNE regards as "the evident purpose" of the establishment of the commission—the establishment of consistency and uniformity of policy—we believe to have been chiefly an afterthought of the commissioners themselves, and not a wholly fortunate one at that. We agree with Mr. HARTSHORNE in not liking the present status of the commission, but we should seek a remedy in the opposite direction from his. We would not make it more of a court, but less of one. The commissions whose real power was greatest have been those whose appearance of judicial authority was least. Bodies of the type suggested by Mr. HARTSHORNE have enjoyed, as a rule, small measure of success. Let us have courts for the adjudication of disputes, commissions for their prevention; and let us not imperil the success of the commission in the latter function by encouraging it to assume the former.

ARTHUR T. HADLEY.

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INTERNATIONAL COURTS OF ARBITRATION. By THOMAS BALCH.  
Reprinted, with notes, by THOMAS WILLING BALCH. Philadelphia,  
1892.

It is with especial interest that we call attention in our columns to the above work, which treats of a subject which is now attracting the

attention of the civilized world in an unusual degree. The first edition was published by the author in the year 1874, at the time that the Geneva Board of Arbitration was engaged in settling the much discussed question of the Alabama claims. It is particularly appropriate that the second edition of this pamphlet should be brought out by the author's son at a time when the international arbitration of the rights of the United States in the seal fisheries of Behring Sea is attracting universal attention. We hope that at some time in the near future he will publish a further edition of this work so enlarged as to include a discussion of the tribunal of arbitration which is now holding its sessions in Paris for the purpose of settling this great question.

Mr. THOMAS BALCH, whose death occurred in the year 1877, will be remembered by many Philadelphians as a writer of prominence on political, historical and social questions, and a French scholar of considerable repute. At different periods he corresponded on these topics with many distinguished foreigners, principally in France and England, and his writings abound with references and criticisms of the most interesting character. It is a notable fact that Mr. BALCH was the first writer to suggest the reference of the Alabama question to an international board of arbitration such as subsequently met at Geneva, viz., one consisting of representatives from the two contesting nations and from, at least, one neutral State. On page 11 of this pamphlet is printed the original letter, dated March 3, 1865, in which Mr. BALCH made this suggestion. His idea was afterward expanded so as to include representatives from three neutral States instead of only one, but the general structure of the tribunal followed the plan formulated by him nine years before the board of arbitration convened at Geneva.

The pamphlet also suggests the very interesting question whether such boards of arbitration should not consist *exclusively of neutrals*, instead of including representatives of the contesting nations. Mr. BALCH quotes Professor LORIMER, of Edinburgh, as inclining with some justice to take that view of the matter. It is to be noted, however, that of the five arbitrators on the Geneva board two were citizens of the nations party to the dispute, and of the seven arbitrators on the Behring Sea Board of Arbitration two are citizens of the United States, one a citizen of Great Britain and one a citizen of Canada, leaving the neutral members of the board, who are citizens of Italy, France and Sweden respectively, in a clear minority. We are of opinion, however, that the suggestion that such boards ought to consist exclusively of neutrals might well be followed in future arbitrations, since the present system, by making the respective litigants judges in their own case, tends to diminish the chance of reaching a decision satisfactory to all, or even to a large proportion, of the arbitrators.

Mr. BALCH states at some length, and with great force, certain objections against the method of arbitration which had been generally employed in international disputes prior to the Geneva arbitration. This method was the reference of the subject of controversy to some neutral sovereign for decision. He points out very clearly the reasons why this method could not be followed in the settlement of the Alabama claims, which