BOOK REVIEWS.

COMMENTARIES ON MODERN EQUITY JURISPRUDENCE AS DETERMINED BY THE COURTS AND STATUTES OF ENGLAND AND THE UNITED STATES. By CHARLES F. BEACH, Jr. In two volumes. New York: Baker, Voorhis & Co., 1892.

One cannot fail to admire the energy which has added another massive legal work to the long list of Mr. BEACH'S writings.

His ability, and the enterprise which in a few short years has given to the profession exhaustive works on Contributory Negligence, Private Corporations, the Modern Law of Railroads, the Law of Receivers, and the Law of Wills, etc., is a record which we believe has never been excelled.

Mr. BEACH tells us in his preface that his work is the "result of an attempt to state and to illustrate and distinguish the modern rules of equity in a plain and practical way." In justification for his idea that there is "a modern equity" as distinguished from the equity of the ancient High Court of Chancery, he cites Sir GEORGE JESSEL'S opinion in Knatchbull *v.* Hallett, 13 Chanc. Div., 696, 710, where that learned jurist says that "the doctrines [of equity] are progressive, refined and improved; and if we want to know what the rules of equity are, we must look, of course, rather to the more modern than the more ancient cases." In pursuance of this idea throughout the work, while all cases in point are cited in the notes, only the facts of the very latest cases are explained, and quotations of opinions are in the same way confined to the more recent cases. There is in this an advantage as well as a disadvantage. The advantage lies in the fact that the quotations found in the notes and the statement of cases are always the very latest expression of judicial opinion. The disadvantage is that if all text writers on equity should adopt the same principle, each would furnish to the profession a different set of illustrations. Abandoning the old habit of citing the facts of the first case, where the principle or doctrine was explained with conciseness and ability, renders it impossible that a lawyer or a student should, as heretofore, fix those principles in his mind by leading cases.

Turning to the text of the work, we find that in accordance with the principle laid down in the preface, only twenty-three pages are spent in explaining the general principles of equity jurisprudence, while the rest of the work is taken up in the application of those principles. As opposed to Mr. POMEROY, Mr. BEACH has adopted for the basis of his classification the different external facts to which equity has been applied as, for instance, accidents, mistakes, trusts, etc. Under each head the jurisdiction of the court in the particular case is first treated of, and then the different classes of cases which fall under the head are discussed. As, for instance, in Chapter II, under the head of "Accidents," he first treats of the jurisdiction of the Court of Equity, then of suits on lost instruments, suits on negotiable instruments, etc. This will be seen to be a totally dif-

ferent arrangement from that adopted by Mr. POMERY, who, after discussing in a general way the jurisdiction of Courts of Equity, passes on in the main part of his work to take up, first, equitable maxims; second, the rights which spring from those maxims; and third, the remedies used by Courts of Equity for the enforcement of rights. The two methods of classification illustrate the difference between the two works.

Mr. POMEROY has endeavored to discuss the principles of equity, their foundation primarily, and secondarily their application. Mr. BEACH'S work is primarily a statement of the practical applications which have been made of equitable principles. As a work designed for one who desires to find out how the law has been applied to specific subjects it is invaluable, the statements of the law and their application being concise and wonderfully accurate. To show this accuracy.—So far as we have been able to test the work, we have only found one slight misstatement, and that more than excusable. In Section 779, in speaking of injunctions in cases of libel and slander, Mr. BEACH reiterates a statement made by the late Mr. Justice BRADLEY, in Kidd *v.* Horry, 27 Fed. Rep., 773, to the effect that recent cases in England, which have established a jurisdiction in equity to restrain the publications of a libel, rest on certain acts of Parliament—a statement which is not quite correct even as modified in the note. The English Courts have never but once, in Dixon *v.* Holden, Law Rep., 7 Eq., 480 (1869), claimed the right to issue an injunction to restrain a libel, and that case has been definitely overruled by the Prudential Assur. Co. *v.* Knott, 10 Chanc. App., 142 (1875). The legislation referred to allows one suing for damages on account of a libel in the Common Law Courts to obtain an injunction pending the suit to restrain the further publication of the libel, and, if the suit is determined in his favor, to obtain a permanent injunction. (See AMERICAN LAW REGISTER AND REVIEW, Vol. XXXI, p. 792, Note A.)

The case of Emack *v.* Kane, 34 Fed. Rep., 47, has considerably modified the doctrine of Kidd *v.* Horry, and it is doubtful whether a Court of Equity would not now do what the text says it would refrain from doing, to wit: restrain the defendant by injunctions from publishing circulars which are claimed to be injurious to the plaintiff's patent rights and business. To the statement in the next Section, 780, that equity will enjoin a combination or conspiracy to "boycott," should also be added the statement that equity will also enjoin against strikers who are conspiring to injure the property of their employer. New York, Lake Shore & Western R. R. *v.* Wenger, a case not cited by Mr. BEACH, reported in 17 Weekly Law Bulletin, Ohio, 306 (1887), Cuyahoga County Court of Common Pleas; Coer D'Alene Consolidated Mining Co. *v.* Miners' Union of Wardner, 51 Fed. Rep., 260. The cases recently decided by Judges TAFT and RICKS have further developed the doctrine of equity on this subject.

In conclusion, we can say that the lawyer who turns to Mr. BEACH'S work for the purpose of finding an elaborate discussion of the principles of equity or the historical development of their ever-increasing application will be disappointed. This is not the task which the author has set himself. But he who wants to have constantly before him a work which will

give, in the minimum of time spent on the subject, a general statement of the law on a particular point, and a complete citation of cases, cannot do better than place upon his shelf a copy of Mr. BEACH'S latest work.

In looking over all Mr. BEACH'S books we find he has always had a very clear idea of what he wants to give the profession, but, without disparaging his previous attempts, in none of his works which we have read has he so completely accomplished what he has attempted to do as in this on "Modern Equity Jurisprudence."

W. D. L.

COMMENTARIES ON THE LAW OF PUBLIC CORPORATIONS, INCLUDING MUNICIPAL CORPORATIONS AND POLITICAL OR GOVERNMENTAL CORPORATIONS OF EVERY CLASS. By CHARLES FISK BEACH, JR. In two volumes. Indianapolis: The Bowen-Merrill Company, 1893.

It is seldom that one receives from the same author, within one month after having reviewed a work of over 1578 pages, another work covering 1984 pages. The treatise on "Equity" called forth an expression of our admiration for the author's energy—the receipt of this book has increased that admiration. Mr. BEACH tells us in his preface that he has "attempted to consider all the law of public corporations, including municipal corporations, and governmental or political corporations of every class." Taken in connection with his work on "Private Corporations" (Chicago, 1891), they constitute a complete treatise, in four uniform volumes, on company law in all its phases, from the federal government at the one extreme to the most insignificant joint-stock association or local corporation at the other.

A public corporation, in Mr. BEACH'S view, is co-extensive with government. His book may, therefore, be said to be a work on government, both national, state, and local, in which the national and State governments are only incidentally referred to, while the real substance of the book is a work on local governments—whether that local government derives its powers by prescription, is a creation of the Constitution, or, as is most frequently the case in the United States, is the creation of a charter enacted by a State legislature. Though the introductory chapters contain a very good historical review of the rise of the modern English and American municipal corporations, the work is in no sense a critical, historical, or comparative study of local government in the United States or in England. Neither is it a study of the actual or possible construction of the local government itself, but it is primarily a study for the lawyer of the present legal method of creation—powers, liabilities, and dissolution of local governments in the United States as determined by the decisions of our State and federal courts. As such, it is a work of great value. It is a mine of information, if not of critical discussion, on the powers and liabilities of public corporations. The book is eminently a book of reference, rather than a book to be read. The desire to render each chapter a complete treatise on the subject treated has necessitated considerable repetition. As, for instance, on page 233, § 221, the author treats of "Municipal bonds void when *ultra vires*;" while on page 629, § 614, the

same subject is treated from only a slightly different point of view. On page 593, § 578, under the head of "Fire Limits," we read that, "A provision in a charter to prevent the reconstruction in wood of old buildings within certain limits does not include the power to prevent the repairing with shingles the roof of buildings originally covered with similar materials;" while on page 614, § 598, we find the same case cited, and the same principle stated almost exactly in the same words. From the standpoint of those who desire to read this treatise, these repetitions, which occur quite frequently, would be very annoying; but from the standpoint of one who looks at the work as a book of reference, this method of completely treating each subject, regardless of any slight repetition in another part of the text, is a great advantage, and is, we believe, largely the secret of the success of Mr. BEACH'S works. When we use ordinary text-books as books of reference we are almost always obliged to read the work half through before any particular subdivision of the subject can be completely mastered. To take an example: Those who turn to Mr. BEACH'S work and wish to find out anything about *ultra vires* acts of a public corporation can do so by turning to his chapter on that subject, while those who desire to know the liability of a municipal corporation for the *ultra vires* acts of its agents will find the subject treated in full under the chapter on "Officers and Agents." In other words, it is not necessary to go first to one chapter and then to another to find out all that it is necessary for a lawyer to know on officers and agents of public corporations, or on *ultra vires*. For in each chapter the author seems to have regarded the subject of public corporations from a different point of view, and completely treated the subject from that standpoint, thus creating one of the most complete reference text-books we have ever seen.

W. D. L.

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

This work is, as the author tells us in his preface, the outcome of a lengthy course of reading and study. The author has brought together a large amount of valuable material, and the book would be useful if it were only for the large and complete collection of cases bearing upon the matters discussed.

In his introductory chapter Mr. BROWNE states the "general rule excluding parol evidence," gives "reasons for exceptions to the rule," and among other matters reprints so much of STEPHEN'S Digest of the Law of Evidence as bears upon the parol evidence rule, the provisions of the New York proposed Code of Evidence on the same subject, together with the rules stated by Mr. AUSTIN ABBOTT and Mr. CHARLES CHAMBERLAYNE. In subsequent chapters are discussed "Primary Rules," "Parties," "Strangers," "Consideration," "Formation and Delivery," "Legality of Agreements," "Fraud," "Mistake," "Modification, Discharge, Substitution and Waiver," "Patent Ambiguities," "Incomplete Agreements," "Mercantile Contracts," "Usage," "Negotiable Instruments," "Deeds," "Receipts, Bills of Lading, Releases," "Subscriptions," "Bonds," "Judgments," and "Wills."

These chapter headings show the scope of the work, and indicate also its strength and its weakness. Its strength, as already suggested, consists in the fact that the author has collected valuable material, and classified and arranged it in a reasonably convenient, although somewhat unscientific, form. Its weakness lies in the fact that while it professes to be a treatise which exhausts the topic with which it deals, it at no point reaches the bottom of the subject, nor does the author appear to have grasped those fundamental conceptions which are made clear to the reader of Prof. J. B. THAYER'S writings on this branch of the law of evidence.

It is, perhaps, unfortunate for Mr. BROWNE that Prof. THAYER'S "Select Cases on Evidence," and the same author's paper on the "Parol Evidence Rule," in the *Harvard Law Review*, should have appeared almost simultaneously with the work in hand. Prof. THAYER, by a consistent use of the historical method—the only method by which a scientific investigation of legal principles can be conducted—has succeeded in showing how little of the so-called "parol evidence rule" really belongs to the domain of the law of evidence, and how much of it has to do with substantive law. The following quotation, for example, is typical of the results reached by Prof. THAYER. "The statement, then, that anything is conclusive evidence is not one for which the law of evidence is responsible. It may be a thing very important to be known in handling evidence, but in that respect it is not essentially different from the ordinary rules of substantive law and procedure governing the particular case." Again, in relation to the subject of judgments, Prof. THAYER points out how the rule that judgments cannot be contradicted, added to or varied by parol evidence, is a rule of substantive law, and "appears to be only another mode of expressing the doctrine of the conclusive and binding quality of domestic judgments as regards all who appear upon the record to be parties and to be subject to the jurisdiction."

On the other hand, if one reads Mr. BROWNE'S twentieth chapter—"Judgments"—he will find no such discriminating statements. He will find plenty of such propositions as these: "A judgment record of another State may be impeached by parol proof of fraud or want of jurisdiction, but not otherwise" (§ 121). "A judgment of a domestic court of general jurisdiction may not be collaterally impeached by parties or privies by parol if it shows jurisdiction upon its face" (§ 122). There is not so much as a suggestion that the reason for excluding evidence in this and in similar cases is "that the fact which it tends to prove is of no importance." "Whenever the substantive law does give effect to such a fact, as in cases of fraud, then, of course, it may be proved."

Again, if we compare Mr. BROWNE'S investigation of the subject of "Patent Ambiguities" with Prof. THAYER'S note on "Writings," the comparison will result to Mr. BROWNE'S disadvantage. No better illustration of the superiority of Prof. THAYER'S method of investigation can be cited than that which is exhibited by his exposition of BACON'S conception of the doctrine of latent and patent ambiguities. Although Prof. THAYER'S work was in Mr. BROWNE'S hands (for he quotes it on page 124) his discussion of patent ambiguities, while sound as far as it

goes, consists merely of an array of opinions drawn from various text-writers, preceded by the citations of a few cases and Judge COWEN'S criticism, and followed by the statement of but four cases, one from Wisconsin, one from Texas, one from Arkansas, and one from Iowa. In other words, Mr. BROWNE has failed to do justice to BACON by omitting to "turn on the light of a knowledge of the legal conceptions, which were peculiar to the time, and all their fanciful and pedantic style of expression." One rises from a reading of Prof. THAYER'S exposition of BACON'S conception with an estimate of Lord VERULAM'S celebrated maxim different from that which the reader of Mr. BROWNE'S chapter will be led to form.

If we turn to Mr. BROWNE'S twenty-first chapter, on "Wills," we find that after a preliminary explanation of *ambiguities* the author sets forth WIGRAM'S propositions with respect to interpretation, and follows them up with a summary of Mr. STEWART CHAPLIN'S views on the same subject. Then follow a number of digested cases under the head of "Corroborative Authorities." This is a valuable collection, but it is to be regretted that these authorities were not made the subjects of historical study, and that they have not been printed with due regard to their chronological order, and to the progressive development of the doctrines recognized in them. It would have been well, too, if Mr. BROWNE had given to his readers, with respect to WIGRAM'S treatise, from which he quotes so freely, some such reminder as to its true nature as that which Prof. THAYER puts into the following words: "And, generally, as regards this valuable little book, which is widely supposed to contain a considerable number of rules of evidence the real truth is that, while it lays down some rules of construction, it points out that there is but one single rule of evidence involved in the whole discussion; namely, that which is stated in its Proposition 6, with the exceptions in Proposition 7. Little reflection is needed to see that such things, *mere instances of what is provable*, are but so many illustrations and applications of the fundamental conceptions in any rational system of proof; namely, that which is logically probative, and at the same time practically useful, may be resorted to unless forbidden by some rule or principle of the law."

These comparisons between the work of Prof. THAYER and of Mr. BROWNE are instituted not for the purpose of making captious criticisms, but because of a sincere regret that a writer of Mr. BROWNE'S well-known ability and talents did not, in the investigation of his chosen branch of law, have recourse to that mode of investigating a legal doctrine which alone is sure to result in the discovery of fundamental principles as we find them applied by eminent judges in cases of admitted authority.

As to the "externals" of the work, it may be said that the type is sufficiently clear, that the paper is fair, and that the general arrangement of the work is convenient. The failure to give the references to the official reports of cases in addition to the reference to the publications of the West Publishing Company is not to be commended. Typographical errors are rare. We notice, however, on page 67, Lord Chancellor HARDWICKE'S celebrated decision in 2 Vesey, 155, referred to as Chesterfield *v. Jameson*. G. W. P.

DEATH BY WRONGFUL ACT. A Treatise on the Law Peculiar to Actions for Injuries Resulting in Death, Including the Text of the Statutes, and an Analytical Table of Their Provisions. By FRANCIS B. TIFFANY. St. Paul, Minn.: West Publishing Co., 1893.

"The purpose of this book is to treat of those questions of law which are peculiar to the various statutory civil actions maintainable when the death of a person has been caused by the wrongful act or negligence of another." As is well known, at common law no action could be maintained by the representatives of one who had been killed by the negligence of another, the reason being that such negligence was a felony and the private wrong was lost in the public wrong. This was cured in England by "Lord Campbell's Act," passed in 1846. In America, actions for death by wrongful act are all based on statutes practically similar to the English act referred to. The work of Mr. TIFFANY, therefore, is necessarily to a great extent a digest of the several statutes and the decisions under them. The work shows evidence of great care in preparation, the English being much better than is usually the case in works which must almost necessarily be a collation of the opinions of others.

After an introduction on the common law rule, as adopted in England in the case of Higgins *v.* Butcher, Yelverton, 89, and the more important case of Baker *v.* Bolton, 1 Campbell, 493, with a review of the American common law authorities, the author passes in the second chapter to a consideration of the statutes.

Under the title of "When Action Lies," the provisions of the different State statutes are treated in alphabetical order. In Chapter IV, however, where the author treats of "The Wrongful Act, Neglect or Default" of the defendant, the alphabetical order is abandoned for the very good reason that all the provisions of the different States are practically the same. The last chapters treat of the Beneficiaries, Parties, Statutes of Limitation, Matters of Defense, Damages, Practice and Pleading, Evidence, Jurisdiction of State Courts, etc. The work proper is followed by an appendix containing in full the statutes of the different States. There is also an analytical table showing in a condensed form the leading provisions of the statutes. We agree with the author in thinking that this table will be found of a special value in the newer States and Territories whose statutes have not yet been construed by the courts. Thus, an examination of the table would show a person wishing to arrive at the proper construction of the provisions of the Act in New Mexico, which has received little or no consideration, that the Act is almost identical with the statute of Missouri, which has been fully construed by the Courts of that State. The use of the table in this respect, however, might have been increased by reference under each State to the States whose special provisions were practically the same. The work, as a whole, will be found valuable to any one suing or defending an action for damages for the death of the plaintiff's interstate.

W. D. L.

NEGLIGENCE OF IMPOSED DUTIES: CARRIERS OF PASSENGERS. By CHARLES A. RAY, LL.D., Ex-Justice of Supreme Court of Indiana. Rochester, N. Y.: The Lawyers' Co-operative Publishing Company, 1893.

This work is a very valuable addition to that class of text-books which we may call "digest text-books." In fact, it is one of the best examples we have received. When we say a "digest text-book" we mean one which consists in a digest of the syllabi of cases on a particular subject, so arranged and connected as to combine the features of an ordinary digest with the logical arrangement of a work dealing with legal principles.

With scientific and philosophical text-books Judge RAY has little sympathy. He says: "However worthy of commendation may be the effort of writers of law books to conform the law to their philosophical reasoning, the profession will accept the decisions of the courts only as the final test, and so far as these harmonize the law is settled." He also says that "the law of negligence as taught in the books is practically applied in the cases constantly presented in the courts, and abstract rules find illustration which, as they multiply, solidify into law itself. Whether the result be recognized or not, the law is gradually stamping certain acts or omissions of the carrier as negligence *per se*, and it is equally emphatic in declaring that the passenger must observe certain precautions to avoid the charge of negligence contributing to any injury he may receive."

We must admit the substantial correctness of this statement, though in doing so we acknowledge that there is no law of negligence, in the sense of a body of legal principles. In fact, the so-called "law of negligence" in the United States is a confused mass of decisions, many of which are examples of some of the worst reasoning and injustice to litigants to be found in the books. Judge RAY has done a valuable service in taking these decisions and arranging their syllabi in a logical order. It is true that a reading of the work convinces us that a lawyer cannot advise his clients, except in extreme cases, whether they have a good cause of action for negligence or not. Judge RAY, however, has provided him with a book to which he can turn and easily and quickly see the way in which the courts have decided cases whose facts have some resemblance to the one presented to him. He will, therefore, be able to guess, with a greater degree of certainty that he guesses correctly, how to advise his client.

Digest text-books have come to have a distinctive place in legal literature. They always, when well done, have their use; but, perhaps, in the law of negligence, they are more useful than anywhere else, because a scientific text-book, while interesting, could have no possible practical value, as the courts have seldom applied any scientific principles to actions for damages the result of negligence.

Judge RAY'S book has been well printed. The index is thorough, and, while treating the subject completely, he has not thought it necessary, as have too many modern authors, to go beyond the subject stated on his title page, and increase the apparent bulk of his work by writing a treatise on law in general.

W. D. L.